

No. 24-4291

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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JOHN WOOLARD, ET AL.,

*Plaintiffs-Appellants,*

*v.*

TONY THURMOND, ET AL.,

*Defendants-Appellees.*

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On Appeal From the United States District Court  
for the Eastern District of California  
Case No. 23-cv-02305-JAM-JDP Hon. John A. Mendez

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**BRIEF OF THE NATIONAL COUNCIL OF YOUNG ISRAEL  
AS AMICUS CURIAE IN SUPPORT OF REHEARING EN BANC**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *amicus curiae* makes the following disclosures. *Amicus* is a Jewish 501(c)(3) membership organization. It is an umbrella organization comprised of more than one hundred synagogues across the United States. *Amicus* states that it has no parent corporations and that no publicly held corporation owns 10% or more of its stock.

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## **INTEREST OF *AMICUS CURIAE***

The National Council of Young Israel (“Young Israel”) is a Jewish synagogue organization that provides resources and services to more than 100 synagogues and their more than 25,000 member families throughout the United States. Young Israel was founded in 1912 primarily to foster Torah-true Judaism in North America and to protect against increasing assimilation. While Young Israel provides an array of services to support its members, the organization is grounded in the importance of Jewish education and was created to be a bulwark against the trend of dwindling Jewish educational opportunities in early 20th century America. Today, Young Israel remains dedicated to fostering quality Jewish education for its member families. *Amicus* submits this brief to explain the importance of a religious education to observant Jewish families and their children and to demonstrate how California’s refusal to fund and credit faith-based independent-study materials in its public benefits program violates the First Amendment.\*

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\* *Amicus* states that no counsel for any party authored this brief in whole or in part, and that no person or entity, other than *amicus* and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. See Fed. R. App. P. 29(a)(4)(E). The parties have consented to this brief’s filing. See 9th Cir. R. 29-2(a).

## INTRODUCTION

The First Amendment prohibits states from excluding individuals and institutions of a “religious character” from “an otherwise generally available public benefit program.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 466 (2017). California’s independent-study program violates this constitutional proscription by excluding families that wish to homeschool their children using curricula that include religious teachings, and by prohibiting even the use of secular educational materials published by religious entities.

When the government makes public funding available for parent-directed educational choices of all kinds, as in California’s independent-study program, the government cannot exclude some choices merely because they contain faith-based content or were published by religious actors. *Carson ex rel. O.C. v. Makin*, 596 U.S. 767, 785–89 (2022); *Espinoza v. Montana Dep’t of Revenue*, 591 U.S. 464, 475 (2020). “Such discrimination” against religion is “odious to our Constitution” and cannot stand. *Carson*, 596 U.S. at 779; see, e.g., *Loffman v. California Dep’t of Educ.*, 119 F.4th 1147, 1153 (9th Cir. 2024).

Young Israel submits this *amicus* brief to emphasize the constitutional and practical harms posed by California’s discrimination against religious families seeking faith-based education. Religious education is critical to Jewish families. And faith-based educational programs—including the independent-study programs at issue here—fulfill critical religious needs that public schools cannot fulfill. *Amicus* does not seek to mandate religion in public schools or force admission of all materials into independent-study programs. But it submits that the State’s categorical exclusion of faith-based materials, parties, and uses from the independent-study program unconstitutionally forces Jewish families “to choose between the ... education benefits made available” through the independent-study program and “education in [a] Jewish setting.” *Loffman*, 119 F.4th at 1168.

## ARGUMENT

### **I. Faith-Based Independent-Study Programs Meet Critical Religious Needs That Other Schools Cannot Fulfill.**

“Religious education is a matter of central importance in Judaism.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 755 (2020); *see also, e.g., Loffman*, 119 F.4th at 1165. The Torah requires Jewish parents “to ensure that their children are instructed in the faith,”

“an obligation of the highest order.” *Our Lady of Guadalupe Sch.*, 591 U.S. at 755; *see* Mishneh Torah, Hilchos Talmud Torah 1:3 (“[O]ne is obligated to hire a teacher for one’s son”). Jewish parents are also commanded to raise their children with a strong Jewish identity and transmit their knowledge and religious values from generation to generation. *See, e.g.*, Deuteronomy 6:7 (Stone Edition, The Chumash, ArtScroll Translation) (1993); *see also* Genesis 18:19; Exodus 10:2; Exodus 13:8; Deuteronomy 11:19.

Religious education helps fulfill those religious obligations and plays an important role in shaping the Jewish community. Steven M. Cohen *et al.*, *The Impact of Childhood Jewish Education on Adults’ Jewish Identity*, United Jewish Cmtys. (Jul. 1, 2004), <https://tinyurl.com/4a6wzsz7>. Students who receive a Jewish education are more likely to be integrated in their Jewish communities, embrace their faith, and form an emotional attachment to Israel than are students who receive an entirely secular education. *Id.* Religious education is therefore essential to the continued survival of the Jewish community and “an engaged Jewish public.” *The Jewish Education of Today’s Jewish Leadership*, Research Success Technologies Ltd., at 2 (2021),

<https://tinyurl.com/5n6zh53p>. Absent Jewish education, children are much less likely to maintain “Jewish identification in later life.” Arnold Dashefsky & Cory Lebson, *Does Jewish Schooling Matter? A Review of the Empirical Literature on the Relationship Between Jewish Education and Dimensions of Jewish Identity*, 23 *Contemporary Jewry* 96, 111 (2002).

**A. Public Schools Cannot Meet Critical Needs of Jewish Families.**

Public schools operated by local or state educational agencies are explicitly “non-sectarian.” *Definition of a School*, Cal. Dep’t Education, <https://www.cde.ca.gov/ds/si/ds/dos.asp> (accessed Nov. 3, 2025). As a result, those schools cannot accommodate the needs of Orthodox Jewish students—including inculcation of religious values and prayer practices, adequate sex-segregation, prayer services, use of religious texts, and the provision of Orthodox Jewish role models. *See, e.g.*, Boruch Werdiger, *Why I Choose a Yeshiva Education for My Children*, Lubavitch International Magazine (May 15, 2023), <https://tinyurl.com/yw56wtzn>; David Benkoff, *No, Orthodox Jews cannot ‘Just send their kids to public school,’* *Jewish Journal* (Feb. 6, 2017), <https://tinyurl.com/259k6xy8>. For these reasons, many families elect to send their children to private

Jewish schools, which—unlike public schools—are capable of overseeing both the academic and spiritual development of their students. Indeed, private Orthodox Jewish schools play a crucial role in education for many Orthodox families who are members of Young Israel synagogues.

But for numerous Jewish families, private school simply is not an option. Some Jewish communities are not large enough to support these schools. And for others, the cost of tuition in a private Jewish school is prohibitively expensive. *See generally Average Cost of Private School, Education Data Initiative* (Aug. 29, 2024), <https://tinyurl.com/5n86hhnk> (average annual cost of \$16,884 in California). Homeschooling is these families' only option for providing their children with a religious education.

In fact, more than one third of families who homeschool their children do so to provide their children a religious education. *Aug. 1-10, 2023, Washington Post-Shar School home schooling poll* at 5, *Wash. Post* (Sept. 25, 2023), <https://tinyurl.com/2s4ark99>. Like their private religious school counterparts, students who receive religious homeschooling are more likely to behave in accordance with their religious and moral principles and excel in academics than are public

school students. See Wayne McEntire, *Religious Outcomes in Conventionally Schooled and Home Schooled Youth*, National Home Education Research Institute (Apr. 10, 2005), <https://tinyurl.com/2d8h2few>; Brian D. Ray, *Research Facts on Homeschooling*, Ky. Leg. Interim Joint Comm. on Educ. (Sept. 15, 2022), <https://tinyurl.com/mwfkW3uw>.

Homeschooling presents some significant challenges for families. Parents who work during school hours, do not comfortably speak English, and have limited time or resources may not be able to provide the kind of full-time instruction at home in English that California law requires. See *Homeschooling & Education Alternatives*, Cal. Dep't Education, <https://tinyurl.com/3rhystvf>; Cal. Educ. Code §§ 33190, 48222. Even parents who do have the time and ability to teach their children at home in English may be overwhelmed by the prospect of having to do so *without* administrative support or assistance from experienced teachers.

Fortunately, various public entities offer funding, educational materials, administrative support, and assistance to make home-based education feasible and practical. One such program is California's "independent study model," which allows families to provide home-based

education with limited administrative support from credentialed public- and charter-school teachers, and without the need for parents to pay many thousands of dollars for private school. *See Church, Choice, and Charters: A New Wrinkle for Public Education?*, 122 Harv. L. Rev. 1750, 1756–57 (2009) (describing administrative support for homeschool families using religious materials). Such programs offer critical public aid that helps parents to direct the educational upbringing of their children—including for families that could not otherwise afford a private religious education.

**B. The State’s Exclusion of Religious Materials, Parties, and Uses from Independent-Study Programs Harms Jewish Families.**

California’s independent-study program purports to be available to all families in the State, but it nonetheless prevents families from purchasing and using otherwise-eligible religious curricula and materials—i.e., “content aligned to grade level standards that is substantially equivalent to in-person instruction.” Cal. Educ. Code § 51747(c); *see* Cal. Const. art. IX § 8. The State’s exclusion of such religious curricula and materials from its publicly available independent-

study program harms Jewish families who require assistance with homeschooling.

The independent-study programs at issue in this case—administered by the Blue Ridge Academy and Visions in Education charter schools (two named Defendants-Appellees in this action)—are required to exclude religious materials, parties, and uses from the State’s public benefit program. The Blue Ridge Academy, like many charter schools in California, aims to provide “personalized” and “customizable” learning to meet students’ interests and needs. 3-ER-506, 508. To achieve that goal, Blue Ridge allows families to access public funds to purchase pre-approved materials to teach their children at home. 3-ER-479 ¶ 36. Blue Ridge also offers limited supervision through their “Homeschool Teachers,” who meet with students about once a month and periodically review students’ work samples to verify attendance and ensure that students meet basic statewide standards. 3-ER-509, 512.

But work samples are “acceptable”—and thus may receive academic credit from the charter school—only if they are “non-sectarian (non-religious)” (3-ER-514), *even if* the parents pay for their children’s religious curricula or educational materials without using public funds

(see 3-ER-485), and *even if* the substance of their selected curricula and materials is entirely secular, but is published by a religious entity (see 3-ER-484–85).

The record here contains many examples of restrictions on religious curricula and materials. For example, Blue Ridge denied a family’s request to purchase Bob Jones University’s curriculum focusing on science, social studies, handwriting, phonics, and reading because that curriculum also provided “[w]orldview shaping” and religious themes. 3-ER-483–84. Blue Ridge also refused to credit a student’s sentence-structure assignment because one *example*—not a graded question or student answer—included the sentence, “God sends the rain to help plants grow.” 3-ER-485; 3-ER-516. Furthermore, Blue Ridge rejected a math course because “it came from a faith-based university,” even if the family paid for the curriculum without independent-study funds. 3-ER-484–85. Blue Ridge cited California law for these restrictions: “[T]o stay compliant with the state, we cannot approve any religious content curriculum.” 3-ER-484–85.

Similarly, Visions in Education offers a “Home School Academy”—a program of “parental choice” designed to “honor[] [parents’] right to

educate [their] children.” 3-ER-481 ¶¶ 41; *see also Home School, Visions in Educ.*, <https://www.viedu.org/home-school/>. Visions’ Home School Academy allows parents to select curricula and educate their children in their own homes. 3-ER-481 ¶ 42. Through Visions, parents may receive public funding to purchase homeschooling curricula and materials. *Id.* Visions’ “credentialed teacher[s]” provide “advice” to ensure students meet state standards and periodically review work samples for completion. *Id.*

Although Visions permits parents to supplement additional curricula to fill any gaps (3-ER-481 ¶ 43), this option is not available for *religious* curricula (3-ER-486–87). Like Blue Ridge, Visions will not accept any assignments derived from a faith-based curriculum, even if parents pay for the curriculum and the assignment contains no religious language but comes from a religious publisher.

For example, Visions will not “approve or consider work from a faith-based curriculum,” even if used for math and English Language Arts. 3-ER-487. Visions prevented a student from receiving credit for a math worksheet testing multiplication and division—which had no religious references—solely because it was published in a religious

curriculum. 3-ER-488; *see also* 3-ER-518. Visions cited California law, noting it is “a publicly funded school” and “under California law, “[n]o religious materials may be assigned as a part of the independent study, and students cannot use religious materials to complete independent study assignments.” 3-ER-487 ¶¶ 66–68. This restriction led to the expulsion of that student from Visions. 3-ER-477; 3-ER-488–89.

It is easy to see how these types of restrictions would limit the ability of Jewish parents to include Jewish teachings and materials in their homeschooling curriculum. For Orthodox Jewish families who cannot afford private school or who cannot provide full-time instruction in English at home, and for whom religious education is more than just a preference but a religious command, independent study may be their only option.

California’s blanket prohibition on religious materials, publishers, and uses from the independent-study program would seriously harm these families. Orthodox Jewish students cannot receive independent-study credit for courses on Jewish history, tradition, or texts. *See, e.g., Independent Study for Sukkot*, The Jewish Educator Portal, <https://tinyurl.com/5e6rs7u2> (last visited Nov. 2, 2025); *Torah Academy*:

*Independent Study*, Hershoin Schiff Community Day School, <https://tinyurl.com/ybkyjk6d> (last visited Nov. 2, 2025). Nor can they purchase or use even secular curricula or materials so long as they are published by Jewish entities. See *The Ani VeAmi Jewish Homeschooling Curriculum*, Ani VeAmi: A Jewish Living Education Curriculum, <https://tinyurl.com/3fxamxm5> (last visited Nov. 2, 2025) (distinguishing “[s]ecular” subjects, such as math, from “Judaic” or “[i]nterwoven” subjects).

By declining families’ requests to purchase or use religious materials or secular materials published by religious entities for independent home study, and by refusing to credit school work that refers to religion, the State is denying parents access to an otherwise-available public program and interfering with their ability to direct the religious and academic upbringing of their children.

## **II. The State’s Exclusion of Religious Materials, Parties, and Uses from Independent-Study Programs Violates the First Amendment.**

The State’s categorical prohibition on religion in its public benefits program is unconstitutional. “[W]hen the government chooses to provide public benefits, it may not ‘condition the availability of [those] benefits

upon a recipient’s willingness to surrender his religiously impelled status.” *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2359 (2025). That is what the State has done here.

By denying public benefits to religious families that wish to homeschool their children with otherwise-eligible religious materials—and refusing to credit any schoolwork that references God or faith—the State “imposes a penalty on the free exercise of religion.” *Trinity Lutheran*, 582 U.S. at 462. *Amicus* stresses that it does not seek to force religion in public schools, or to require charter schools to teach religion in the classroom. Instead, it submits that the State’s categorical exclusion of religious materials, parties, and uses from a public benefits program lacks any basis in the Establishment Clause and violates the Free Exercise Clause by forcing Jewish families “to choose between the ... education benefits made available” by the State and “education in [a] Jewish setting.” *Loffman*, 119 F.4th at 1168.

**A. The Free Exercise Clause Prohibits the State’s Exclusion of Religious Materials, Parties, and Uses from Independent-Study Programs.**

The panel concluded that California’s exclusion of religious parties, materials, and uses from the independent-study programs at issue here

imposes *zero* burden on the Free Exercise Clause. *See* Panel Op. 9–14. That holding imposes significant constitutional and practical burdens on religious families, including the many Jewish Americans served by *Amicus*, whose sincere religious beliefs compel them to provide their children with a faith-based education.

The Free Exercise Clause affords “a generous measure of protection” to a parent’s fundamental right to “educat[e] one’s children in one’s religious beliefs.” *Mahmoud*, 145 S. Ct. at 2351. Importantly, that provision not only protects a parent’s “right to teach religion in the confines of one’s own home” and “outside the home” without government interference, but it also “follow[s] ... children into the public school classroom.” *Id.*; *see also Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972).

That right would be an empty promise if the government could impose “indirect coercion or penalties on the free exercise of religion” by “exclud[ing] religious observers from otherwise available public benefits.” *Carson*, 596 U.S. at 778; *see also, e.g., Loffman*, 119 F.4th at 1166–69. As a result, the Supreme Court has held that the Free Exercise Clause prevents the government from excluding otherwise-eligible religious parties, materials, and uses from generally available education

programs. *See Carson*, 596 U.S. at 789 (tuition assistance); *Espinoza*, 591 U.S. at 488–89 (tuition assistance); *Trinity Lutheran*, 582 U.S. at 467 (playground-resurfacing program); *see also Loffman*, 119 F.4th at 1166–69 (special-education benefits). This precedent applies with equal force to public benefits that—like the independent-study programs at issue here—provide the “rough *equivalent* of [a] public school education.” *Carson*, 589 U.S. at 782 (emphasis added). Any other rule would “reduc[e]” the First Amendment “to a simple semantic exercise.” *Id.* at 784.

Here, the families’ constitutional rights have been violated in at least two respects.

*First*, Defendants-Appellees have unconstitutionally excluded the religious families from otherwise available public benefits—forcing parents to “choose either the full benefits [of the program] or education in a religious context.” *Loffman*, 119 F.4th at 1168. Religious parents must have the right to both access California’s generally available homeschool aid program on the same terms as non-religious parents, and also to choose homeschool curricula that best align with their values and needs. Like the religious families in this dispute, many Jewish families’

sincere beliefs compel them to select religious educational materials that will allow them to provide their children with a faith-based education. By excluding the families from accessing otherwise-eligible homeschool funding and materials merely because they contain religious material or were published by religious institutions, the public benefits programs offered by Blue Ridge and Visions violate the Free Exercise Clause.

*Second*, the State is burdening the fundamental right of the parents in this dispute to provide their children a religious education. *Mahmoud*, 145 S. Ct. at 2351; *see Loffman*, 119 F.4th at 1166 (prohibitions on public benefits “burden[ed] ... the families whose children attend or hope to attend [religious schools]”). Defendants-Appellees have refused to provide parents with access to state funds to purchase religious homeschooling materials, denied school credit to student work originating from religious homeschooling materials, and even expelled homeschooled students who are instructed with religious curricula—even *if* their parents pay for their children’s religious educational materials themselves without using public funds, and *even if* the substance of their selected materials is entirely secular, but is published by a religious

entity. *See* 3-ER-477. Such discrimination against religion in the State’s public benefits program necessarily violates the First Amendment.

Protecting the First Amendment rights of religious families would not require a massive reshaping of the State educational system, but rather a narrow, targeted correction of the panel’s decision here. The Court does not need to force religion into public schools, and the State would not need to accept any and all materials simply because they are faith-based.

On the contrary, the State may—without violating the First Amendment—refuse to allow any materials that fail to meet well-established academic criteria to be purchased through the public benefit program (*see* Cal. Educ. Code §§ 51747(c), 60605; *Content Standards*, Cal. State Bd. of Educ., <https://www.cde.ca.gov/be/st/ss/> (last visited Nov. 3, 2025)), or other materials that the State has a sufficiently important interest in prohibiting. But the State’s categorical prohibition of religion here goes well beyond any such limits. It is not confined to circumstances in which the State has a sufficiently important interest in prohibiting religious materials. And the State’s prohibition is not adequately tailored to any sufficiently important interests the State may have. Rather, the

State has imposed a blanket, categorical ban—not a tailored, justified regulation. *Amicus* does not ask this Court to replace California’s categorical prohibition on religion with a contrary categorical rule. Instead, it submits that California’s blanket prohibition on religion—driving away religious parents from its public benefits program—simply goes too far under the Constitution.

That parents may have access to the independent-study program through public charter schools is irrelevant. *Contra* Panel Op. at 11. The Supreme Court has repeatedly rejected the argument that religious parties, materials, and uses can be excluded from public benefits merely because the benefit or forum is accessed through or in a public school. *See, e.g., Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001). And if a deaf student attending a private religious school must—pursuant to a generally available program—be given equal access to a publicly employed sign language interpreter as public school students, then an independent-study student who follows a religious curriculum must be given equal access to a charter-school teacher as a comparable student who follows a non-religious curriculum. *See Zobrest v. Catalina*

*Foothills Sch. Dist.*, 509 U.S. 1 (1993). As this Court recently held, the State imposed a free exercise burden where Jewish families were forced “to choose between the special education benefits made available through public school enrollment ... and education in an Orthodox Jewish setting.” *Loffman*, 119 F.4th at 1168.

The panel failed to meaningfully engage with this precedent, much less appreciate the significant harms that its conclusory opinion will cause to religious education and religious families. As relevant to *Amicus* and the community it seeks to protect, many Jewish families believe they have a religious duty to educate their children in their Jewish faith. Public schools cannot fulfill that need. And as noted above, many families do not have access to—or else cannot afford to enroll their children in—private Jewish schools that provide critical religious teaching, accommodate religious diet or observance of holy days, and provide rigorous secular instruction. Homeschooling is their only option, and denying these families access to the State’s homeschooling programs for religious reasons violates the First Amendment.

**B. The Establishment Clause Does Not Permit the State’s Discrimination Against Religion.**

In defending its actions, the State has invoked the Establishment Clause as a “compelling interest” that supposedly required it to exclude religious families from using faith-based materials in the independent-study program. *E.g.*, *Thurmond Br.* 42–43. The Supreme Court has rejected this proffered basis for discrimination against religion over and over again in recent years.

The Supreme Court has made clear—recently, and often—that the “Establishment Clause must be interpreted by ‘reference to historical practices and understandings.’” *Kennedy v. Bremerton School Dist.*, 597 U.S. 507, 536 (2022). And the religious establishments in late eighteenth and early nineteenth century America did not involve including religious organizations in otherwise-available public benefits programs. Rather, the establishments prohibited by the Establishment Clause generally reflected “forms of coercion”:

First, the government exerted control over the doctrine and personnel of the established church. Second, the government mandated attendance in the established church and punished people for failing to participate. Third, the government punished dissenting churches and individuals for their religious exercise. Fourth, the government restricted political participation by dissenters. Fifth, the government provided

financial support for the established church, often in a way that preferred the established denomination over other churches. And sixth, the government used the established church to carry out certain civil functions, often by giving the established church a monopoly over a specific function.

*Shurtleff v. City of Bos.*, 596 U.S. 243, 286 (2022) (Gorsuch, J., concurring). Religious *coercion*—coercing church attendance, mandating religious observances, and forcing religious practices—was “among the foremost hallmarks of religious establishments the framers sought to prohibit when they adopted the First Amendment.” *Kennedy*, 597 U.S. at 537; *see also Shurtleff*, 596 U.S. at 286 (Gorsuch, J., concurring).

The Establishment Clause fears imagined by the State here—allowing religious families to access educational benefits—do “not come close to crossing any line one might imagine” prohibiting “impermissible government coercion.” *Kennedy*, 597 U.S. at 537. The program here is entirely the product of “genuine and independent choices of private individuals.” *Zelman v. Simmons-Harris*, 536 U.S. 639, 649 (2002); *see Espinoza*, 591 U.S. at 474. Vindicating the rights of religious families in this case would not establish any particular religion in California—in its public schools or otherwise. It would merely allow individual parents to elect to provide their own children with a faith-based education at

home—without any involuntary, coercive religious education directed to any other student. As the Supreme Court has stated repeatedly in recent years: “[A] neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients does not offend the Establishment Clause.” *Carson*, 596 U.S. at 781; *see also Espinoza*, 591 U.S. at 487–88; *Trinity Lutheran*, 582 U.S. at 466.

The State “effectively created its own vise between the Establishment Clause on one side and the Free Speech and Free Exercise Clauses on the other, placed itself in the middle, and then chose its preferred way out of its self-imposed trap.” *Kennedy*, 597 U.S. at 533 (cleaned up). But “the Constitution neither mandates nor tolerates that kind of discrimination.” *Id.* at 544; *see also, e.g., Loffman*, 119 F.4th at 1170 (state lacks a “compelling interest in being more protective of anti-establishment interests than the federal constitution itself requires” in “the face of the infringement of free exercise” (cleaned up)).

## CONCLUSION

The Court should grant the petition for rehearing *en banc*, and reverse the district court.

Dated: November 3, 2025

Respectfully submitted,

*/s/ Blaine H. Evanson*

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief contains 4198 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I further certify that this brief is an *amicus* brief and complies with the word limit of Circuit Rule 29-2(c)(2).

*/s/ Blaine H. Evanson*

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## **CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2025, I electronically filed this brief with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF system.

*/s/ Blaine H. Evanson*

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