

In the Supreme Court of the United States

Bethany M. Hall,
Petitioner,

v.

A. Scott Fleming, Director,
Virginia State Council of Higher Education,
Respondent.

Cameron Johnson, *et al.*,
Petitioners,

v.

A. Scott Fleming, , Director,
Virginia State Council 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 NOTRE DAME EDUCATION LAW PROJECT,
NOTRE DAME PROJECT ON CHURCH, STATE &
SOCIETY, LINDSAY AND MATT MOROUN RELIGIOUS
LIBERTY CLINIC, AND UNION OF ORTHODOX
JEWISH CONGREGATIONS OF AMERICA AS
AMICI CURIAE IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Amici curiae are several organizations that work to advance religious freedom and other constitutionally protected liberties, promote educational opportunity, and protect the rights of religious educators and the families they serve.

The **Notre Dame Law School Education Law Project** is an academic program that seeks to enhance civil society, promote educational opportunity, and protect religious liberty by supporting educational pluralism through research, scholarship, and advocacy. Its work focuses in particular on parental choice and faith-based schools, domestically and abroad.²

The **Notre Dame Program on Church, State & Society** focuses on how law shapes the relationship among religious institutions, government, and the broader social order. The Program advances the University's distinctive Catholic mission through scholarship, conferences, workshops, and lectures that bring together diverse perspectives to sharpen debate and build community.

Notre Dame Law School's **Lindsay and Matt Moroun Religious Liberty Clinic** is an academic institution and teaching law practice that promotes

¹ Pursuant to Rule 37.6, *amici curiae* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici curiae*, their members, and their counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties received notice of *amici's* intention to file this brief at least ten days prior to the deadline.

² The views expressed here do not necessarily reflect those of the University of Notre Dame or Notre Dame Law School.

and defends the freedom of religion for all people. It advocates for the right of all people to exercise, express, and live according to their beliefs and defends individuals and organizations against interference with these fundamental liberties.

The **Union of Orthodox Jewish Congregations of America** (Orthodox Union) is the nation's largest Orthodox Jewish synagogue organization, representing nearly 2,000 congregations across the United States. With its Teach Coalition, the Orthodox Union also represents the interests of nearly 250 non-public Jewish K-12 schools before state governments. The Orthodox Union, through its Teach Coalition and OU Advocacy Center, has participated in many cases before this Court that, like this one, raise issues of importance to the Orthodox Jewish community. Through *amicus curiae* briefs, the Orthodox Union seeks to inform the Court of the perspective of our community and the impact the Court's rulings will have.

* * *

Amici submit this brief to raise attention to the prevalence of state and federal programs that reflect an overly broad reading of *Locke v. Davey* and which unconstitutionally exclude students from otherwise available public benefits.

SUMMARY OF ARGUMENT

This Court should grant certiorari to put an end to the damaging effects of *Locke v. Davey*, 540 U.S. 712 (2004). To begin, as Judge Richardson ably demonstrated in his concurring opinion below, “*Locke* was wrongly decided.” Hall Pet. App. 14a-18a.³ What’s more, *Locke* sits in tension with—and imposes a significant impediment to—this Court’s many recent decisions that aim to end unconstitutional religious discrimination in public funding programs. Indeed, despite this Court’s efforts to limit *Locke*, it continues to entrench an array of religious discrimination, providing government actors with a permission structure to justify religious discrimination in educational funding programs that cannot otherwise survive First Amendment scrutiny.

This Court has repeatedly held that the First Amendment prohibits the government from barring religious institutions, and the individuals that they serve and educate, from public funding solely because they are religious or engage in religious activity or instruction. From private school funding to playground resurfacing, the Court has underscored a simple rule for excluding religious institutions from funding: don’t do it. In this Court’s words, “[a] State need not subsidize private education. But once a State decides to do so, it cannot disqualify some private schools solely because they are religious.” *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 487 (2020).

³ See also Mark Storslee, *Church Taxes and the Original Understanding of the Establishment Clause*, 169 U. Pa. L. Rev. 111, 189-92 (2020) (discussing historical government practices of supporting students preparing for the ministry).

Locke sits uneasily with these recent decisions. And, in these decisions, this Court has consistently aimed to ease the tension by narrowly characterizing *Locke* as permitting the government to decline to support religious education in one exceedingly specific context: when the excluded students are pursuing “‘vocational religious’ *degree[s]*” to “prepare for the ministry.” *Carson v. Makin*, 596 U.S. 767, 788 (2022) (quoting *Locke*, 540 U.S. at 725); *Espinoza*, 591 U.S. at 479 (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 464 (2017)). Even that narrow view raises difficult interpretive questions that threaten to allow unconstitutional discrimination to go unchecked. Indeed, in the view of the courts below, even the Court’s narrow understanding of *Locke* allows students like Bethany Hall and Cameron Johnson to miss out on the tens of thousands of dollars of funding that their peers receive, solely based on their calling to pursue religious ministry as a vocation.

The Court’s effort to cabin *Locke* to its facts has failed even more dramatically on the ground. Rather than staying within its narrow confines, *Locke* sows confusion and casts a long shadow in public programs supporting higher education. Across the country, dozens of state and federal laws and regulations reflect a capacious reading of *Locke* that sanctions unconstitutional religious discrimination in public benefit programs, particularly those that fund students pursuing higher education. Indeed, dozens of laws deny higher education funding that cannot possibly be justified by *Locke*, including: prohibitions on studying at certain kinds of schools, prohibitions on studying religion or religious instruction in general, and a variety of prohibitions affecting auxiliary student grants.

These laws flout this Court’s recent funding-discrimination cases, and they cannot be justified on any fair reading of the First Amendment. Unfortunately, confusion over this basic point continues to persist. Abandoning the failed project of *Locke* is the best, perhaps only, way to eliminate this confusion and ensure the equal treatment of all students, even those pursuing religiously related courses of study.

ARGUMENT

I. Despite efforts to cabin *Locke*, dozens of laws unconstitutionally deny funding to students pursuing degrees unrelated to preparation for the ministry.

This Court has made abundantly clear that the First Amendment prohibits states from “exclud[ing] some members of the community from an otherwise generally available public benefit because of their religious exercise.” *Carson v. Makin*, 596 U.S. 767, 781 (2022). Indeed, this Court has reaffirmed that rule three times in the past decade. *See id.*; *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 487 (2022); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462 (2017). As Justice Kavanaugh described at a recent oral argument, *Trinity Lutheran*, *Espinoza*, and *Carson* “are some of the most important cases [this Court has] had.” Tr. of Oral Argument at 106, *Okla. Statewide Charter Sch. Bd. v. Drummond*, 605 US. 165 (2025) (No. 24-394). And in *Carson*, the Court observed that the prohibition on religious discrimination is by now an “unremarkable principle[]” of the Free Exercise Clause’s protections. 596 U.S. at 780 (internal quotation marks omitted).

Locke confounds that bedrock rule. Under *Locke*, the general prohibition on excluding the religious still allows a state to deny funding for studies “intended to be used ‘to prepare for the ministry.’” *Carson*, 596 U.S. at 788 (quoting *Trinity Lutheran*, 582 U.S. at 464). That “distinct category” of funding is meant to be “narrow.” *Id.* (quoting *Locke*, 540 at 721); *see also* *Trinity Lutheran*, 582 U.S. at 464; *Espinoza*, 591 U.S. at 483. It does not allow states to deny funding to every degree that might be religious—like students studying “theology courses,” or even those being educated “through the lens of [a particular] faith.” *Carson*, 596 U.S. at 787-88. It does not exclude “pervasively religious schools” even if they “incorporate[] religious instruction throughout their classes.” *Espinoza*, 591 U.S. at 480 (quotation omitted). It applies to—and only to—“vocational religious degrees” that are used to prepare “church leaders.” *Carson*, 596 U.S. at 788-89 (quotation omitted); *see also* *Espinoza*, 591 U.S. at 479 (*Locke* applies specifically to “training a minister”).

Unfortunately, this Court’s efforts to constrain *Locke* have failed on the ground. Without question, *Locke* sits uneasily with the *Carson* line of cases. And governments across the country seem unable to draw the line this Court has demanded. Instead, dozens of state and federal laws continue to unconstitutionally exclude the religious from higher-education benefits even though their studies are not in preparation for ministry. This is, to be sure, a problem that sweeps well beyond this particular area of funding; even following *Carson*, *hundreds* of public aid programs continue to exclude the religious. *See Protecting Religious Organizations from Discrimination*, Religious Equal., <https://religiousequality.net> (last

visited Sep. 9, 2026) (collecting religiously discriminatory provisions of state and federal funding programs). The good news is that reform efforts are underway, at both the state and federal levels.⁴ *See, e.g.*, Michael A. Helfand & Nicole Stelle Garnett, *These States are Leading on Restoring Religious Freedom*, City J., (June 1, 2026), <https://perma.cc/NV8B-ZJZT>. But *Locke* imposes a severe impediment to the much-needed constitutional correction in this area. Indeed, *Locke* continues to sow confusion over what kinds of funding might be denied to religious institutions—and to provide a permission structure to justify religious discrimination in educational funding programs that cannot otherwise pass muster.

The effects are, regrettably, widespread as millions of dollars are denied each year to students and schools solely because they are religious.

⁴ *See, e.g.*, S. File 2060, 91st Gen. Assemb. (Iowa 2026), <https://perma.cc/W6EL-RG2U> (bill to eliminate religious exclusions in state funding programs); Exec. Order No. 2025-08, Okla. Admin. Code § 1:2025-08 (Okla. Mar. 31, 2025) (declaring policy to end religious exclusions in Oklahoma public benefit programs); Constitutionality of Religious Restrictions on the Use of Federal Funds, 50 Op. O.L.C. (Aug. 25, 2026) (concluding that federal statutes and regulations that prohibit the recipients of federal fund, including “Charitable Choice” and childcare programs administered by the U.S. Department of Health and Human Services violate the Free Exercise Clause).

A. Prohibitions on studying at certain kinds of school

To start, a host of laws disqualify students from receiving educational support based simply on *where* they choose to study. These laws deny public benefits to students who study at a variety of schools, including (a) a postsecondary institution’s “department of divinity,” “school of theology,” or “seminary”; (b) a postsecondary institution whose “sole” or “primary purpose” is “religious or theological training” or “religious education”; or (c) schools that are affiliated with “sectarian,” “denominational,” or “religious” institutions.

Locke cannot justify these exclusions.⁵ A vast array of studies at religious schools are unrelated to “prepar[ing] for the ministry.” *Carson*, 596 U.S. at 770. To be sure, some programs at divinity schools and seminaries educate students preparing for ministry. But many offer programs well beyond that. Yeshiva University’s Rabbi Isaac Elchanan Theological Seminary, for example, offers tracks “[f]or students who are pursuing *semikha* [rabbinical ordination], but not looking to careers in *avodat hakodesh* [sacred service].”⁶ A number of divinity schools offer programs

⁵ See Religious Restrictions on Capital Financing for Historically Black Colleges and Universities, 43 Op. O.L.C. 191 (2019) (concluding that certain provisions of the Historically Black Colleges and Universities Capital Financing Program that prohibit federal funding of “a school or department of divinity” violate the Free Exercise Clause).

⁶ *Semikhah Requirements* § D(2)(c), Rabbi Isaac Elchanan Theological Seminary, <https://perma.cc/U4K8-PSK3>.

to prepare for careers in professional counseling.⁷ Students at Princeton Theological Seminary may focus even more broadly in “Theology, Justice and Public Life,” a program designed for “working professionals and leaders who want to influence social change” by weaving theology “with themes of social justice” through “classes focused on everything from race and belonging to proclamation and trauma.”⁸ So too at the University of Chicago Divinity School, which offers programs in the “academic study of religion”⁹ and courses in subjects as wide-ranging as the Scopes Monkey Trial, theology and social justice, religion in “visual culture,” and “Narrative in the Time of Queer

⁷ See, e.g., *MA in Counseling (MACO)*, Gordon-Conwell Theological Seminary, <https://perma.cc/ZK88-VMLR>; *Master of Arts Christian Counseling (MACC)*, Reformed Theological Seminary, <https://perma.cc/MS4R-5VQC>; *Master of Arts in Mental Health Counseling*, Asbury Theological Seminary, <https://perma.cc/8KYV-SS5C>.

⁸ *Master of Arts (Theology, Justice, and Public Life)*, Princeton Theological Seminary, <https://perma.cc/SR6C-N6FT>.

⁹ *MA and AMRS Programs*, The University of Chicago Divinity School, <https://perma.cc/E6WQ-2MGZ>; *PhD Program*, The University of Chicago Divinity School, <https://divinity.uchicago.edu/PhDprogram>.

and Crip.”¹⁰ Unsurprisingly, the vast majority of these students go on to careers outside the clergy.¹¹

Many seminaries and divinity schools also offer clinical counseling degree programs for students that desire to offer help to clients with a wide variety of mental-health issues. Gordon-Conwell Theological Seminary (Multidenominational Evangelical) has two.¹² Reformed Theological Seminary (Reformed) also offers a M.A. in Christian Counseling degree.¹³ Similar programs are offered at Asbury Theological Seminary (Multidenominational Evangelical), through either an M.A. in Marriage and Family Counseling “within a Christian worldview”¹⁴ or an M.A. in Mental Health Counseling “integrating Christian values.”¹⁵

¹⁰ *Committees and Areas of Study: Religions in the Americas*, The University of Chicago Divinity School, <https://perma.cc/7EFH-BLN4>; *Committees and Areas of Study: Theology*, The University of Chicago Divinity School, <https://perma.cc/Y92Q-PWNQ>; *Committees and Areas of Study: Religion, Literature, and Visual Culture*, The University of Chicago Divinity School, <https://perma.cc/NW4K-HMEX>.

¹¹ *See Career Outcomes*, The University of Chicago Divinity School, <https://perma.cc/5HJ8-XN3U> (97% of M.A., 85% of PhD, and 54% of M.Div. graduates working outside “religious leadership”).

¹² *See MA in Counseling (MACO)*, Gordon-Conwell Theological Seminary, <https://perma.cc/ZK88-VMLR>; *MA in Christian Counseling (MACC)*, Gordon-Conwell Theological Seminary, <https://perma.cc/52CD-2PUC>.

¹³ *See Master of Arts in Christian Counseling (MACC)*, Reformed Theological Seminary, <https://perma.cc/MS4R-5VQC>.

¹⁴ *Master of Arts in Marriage and Family Counseling*, Asbury Theological Seminary, <https://perma.cc/AQB2-6CJD>.

¹⁵ *Master of Arts in Mental Health Counseling*, Asbury Theological Seminary, <https://perma.cc/8KYV-SS5C>.

In short, studying at a “divinity” school or “seminary” hardly equates to preparing for a life in the ministry. Yet many states deny otherwise available aid to students enrolled there, inflating *Locke* beyond recognition.

These include:

- Ala. Code § 16-33A-1(3): Alabama Student Grant Program scholarship limited to use at an educational institution whose “curriculum which is not comprised principally of sectarian instruction or preparation of students for a sectarian vocation and which does not award primarily theologian or seminarian degrees.”
- Fla. Stat. § 1009.89(3): Effective Access to Student Education Grant Program scholarship limited to use at an educational institution “which has a secular purpose, so long as the receipt of state aid by students at the institution would not have the primary effect of advancing or impeding religion or result in an excessive entanglement between the state and any religious sect.”
- Fla. Stat. § 1009.521(2): Effective Access to Student Education Grant Program scholarship limited to use at an educational institution that has “a secular purpose, and the receipt of state aid by students at the institution may not have the primary effect of advancing or impeding religion or result in an excessive entanglement between the state and any religious sect.”
- Ga. Code § 20-3-250.3(a)(6): Scholarship program eligibility excludes use at educational

institutions whose “purposes are solely to provide programs of study in theology, divinity, religious education, and ministerial training, and [requires] that they do not grant postsecondary degrees of a nonreligious nature.”

- 110 Ill. Comp. Stat. 920/8: Baccalaureate Savings Act tuition assistance grant program excludes “financing of the education of a student (i) in a school or department of divinity for any religious denomination.”
- Nev. Rev. Stat. § 396.916(2): Governor Guinn Millennium Scholarship Program limited to use at a “nonsectarian college or university.”
- N.M. Stat. § 21-21C-3(B): Student Choice Grant scholarship program limited to use at a “nonsectarian four-year college or university.”
- N.C. Gen. Stat. § 116-201(b)(8)(a): Scholarship program limited to use at educational institutions which are “not a seminary, Bible school, Bible college, or similar religious institution in this State.”
- 24 Pa. Stat. § 19-1901-F: Pennsylvania Technical College Program scholarship excludes use at educational institutions “determined by the Department of Education to be a theological seminary or school of theology or a sectarian and denominational institution.”
- 24 Pa. Stat. § 5183: Institutional Assistance Grant tuition assistance grant program limited

to use at educational institutions “determined by the agency not to be a theological seminary or school of theology or a sectarian and denominational institution.”

- 73 Pa. Stat. § 400.2101: Family Savings Account program limited to use at educational institutions that are not “a school of theology or theological seminary.”
- S.C Code § 12-6-3385(B)(2): Income tax credit for tuition available to students unless they attend educational “Institutions whose sole purpose is religious or theological training, or the granting of professional degrees.”
- S.C. Code § 59-114-20(4)(b): South Carolina National Guard College Assistance Program scholarship excludes use at educational “Institutions whose sole purpose is religious or theological training, or the granting of professional degrees.”
- S.C. Code § 59-149-10(B)(2): South Carolina LIFE scholarship program excludes use at “Institutions whose sole purpose is religious or theological training, or the granting of professional degrees.”
- S.C. Code § 59-150-360(C): Tuition assistance program excludes use at educational “Institutions whose sole purpose is religious or theological training.”
- Va. Code § 22.1-290: Teaching Scholarship Loans available for tuition of future educators

limited to use at educational institutions “whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education.”

- Va. Code § 30-231.2(C): Brown v. Board of Education Scholarship program excludes use at “any institution whose primary purpose is to provide religious training or theological education.”
- 20 U.S.C. §§ 1003(15), 1011k(c): Federal funding of postsecondary programs may not “be used ... for a school or department of divinity,” which includes any “institution, or a department or a branch of an institution, the program of instruction of which is designed for the education of students— (A) to prepare the students to become ministers of religion or to enter upon some other religious vocation (or to provide continuing training for any such vocation); or (B) to prepare the students to teach theological subjects.”
- 20 U.S.C. §§ 1062(c)(1); 1066c(c), 1003(15): Federal education grants for Historically Black Colleges may not be used “by a school or department of divinity.” Federal bond insurance for Historically Black Colleges may not be used “by a school or department of divinity or to an institution in which a substantial portion of its functions is subsumed in a religious mission,” the term “school or department of divinity” means “an institution, or a department or a branch of an institution,

the program of instruction of which is designed for the education of students— (A) to prepare the students to become ministers of religion or to enter upon some other religious vocation (or to provide continuing training for any such vocation); or (B) to prepare the students to teach theological subjects.”¹⁶

- 20 U.S.C. § 1068e(1): Federal grant program for educational institutions serving low-income students may not be used “for a school or department of divinity.”
- 20 U.S.C. §§ 1103e(1), 1003(15): Federal grant program for educational institutions serving Hispanic students may not be used “for a school or department of divinity.” The term “school or department of divinity” means “an institution, or a department or a branch of an institution, the program of instruction of which is designed for the education of students— (A) to prepare the students to become ministers of religion or to enter upon some other religious vocation (or to provide continuing training for any such vocation); or (B) to prepare the students to teach theological subjects.”
- 20 U.S.C. § 7221i(2)(E): Federal grant program requires that charter schools receiving federal funding must be “nonsectarian in its programs, admissions policies, employment practices, and

¹⁶ *C.f.* Religious Restrictions on Capital Financing for Historically Black Colleges and Universities, *supra* note 5, at 198-200, 219 (concluding that certain provisions of this statute are likely unconstitutional).

all other operations, and is not affiliated with a sectarian school or religious institution.”¹⁷

- 25 U.S.C. § 278a: Federal tribal education grant prohibits the use of federal funding for the education of Indian children at any “sectarian schools.”
- 25 U.S.C. § 3306(a): Federal tribal education grant program to Indian students for higher education expenses may not “be used for study at any school or department of divinity or for any religious worship or sectarian activity.”
- 34 C.F.R. §§ 648.2(c), 648.9(b): Graduate Assistance in Areas of National Need needs-based grant program prohibits use for “study at a school or department of divinity.” The term “School or department of divinity means an institution, or an academic department of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter into some other religious vocation or to prepare them to teach theological subjects.”

B. Prohibitions on studying religion or religious instruction in general

Second, many laws unconstitutionally disqualify students from receiving public benefits solely because their course of studies is deemed too “sectarian” or “religious” character, including those which might

¹⁷ *C.f.* Exclusion of Religiously Affiliated Schools from Charter-School Grant Program, 44 Op. O.L.C. 131 (2020) (concluding this provision is unconstitutional).

include “religious worship” or “proselytization.” Many go so far as to exclude all degrees in “theology,” “divinity,” “religious studies, or “religious education.” Following *Carson*, there is no question that such exclusions based on the *religious nature* of one’s studies or of a school’s approach to teaching and formation cannot stand. *See* 596 U.S. at 787-88.

These many programs include:

- Ala. Code § 16-33D-3(8): ReEngage Alabama Grant program scholarships limited to use for a “nonsectarian, secular educational program that is aligned with Alabama’s high demand workforce needs.”
- Ala. Admin. Code R. 300-4-13.07(6): Alabama Student Grant Program scholarship limited to use towards a “nonsectarian, secular educational purposes.”
- Ky. Rev. Stat. § 164.7874(20)(a)(2): Kentucky Educational Excellence Scholarship program eligibility excludes any “degree program of study not comprised solely of sectarian instruction.”
- La. Stat. § 17:1675(5): Scholarship program eligibility requires that students “shall not be a major in religious studies or theology.”
- Md. Educ. Code § 18-104(b)(2): Scholarship program eligibility requires that students are not “[r]equired to take sectarian religious courses to qualify for a degree.”

- Mich. Comp. Laws § 390.991(1): Tuition assistance grant program eligibility is limited to those institutions “whose instructional programs are not comprised solely of sectarian instruction or religious worship.”
- Mich. Comp. Laws § 390.994(4)(2): Tuition grant program eligibility excludes any “student who is enrolled in a program of study leading to a degree in theology, divinity, or religious education.”
- Minn. Stat. § 135A.30(2)(3): Minnesota Academic Excellence Scholarship Program eligibility excludes students who do not “enroll full time in a nonsectarian, baccalaureate degree-granting program.”
- N.J. Stat. § 18A:71B-20(b): “A student who is enrolled in a course leading to a degree in theology or divinity shall not be eligible for a tuition aid grant.”
- N.M. Stat. § 21-21C-7: Student Choice Grants program eligibility prohibits students from using funds “for sectarian purposes.”
- Ohio Rev. Code § 3333.122(E): Ohio College Opportunity Grant Program excludes “any student in a course of study in theology, religion, or other field of preparation for a religious profession.”
- Or. Rev. Stat. § 348.260(8): Oregon Opportunity Grant program eligibility excludes “any qualified student enrolled in a course of study

required for and leading to a degree in theology, divinity or religious education.”

- S.C. Code § 2-77-15(1): South Carolina Higher Education Excellence Enhancement Program tuition assistance grant program eligibility for low-income students excludes institutions that do not offer “at least one nonsectarian program at the baccalaureate level.”
- S.C. Code § 59-113-20(d)–(e): South Carolina Higher Education Tuition Grant Commission scholarship program eligibility excludes any “student whose academic programs are not comprised solely of sectarian instruction” or is “enrolled in a course of study leading to a degree in theology, divinity, or religious education.”
- Va. Code § 30-231.2(C): Brown v. Board of Education Scholarship program excludes any “student pursuing a course of religious training or theological education.”
- 8 Va. Admin. Code § 40-180-10: Virginia Foster Care Tuition Grant requires that a student’s course of study “does not include religious training or theological education in programs.”
- 20 U.S.C. § 123: Federal funding for Howard University may not be used “for religious instruction.”
- 20 U.S.C. § 1011k(c): Federal funding of postsecondary improvement programs may not “be used for religious worship or a sectarian activity.”

- 20 U.S.C. § 1062(c)(1): Federal education grants for Historically Black Colleges may not be used for “any educational program, activity, or service related to sectarian instruction or religious worship.”
- 20 U.S.C. § 1066c(c): Federal bond insurance for Historically Black Colleges may not be made “for any educational program, activity or service related to sectarian instruction or religious worship.”
- 20 U.S.C. § 1068e(1): Federal grant program for educational institutions serving low-income students may not be used for “any religious worship or sectarian activity.”
- 20 U.S.C. § 1103e(1): Federal grant program for educational institutions serving Hispanic students may not be used for “any religious worship or sectarian activity.”
- 25 U.S.C. § 1803(b): Federal operational grant program for tribal educational institutions may “not be used in connection with religious worship or sectarian instruction.”
- 25 U.S.C. § 2502(b)(2): Federal operational grant program for tribal educational institutions “may not be used in connection with religious worship or sectarian instruction.”
- 2 C.F.R. § 3474.15(d)(1): Private organizations receiving federal funding must not conduct “explicitly religious activities, such as worship, religious instruction, or proselytization, [and]

must offer those activities separately in time or location from any programs or services funded.”

- 34 C.F.R. § 75.52(c)(1): Programs and services funded by federal education grants must be kept “separate[] in time or location from any “explicitly religious activities, such as worship, religious instruction, or proselytization.”
- 34 C.F.R. § 606.10(c)(3): Federal development grant program for Hispanic-serving institutions prohibits use for “[a]ctivities or services that constitute religious instruction, religious worship, or proselytization.”
- 34 C.F.R. § 607.10(c)(3): Federal development grant program prohibits use for “[a]ctivities or services that constitute religious instruction, religious worship, or proselytization.”
- 34 C.F.R. §§ 608.10(b)(5), 609.10(b)(5): Federal grant program for Historically Black Colleges prohibits use for “[a]ctivities or services that constitute religious instruction, religious worship, or proselytization.”
- 34 C.F.R. § 75.532: Federal education grant programs for nonpublic organizations may not be used for “[r]eligious worship, instruction, or proselytization,” nor are “[e]quipment or supplies to be used” for such activities.
- 34 C.F.R. § 628.45(a)(3)(i): Federal endowment fund challenge grants received by educational

institutions may not be used for “any religious worship or sectarian activity.”

- 34 C.F.R. § 694.5(a): Federally funded educational services funded by the GEAR UP program for students attending nonpublic schools “must be secular.”

C. Prohibitions affecting auxiliary student grants

Finally, still other laws impose religious-use-based restrictions on educational-support benefits to students.

These include:

- Cal. Educ. Code § 69960(b): Learning-Aligned Employment Program work study program requires that the educational institution “shall assure that ... [t]he work performed by the student shall not be related to the activities of any sectarian organization.”
- Idaho Code §§ 33-4403(1), 33-4403(6): Idaho Work Study program excludes “off-campus employment ... located at, or be performed on behalf of, a sectarian or religious establishment” and excludes any “a student whose academic course of study is sectarian in nature or who is pursuing an educational program leading to a baccalaureate degree in theology or divinity.”
- 110 Ill. Comp. Stat. 225/3: Illinois Cooperative Work Study Program scholarship eligibility excludes students enrolled in “any program of

sectarian instruction or for any program designed to serve a sectarian purpose.”

- Ind. Code. § 21-16-2-4(4): EARN Indiana work study program requires that “any work performed by a student ... shall not involve any ... sectarian activities.”
- Minn. Stat. § 124D.09(3)(c): Postsecondary Enrollment Options Act college-credit program for secondary students at postsecondary educational institutions offered only for those that complete “nonsectarian courses.”
- Minn. Stat. § 136A.125(2)(a)(5): Childcare Grant Program limits eligibility to students who are “pursuing a nonsectarian program or course of study that applies to an undergraduate, graduate, or professional degree, diploma, or certificate.”
- Minn. Stat. § 136A.233(2)(d): Work-Study Grant Program eligibility limits students to “nonsectarian” work.
- N.M. Stat. § 21-21B-9: Work-Study Act program provides that “Students cannot work in the following jobs and remain eligible”: “A. jobs that advance a religious purpose; B. jobs that have an objective that is primarily religious; C. jobs that involve excessive entanglements with a religious organization.”
- Ohio Rev. Code § 3365.02(A): College Credit Plus Program offers college credit only for secondary students that complete

“nonsectarian ... courses” at postsecondary educational institutions.

- Tex. Educ. Code § 56.074(b)(1): Texas College Work-Study Program requires that educational institutions “provide employment to an eligible student” of “nonsectarian activities.”
- Tex. Educ. Code § 56.0855(b)(4): Texas Working Off-Campus: Reinforcing Knowledge and Skills Internship Program eligibility requires that employers “provide employment to a student employed through the program in ... nonsectarian activities that relate to the student's long-term career interests.”

CONCLUSION

This Court has worked, repeatedly, to reject government efforts to exclude religious schools and the students that they educate from public benefits programs. At the same time, the Court has sought to limit the pressure that *Locke* puts on that baseline rule of nondiscrimination by confining that case to its facts. Regrettably, those efforts to mitigate the effects of *Locke* appear to be failing on the ground. Religious exclusions on higher-education funding are rampant and run well beyond any effort to limit public funding of training for the clergy.

The only way to resolve the tension and to allow for much-needed constitutional reform may be to abandon *Locke* altogether. This Court should grant certiorari and ensure that governments do not continue to rely on *Locke* to justify unconstitutional discrimination in higher education funding.

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