

No. 26-237

IN THE
Supreme Court of the United States

JOHN WOOLARD, et al.

Petitioners,

v.

TONY THURMOND, et al.,

Respondents.

*On Petition for Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit*

**BRIEF OF U.S. SENATORS TED BUDD, JIM
BANKS, TED CRUZ, STEVE DAINES, CINDY
HYDE-SMITH, JIM JUSTICE, JOHN
KENNEDY, JAMES LANKFORD, MIKE LEE,
ROGER MARSHALL, PETE RICKETTS, JAMES
RISCH, AND TIM SHEEHY AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Amici are United States Senators Ted Budd of North Carolina, Jim Banks of Indiana, Ted Cruz of Texas, Steve Daines of Montana, Cindy Hyde-Smith of Mississippi, Jim Justice of West Virginia, John Kennedy of Louisiana, James Lankford of Oklahoma, Mike Lee of Utah, Roger Marshall of Kansas, Pete Ricketts of Nebraska, James Risch of Idaho, and Tim Sheehy of Montana. As elected representatives and lawmakers in Congress, *amici* have an interest in protecting their constituents' constitutional rights. Congress has enacted legislation that gives individuals the right to enforce their constitutional rights against state government officials. 42 U.S.C. 1983. In addition, *amici* have an interest in ensuring that the Constitution—whether the state-action doctrine or the Establishment Clause of the First Amendment—is not interpreted too broadly to restrict funding of private religious education, as Congress often provided from the founding through Reconstruction.

¹ No counsel for a party authored this brief in whole or in part, and no person other than amici and their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel were timely notified of this brief as required by Supreme Court Rule 37.2.

SUMMARY OF THE ARGUMENT

As part of California’s publicly funded independent-study programs, parents can teach their own children in their own homes with limited oversight from a private, nonprofit corporation operating a charter school. And subject to general state standards, parents can choose any curriculum they want for their homeschooling—with one exception: religion. That overt discrimination—which Respondents say is required by California’s Blaine Amendment—clearly violates the Constitution. And it is preposterous to say, as did the Ninth Circuit, that homeschooling parents are actually state actors.

This Court has “repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits” and programs. *Carson v. Makin*, 596 U.S. 767, 778 (2022). Three times in recent years, the Court has applied that principle to stop states’ efforts to exclude religious schools, parents, and students from generally available funding programs based solely on their religion. *Id.* at 778–79 (citing *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017); *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464 (2020)).

To get around that blatant constitutional violation, the Ninth Circuit deemed the homeschool independent-study programs *public*. In other words, homeschooling parents are state actors. But that’s egregiously wrong. This case presents an easy question: whether parents who teach their own children in their own homes based on curriculum they select speak and act as the government. Both case law and common sense dictate that the answer is no.

In holding otherwise, the Ninth Circuit disregarded this Court’s state-actor decisions, which provide a straightforward answer. The court of appeals instead forged a new test based on *Carson*. But *Carson* presented no state-action question and cannot be read to displace that line of authority.

The Ninth Circuit also split from the unanimous en banc Fourth Circuit, which has held that a private third party contracting with a charter school is not a state actor. See *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 123 (4th Cir. 2022) (en banc); *id.* at 150 (Quattlebaum, J., concurring in part and dissenting in part). This Court should resolve that divide and restore constitutional sanity.

Finally, the First Amendment’s Establishment Clause presents no barrier to Congress or California funding private religious education as part of a neutral public-benefit program. Congress’s long history funding private religious education makes that question open and shut. And this Court’s decisions confirm as much.

The Court should grant the petition and reverse the Ninth Circuit.

ARGUMENT

I. This Court should grant the petition and reverse the Ninth Circuit’s conclusion that homeschool independent-study programs are public.

The Ninth Circuit held that the homeschool independent-study programs at issue are “public school programs” in which California is free to discriminate against religion. App.18a. The court recognized that,

in these programs, “parents provide home-based direct instruction” and are afforded “great flexibility to choose which pre-existing curricula to use to educate their children, or to create their own.” App.9a, 18a. But no matter, the Ninth Circuit held, because “the independent study programs have the critical features” that this Court supposedly “found characteristic of public schools in *Carson*”: they are free, open to all, subject to state curricular standards, and supervised at a basic level. App.15a. So in the Ninth Circuit, homeschooling parents are now state actors.

That conclusion conflicts with this Court’s case law—which sets forth a state-action doctrine that the Ninth Circuit ignored—and splits from the Fourth Circuit. It also gives California and other states broad authority to discriminate based on religion by deeming swaths of activities public *and* to subject countless private parties to constitutional liability as state actors.

A. The Ninth Circuit’s decision conflicts with this Court’s precedent.

The Ninth Circuit’s holding—which created a new test to determine that homeschool independent-study programs are public—conflicts with this Court’s state-action case law. Sup. Ct. R. 10(c).

1. Homeschooling parents are not state actors.

The Constitution’s individual-rights protections, like the Free Exercise and Free Speech Clauses of the First Amendment, “constrain[] governmental actors and protect[] private actors.” *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 804 (2019). As in

this case, then, distinguishing between the two often proves critical. “To draw the line between governmental and private,” this Court “applies what is known as the state-action doctrine.” *Ibid.*

The Court has identified “a few limited circumstances” in which “a private entity can qualify as a state actor.” *Id.* at 809. These include: (1) when a private organization is “entwine[d]” with the government “to the point of largely overlapping identity,” *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 303 (2001); (2) “when the government compels” or significantly encourages a “private entity to take a particular action,” *Manhattan Cmty. Access*, 587 U.S. at 809; (3) when a “private entity performs a traditional, exclusive public function,” *ibid.* (citing *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352–54 (1974)); and (4) when, in “certain circumstances,” “the government has outsourced one of its constitutional obligations to a private entity,” *id.* at 810 n.1 (discussing *West v. Atkins*, 487 U.S. 42, 56 (1988)).

At bottom, the central question is whether the conduct in question is “fairly attributable to the State.” *NCAA v. Tarkanian*, 488 U.S. 179, 199 (1988).

Applying that test here, the homeschooling parents are not state actors. Full stop. No one thinks that parents educating their own children in their own homes with the curriculum they choose are acting for or as the State of California. Indeed, this Court’s decision in *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982), which held that a privately operated school providing free publicly funded education pursuant to a government contract is not a state actor, effectively resolves this case.

First, homeschooling parents are not entwined with the government. The question is whether state officials “control” and “overwhelmingly perform” the substantive tasks, such that there is “overlapping identity” between the private entity and the state. *Brentwood*, 531 U.S. at 300, 303. Here, there is no organizational overlap. Homeschooling parents make all substantive decisions regarding their children’s curriculum. Two charter schools provide limited oversight and support. Pet. 8–9. That falls far short of the “pervasive entwinement” with public officials in the programs’ “structure” that would transform parents into state actors. *Brentwood*, 531 U.S. at 291.

Second, the State does not effectively order homeschooling parents. Instead, parents decide whether to homeschool through independent-study programs and whether to use religious or non-religious curriculum. The question is whether California’s “coercive power” or “significant encouragement” means a decision must “be deemed to be that of the State.” *American Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52 (1999). But the Ninth Circuit agreed that the independent-study programs give “parents great flexibility to choose” or “create” the curriculum they prefer. App.18a. Provided parents satisfy the minimum state standards, they make and carry out their own decisions. Statutory “authorization” of independent-study programs does not amount to compulsion. *American Mfrs.*, 526 U.S. at 54 (citation modified). California cannot be said to direct or compel Petitioners’ religious conduct.

Third, education is hardly an exclusive public function. To satisfy this test, “the government must have traditionally *and* exclusively performed the function” at issue. *Manhattan Cmty. Access*, 587 U.S.

at 809. “While many functions have been traditionally performed by governments, very few have been exclusively reserved to the State.” *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 158 (1978) (citation modified). This Court has recognized only two: “running elections and operating a company town.” *Manhattan Cmty. Access*, 587 U.S. at 809–10 (collecting cases).

Our nation’s history—including Congress’s funding of private education from the founding through Reconstruction, see *infra*, at 15–17—leaves no doubt that education has never been the exclusive domain of the government. In early America, private groups educated children long before the government started operating schools. See Nathan S. Chapman & Michael W. McConnell, *Agreeing to Disagree: How the Establishment Clause Protects Religious Diversity and Freedom of Conscience* 119 (2023). And today, non-state education options like private schools proliferate, including for children who aren’t best served in traditional public schools. See Katherine Schaeffer, *U.S. Public, Private and Charter Schools in 5 Charts*, Pew Research Center (June 6, 2024), perma.cc/SC3D-R9DP (“Private school students have consistently made up about 10% of school enrollment”); accord *Rendell-Baker*, 457 U.S. at 842 (“education of maladjusted high school students” not “the exclusive province of the State”).

Fourth, California has not fully delegated its public-school duties to homeschooling parents through independent-study programs. This case is not like *West*, where a state authorized only private physicians to fulfill its Eighth Amendment obligations to provide medical care for inmates. 487 U.S. at 54–55. California parents remain free to choose other schooling options: public schools, charter schools, and different

curriculum for independent-study programs. California authorized charter schools and independent-study programs to “[p]rovide parents and pupils with *expanded* choices in the types of educational opportunities that are available.” Cal. Educ. Code §§ 47601(e), 51745(a) (emphasis added); Cal. Code Regs. tit. 5, § 11700(c). Creating additional opportunities is not the complete delegation of a state duty.

The analysis is not complicated. Homeschooling parents and the State of California are distinct.

2. The Ninth Circuit applied a made-up test to reach the wrong conclusion.

The Ninth Circuit’s opinion never mentioned the state-action doctrine or cited a state-action case. Instead, the court charted its own course. It distorted *Carson*—which forbids religious discrimination in public-funding programs—and used that decision to determine that homeschooling parents are state actors.

In *Carson*, Maine argued that the First Amendment did not require the state to fund private religious schools through its tuition-assistance program because that program funded only the “rough equivalent” of a public education. 596 U.S. at 782–83. This Court rejected that argument, discussing some of the differences between public and private schools along the way. *Ibid.* The Ninth Circuit opinion latched on to that discussion, holding that the independent-study programs are public because they have “the critical features that the Supreme Court found characteristic of public schools in *Carson*.” App.15a.

As Petitioners and Judge Bumatay have explained, that was wrong. See Pet. 19–25; App.28a–

30a (Bumatay, J., dissenting from denial of rehearing en banc). *Carson* had no occasion to address—and did not address—when a private school should be deemed public for constitutional purposes. That is the function of the state-action doctrine, *Manhattan Cmty. Access*, 587 U.S. at 804—a doctrine *Carson* did not invoke. The Ninth Circuit opinion gave no reason to transform *Carson*’s discussion into a new governing test for state action when it comes to schooling.

The Ninth Circuit opinion also reached the wrong conclusion. It relied on two factors in holding that homeschool independent-study programs are public: (1) independent-study programs are free and open to all, and (2) homeschooling parents are subject to some oversight by charter-school employees and must choose curriculum that satisfies state standards. That two-part analysis cannot be squared with this Court’s decisions.

Regarding the first factor, it makes no difference that independent-study programs are free and open to all. That means the programs are a public benefit—and therefore subject to *Carson*’s anti-discrimination rule. But it does not determine whether the parents are state actors. And this Court in *Rendell-Baker* already rejected the argument that a privately operated and publicly funded school is a state actor. There, the school “depended on the State” for its funding—up to 99% of the funding was public—and “none” of the students “paid tuition.” 457 U.S. at 832, 840–41. But the Court held that the school was not a state actor. *Ibid*. That logic applies equally here.

Moreover, as Petitioners note, the Ninth Circuit’s free-equals-public rationale conflicts with *Carson* itself. “[T]he Maine private schools in *Carson* could be

fully state-funded” but were undisputedly not state actors. Pet. 23. In short, that “the government funds ... a private entity” does not make it “a state actor.” *Manhattan Cmty. Access*, 587 U.S. at 814.

As to the second factor, a charter-school corporation’s minimal oversight of homeschooling parents does not render those parents state actors. The Ninth Circuit explained that the curriculum parents choose must satisfy state standards, that charter-school teachers supervise parents, and that parents sign a written agreement with the charter school laying out the objectives and methods of the program. App.16a–18a. But none of that changes the fact that parents make independent decisions about *what* and *how* to teach their children. And this Court has rejected the theory that “being *heavily regulated* makes you a state actor.” *Manhattan Cmty. Access*, 587 U.S. at 816 (emphasis added). A fortiori, the negligible supervision and regulation here fall far short. Pet. 8–9.

Again, *Rendell-Baker* is instructive. That school was subject to “extensive and detailed” regulations—“ranging from recordkeeping to student-teacher ratios” to “job descriptions”—and was “totally engage[d] in performing public contracts.” 457 U.S. at 833, 840–42. Yet the school was not a state actor because it made its own employment decisions. *Id.* at 841.²

² The Ninth Circuit also noted that California state law labels charter schools public. App.9a. That doesn’t matter for two reasons. First, this case is not about whether a California charter school is public but whether homeschooling parents who contract with the charter school are state actors. Second, this Court has been clear that state-law labels don’t control the state-action analysis. *Jackson*, 419 U.S. at 350 n.7 (dismissing state legislature’s “public utility” label in concluding that electric company

In search of a justification for California’s religious discrimination, the Ninth Circuit applied a novel test to reach a conclusion out of touch with precedent and reality. This Court should step in.

B. The Ninth Circuit’s decision splits from the Fourth Circuit.

In addition to being incorrect, the Ninth Circuit’s decision created a circuit split. Sup. Ct. R. 10(a).

As explained, the Ninth Circuit effectively held that homeschooling parents are state actors because independent-study programs—established by contracts between parents and charter schools—are publicly funded and subject to certain state regulations. App.16a–18a.

The en banc Fourth Circuit unanimously reached the opposite conclusion. In *Peltier*, that court had to decide whether a charter school and the management company with which the charter school contracted to run “the day-to-day operations” of the school were state actors subject to the Fourteenth Amendment. 37 F.4th at 112–13. A majority of the court first held, over vigorous dissent, that the charter school was a state actor. *Id.* at 116–23. (That decision created the separate circuit split that this Court took up but did not resolve in *Oklahoma Statewide Charter School Board v. Drummond*, 605 U.S. 165 (2025) (per curiam).) More important, every member of the en banc court agreed that the management company was not a state actor. *Peltier*, 37 F.4th at 123.

was not a state actor); *Lindke v. Freed*, 601 U.S. 187, 197 (2024) (“The distinction between private conduct and state action turns on substance, not labels”).

The court explained that the state delegates its “constitutional duty” to provide free education to the charter school, not the private, for-profit company. *Ibid.* And the company “has no direct relationship with the state and is not a party to the charter agreement between [the charter school] and North Carolina.” *Ibid.* Instead, the company “manages the daily functioning of the school under its management agreement with [the charter school].” *Ibid.* Because the company’s “actions are more attenuated from the state,” the court held that its action could not fairly be attributed to the state. *Ibid.*

Applying that reasoning, the Fourth Circuit would have decided this case differently. Parents are akin to the management company in every way. At most, California delegates its free-public-education duty to charter schools, not to parents. And parents have no “direct relationship” or contract with California. *Ibid.* Rather, parents—like the company—“enter into a contract with the [charter] school” setting out how the independent-study programs will work. App.10a. Then, within the terms of that contract, parents control the “day-to-day operations” of their children’s education. *Peltier*, 37 F.4th at 113; App.9a, 18a. On top of that, parents even choose what they want to teach. Even more so than the management company, then, the parents’ decisions “are not fairly attributable to the state.” *Peltier*, 37 F.4th at 123 (citation modified).

Only this Court can resolve that constitutional divide.

C. The Ninth Circuit’s sweeping logic threatens individuals’ religious freedom and subjects them to constitutional constraints.

The state-action doctrine, when properly applied, “protects a robust sphere of individual liberty.” *Manhattan Cmty. Access*, 587 U.S. at 818. But by the same token, “[e]xpanding the state-action doctrine beyond its traditional boundaries” will “expand governmental control while restricting individual liberty.” *Ibid.* While this Court has “decline[d]” to go down that road, *ibid.*, the Ninth Circuit opinion jumped at the opportunity.

The consequences will be widespread. Pet. 27–31. As Judge Bumatay warned, the Ninth Circuit’s rule will permit widespread government-sponsored religious discrimination, free-speech restrictions, and other constitutional violations. If parents teaching their own children in their own home with their own curriculum are state actors, then the government can deem “pretty much anything” a “governmental program exempt from First Amendment scrutiny.” App.30a. The Constitution’s individual-rights protections—and the people they serve—deserve better.

There are perverse consequences on the other side of that coin too. The Ninth Circuit’s rule rendering countless private entities state actors simultaneously subjects them to suit under 42 U.S.C. 1983 for acts taken “in the ambit of their personal pursuits.” *Lindke*, 601 U.S. at 196 (citation modified). Even if individuals and corporations can assert successful defenses to liability, the prospect of being sued by itself is likely to chill participation in many vital programs that receive public funds or are subject to government

regulations—foster care, adoption services, medical care, homeless shelters, and other aid programs for disadvantaged communities. See *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174, 193 (2026) (recognizing the prospect of “self-censorship in response to a ‘well-founded fear that the law will be enforced against them’” (quoting *Virginia v. American Booksellers Ass’n, Inc.*, 484 U.S. 383, 393 (1988))).

This Court should restore order before all Americans suffer the consequences.

II. The Establishment Clause poses no barrier to California’s funding of homeschool independent-study programs.

Before the Ninth Circuit, Respondents held out the Establishment Clause as a defense to its religious discrimination. That doesn’t work.

Public funding for religious schools has deep roots in our nation’s historical practices and understandings. In addition, the Establishment Clause does not bar government funding of religious schools through neutral government programs, particularly when private choice directs those funds.

A. Congress’s historical practice supports public funding for religious schools.

“[T]he Establishment Clause must be interpreted by ‘reference to historical practices and understandings.’” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)). The “line that courts and governments must draw between the permissible and the impermissible has to accord with history and

faithfully reflect the understanding of the Founding Fathers.” *Id.* at 535–36 (citation modified).

Our early national practices and historical understandings are replete with government funding for religious schools. From the Republic’s earliest days, Congress (and the states) “provided financial support” to religious—and even “denominational”—schools. *Espinoza*, 591 U.S. at 480. Indeed, at the time, primary education in America was “private[] and almost invariably religious.” Chapman & McConnell, *supra*, at 119. Early Americans did not think such support was unconstitutional even when “the education had religious components and was conducted under denominational auspices.” *Ibid.*

Because the federal government was the lone entity subject to the Establishment Clause before incorporation, Congress’s funding of religious education—particularly during the First Congress—sheds compelling light on the proper historical understanding. *Consumer Fin. Prot. Bureau v. Community Fin. Servs. Ass’n of Am., Ltd.*, 601 U.S. 416, 432 (2024) (“The practice of the First Congress ... provides contemporaneous and weighty evidence of the Constitution’s meaning.” (citation modified)); *Marsh v. Chambers*, 463 U.S. 783, 790–91 (1983) (same). Far from perceiving a legal impediment, the First Congress “encouraged” religious schools—giving land grants that benefitted “church-affiliated sectarian institutions,” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 862 (1995) (Thomas, J., concurring). Congress expressly linked religion and education, stating that “[r]eligion, morality, and knowledge” were “necessary to good government and the happiness of mankind.” Ordinance for the Government of the Territory

of the United States North-West of the River Ohio, art. 3 (July 13, 1787).

Congress’s financial support of religious education continued through Reconstruction. Chapman & McConnell, *supra*, at 120. Congress paid “churches to run schools for American Indians through the end of the 19th century.” *Espinoza*, 591 U.S. at 481; see Nathan S. Chapman, *Forgotten Federal-Missionary Partnerships: New Light on the Establishment Clause*, 96 Notre Dame L. Rev. 677, 701 (2020); accord *Reuben Quick Bear v. Leupp*, 210 U.S. 50, 78 (1908) (noting the government “made contracts for sectarian schools for the education of the Indians”). In 1803, President Jefferson and the U.S. Senate approved a treaty with the Kaskaskia tribe providing financial support for “a priest of [the Catholic] religion” to perform “the duties of his office” and educate the tribe’s children in literature. Treaty Between the United States of America and the Kaskaskia Tribe of Indians, art. III, 7 Stat. 78, 78–79 (Aug. 13, 1803). And congressional spending supported “denominational schools” in the District of Columbia until at least 1848. *Espinoza*, 591 U.S. at 481.

After the Civil War, the same Congress that framed the Fourteenth Amendment “spent large sums on education for emancipated [children], often by supporting denominational schools in the South through the Freedmen’s Bureau.” *Ibid.* Congress directed the agency to partner with “private benevolent associations” through a grant program. Act of July 16, 1866, ch. 200, § 13, 14 Stat. 173, 176; Michael W. McConnell et al., *Religion and the Constitution* 323 (4th ed. 2016). A principal partner was the American Missionary Association, Charles L. Glenn, *African-American/Afro-Canadian Schooling: From the Colo-*

nial Period to the Present 54–56 (2011), which ran thoroughly religious schools, Joe M. Richardson, *Christian Reconstruction: The American Missionary Association and Southern Blacks, 1861–1890* 44 (2008).³

These historical practices show that it does not violate the Establishment Clause for California to fund homeschool independent-study programs in which parents select religious curriculum.

B. The Establishment Clause does not forbid the neutral administration of generally available public programs.

This Court’s trilogy of public-benefit cases, *Trinity Lutheran*, *Espinoza*, and *Carson*, confirm that providing public funds to religious schools or parents through the neutral administration of public programs does not violate the Establishment Clause. In each case, the Court ordered a state to allow religious schools to participate on equal terms, which resulted in public money flowing to those schools—all consistent with the Establishment Clause. *Carson*, 596 U.S. at 781; *Espinoza*, 591 U.S. at 484–85; *Trinity Lutheran*, 582 U.S. at 466.

³ The states similarly funded private religious education. “Far from prohibiting such support, the early state constitutions and statutes actively encouraged [it].” *Espinoza*, 591 U.S. at 480. Examples abound. “Local governments provided grants to private schools, including religious ones, for the education of the poor.” *Id.* at 480–81. Massachusetts and Maine granted public land to schools operated by churches. Richard J. Gabel, *Public Funds for Church and Private Schools* 185–87 (1937). New York, for its part, funded “Presbyterian, Episcopalian, Methodist, Quaker, Dutch Reformed, Baptist, Lutheran, and Jewish schools.” Chapman & McConnell, *supra*, at 119.

That’s because “the Establishment Clause is not offended when religious observers and organizations benefit from neutral government programs.” *Espinoza*, 591 U.S. at 474. That principle applies with particular force to neutral “program[s] in which public funds flow to religious organizations” or religious parents “through the independent choices of private benefit recipients.” *Carson*, 596 U.S. at 781; see *Espinoza*, 591 U.S. at 474; *Zelman v. Simmons-Harris*, 536 U.S. 639, 662–63 (2002).

Here, as in *Carson*, *Espinoza*, and *Zelman*, California operates a neutral public-benefit program: any parent who meets specified criteria can receive funds to support homeschooling through an independent-study program coordinated by a charter school. If the Ninth Circuit’s error were corrected, public funds would support religious education only if California parents decided they wanted to homeschool through an independent-study program *and* chose to use religious curriculum. Parents remain free to send their children to a different school—public, charter, or private—or to select a different curriculum as part of the independent-study program. The programs do not run afoul of the Establishment Clause.

Any other rule would put the Establishment Clause—which forbids “hostility to religion,” *Rosenberger*, 515 U.S. at 846—at war with itself. California’s misguided view, “born of [a] bigotry” that permeated the Blaine Amendment era, “should be buried now.” *Mitchell v. Helms*, 530 U.S. 793, 829 (2000) (plurality opinion); see *Espinoza*, 591 U.S. at 482, 488–89.

CONCLUSION

This Court should grant the petition and reverse the Ninth Circuit.

Respectfully submitted,

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