

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 a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

BRIEF OF *AMICI CURIAE*
COALITION FOR JEWISH VALUES AND
NATIONAL COUNCIL OF YOUNG ISRAEL
IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICI CURIAE*

This brief is filed on behalf of *amici* seeking to ensure the protections of free exercise of religion and the rights of parents to direct the religious upbringing of their children.¹

The **Coalition for Jewish Values (“CJV”)** is a 501(c)(3) nonprofit organization that is recognized as the largest rabbinic public policy organization in the United States. CJV represents over 2,500 traditional rabbinic leaders whose views seek to “represent the consensus of the traditional, observant Jewish community,” and “ensure that CJV speaks clearly and boldly for the same values to which Jews have clung for millennia.” *What Is the CJV?*, COAL. FOR JEWISH VALUES, <https://tinyurl.com/4s5vckz7>. CJV articulates and advocates for public policy positions through education, mobilization, and advocacy based on traditional Jewish thought and is led by a board of traditional Orthodox Rabbis. This advocacy includes submitting amicus curiae briefs in the defense of equality and freedom for religious institutions and individuals, particularly in cases involving education—an issue for which traditional Jewish thought and teaching has long required the freedom to incorporate morality and religious principles into instruction.

¹ Pursuant to this Court’s Rule 37.6, *amici* certify that no counsel for any party authored this brief in whole or in part, and no party or party’s counsel made a monetary contribution to fund its preparation or submission, and no person other than *amici* or their counsel made such a monetary contribution. Pursuant to this Court’s Rule 37.2, *amici* certify that counsel of record for all parties received timely notice of the intent to file this brief.

As a minority religious organization, CJV has long “recognize[d] the efforts of the American pioneers to give expression to [Biblical] ideals in the founding documents of the United States,” and seeks to “promote these same values today, through education, advocacy, and mobilization of support within and beyond the Jewish conservative community.” COAL. FOR JEWISH VALUES, *Our Platform*, <https://tinyurl.com/4jzmtb43>. CJV has an interest in protecting religious liberty and religious practice against instances where there has been unwarranted and unconstitutional interference by the government, especially as homeschooling is an important option for Chabad emissaries and others living outside an established Orthodox Jewish community. See Viva Hammer, *Choosing Homeschooling*, CHABAD.ORG, <https://tinyurl.com/bdf36ahs>.

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.

Young Israel 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.

INTRODUCTION AND SUMMARY OF ARGUMENT

The First Amendment prohibits states from excluding individuals 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). This prohibition flows from the recognition that the Free Exercise Clause of the First Amendment “protects religious observers against unequal treatment” and against “laws that target the religious for special disabilities based on their religious status.” *Id.* at 458 (citation omitted). Indeed, “[s]uch discrimination” against religion is “odious to our Constitution.” *Carson v. Makin*, 596 U.S. 767, 779 (2022). Thus, “denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest of the highest order.” *Trinity Lutheran*, 582 U.S. at 458 (citation omitted).

The question presented in this petition is whether the Ninth Circuit correctly allowed California law to “recast a condition on funding” as merely a “benefit limited to private secular education.” *See Carson*, 596 U.S. at 784. The answer should, rather obviously, be “no.” The petition for writ of certiorari details the change in nomenclature that occurred at the Ninth Circuit in an effort to find a way to allow California to discriminate against religious parents. *See* Pet. 3-4. That ever-changing nomenclature runs squarely against this Court’s warning that the First Amendment cannot be reduced to a “simple semantic exercise” that would thereby render much of Free Exercise jurisprudence “essentially meaningless.” *Carson*, 596 U.S. at 784.

The Free Exercise protections implicated in this case are important to all Americans and are of special importance to Jewish families. As this Court has recognized, “[r]eligious education is a matter of central importance in Judaism.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 755 (2020). The Torah “**require[s]** Jewish parents to ensure that their children are instructed in the faith”—“an obligation of the highest order.” *Id.* (emphasis added). Jewish parents must raise their children with a strong Jewish identity and transmit their knowledge and values from generation to generation. *See* DEUTERONOMY 6:7, 11:19; GENESIS 18:19; EXODUS 10:2, 13:8.

The Ninth Circuit acknowledged that the California independent study program at issue “provide[s] parents great flexibility to choose which pre-existing curricula to use to educate their children, or to create their own.” App. 18a. But because “parents in independent study programs can teach only under the supervision of state employees,” the Ninth Circuit called the California independent study program a public school (“make them public school programs”), so religious discrimination was, according to the Ninth Circuit, permissible. *Id.*

But for many Americans, “the religious education of children is not merely a preferred practice but rather a religious obligation.” *Mahmoud v. Taylor*, 606 U.S. 522, 547 (2025) (citation omitted). The Court should intervene to ensure that the state cannot reach deep into “the confines of one’s own home,” and disrupt “the rights of parents to direct the religious upbringing of their children.” *Id.*

ARGUMENT

I. The principle that a state cannot “exclude religious education” from education benefits is important to Jewish families.

Jewish families will be adversely, and substantially, impacted by the Ninth Circuit’s opinion. On the one hand, the merits of this case are relatively straightforward. “A State need not subsidize private education,” “[b]ut once a State decides to do so, it cannot disqualify some private schools solely because they are religious.” *Carson*, 596 U.S. at 779–80 (citation omitted). To put it another way, “[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*, 606 U.S. at 561 (citation omitted). When a state “plainly excludes schools from government aid solely because of religious status,” the “unremarkable conclusion” is that the state has “impose[d] a penalty on the free exercise of religion that triggers the most exacting scrutiny.” *Espinoza v. Montana Department of Revenue*, 591 U.S. 464, 475-76 (2020).

Nor can “semantic” games—like “recast[ing] a condition on funding” as merely a “benefit limited to private secular education”—be entertained. *Carson*, 596 U.S. at 784. A state cannot justify the denial of Free Exercise rights by simply “recast[ing] a condition on funding” as merely the “rough equivalent of the public school education that [the state] may permissibly require to be secular.” *Id.* at 782. Such a “simple semantic exercise” would render free exercise rights “essentially meaningless.” *Id.* at 784.

The First Amendment principle is clear: once a state chooses to subsidize parental choices in education, it cannot disqualify certain parental choices solely because they are religious.

The application of the First Amendment in this case is straightforward. By offering an outside-the-traditional-public-school benefit to all Californians, California is not constitutionally permitted to exclude otherwise-compliant curriculum “solely because of the religious character” of the parent’s choice. *Espinoza*, 591 U.S. at 475–76.

The Ninth Circuit disregarded this Court’s precedent by drawing a bright-line distinction between “private schools” and parental choice in “public school programs.” App. 18a. In other words, as long as a court places a specific program that funds some parental choices in education in the “public school” box, the state is permitted to discriminate on the basis of religion. *See id.* (holding that the “public school” categorization “defeat[s] Plaintiffs’ free exercise claim”).

This holding is of immense concern to Jewish families. Its premise—that there can be a discrete separation of all things religious and all things educational—is dubious, at best. And such a holding is likely to result in discrimination against the choices that Jewish parents make in the education of their children.

How can one truly separate religion and education? Religious views necessarily affect a variety of “secular” topics. If a geography course taught by a Jewish parent includes a study of Israel, is it religious education because of the centrality of that part of the world to the Jewish faith? What if that same geography course was taught by a parent of the Muslim faith? Or a Catholic parent? One is not hard-pressed to imagine a government bureaucrat concluding that a study of the geography of Israel—as opposed to anywhere else in the world—is religious because of the religious affiliation of those parents. But does that same geographic study of Israel become secular because it is taught by an atheist?

What about biology? If a Jewish (or Christian) parent uses a curriculum by a Jewish or Christian author that teaches there are two sexes, is that curriculum “religious” because it is consistent with the teaching of Genesis? *See* GENESIS 1:27 (“male and female created He them”). Is the same teaching secular if the author of the curriculum is an atheist scientist and the parent is a non-believer?

Religion and education are inextricably intertwined. The Founders recognized that education necessarily involves a moral component. Thomas Jefferson commented that education helped a man “understand his duties to his neighbors and country, and to discharge with competence the functions confided to him by either.” Thomas Jefferson, *Draft of the Rockfish Gap Report of the University of Virginia Commissioners* (1818), <https://tinyurl.com/ywj8eas4>. Not much is more inextricably intertwined with religious belief than the duty one owes to his neighbor.

Religious parents of several faiths have recognized that their faith cannot permit purely secular education. Since as early as the 1920s, for example, Catholic teaching has held “that the so-called ‘neutral’ or ‘lay’ school, from which religion is excluded, is contrary to the fundamental principles of education. Such a school moreover cannot exist in practice.” PIUS XI, DIVINI ILLIUS MAGISTRI ¶ 79, <https://tinyurl.com/yb63bc4b>.

So what is a parent who holds these long-founded religious beliefs to do? Many religious families opt to send their children to private school or adopt a homeschool curriculum to encourage the formation of religious ideals. See *Our Lady of Guadalupe*, 591 U.S. at 755.

Many Jewish families exercise this option through, for example, *Yeshiva* schools. *Yeshivas* are Jewish educational institutions that focus on the study of Rabbinic literature and Jewish law and philosophy. Their existence originates from the status of knowledge and discipline enjoyed in the Orthodox Jewish faith. “Education is not just important in Orthodox Jewish life—it is the foundation of everything. The very first thing a Jewish parent is obligated to do for a child, after providing food and shelter, is teach them Torah.” Chava, *The Orthodox Jewish Education System Explained* (2026), <https://tinyurl.com/y7ctf52n>; see DEUTERONOMY 6:7, 11:19. Shema Yisrael, the centerpiece of morning and evening prayer services within the Jewish faith, includes this instruction: “And you shall teach them”—*i.e.*, the words of “the L-rd your G-d”—“diligently to your children.” DEUTERONOMY 6:7.

As the commentary of ancient Talmudic scholar Moses Nachmanides explains, “this commandment, said openly here, was implied previously [where the Torah says your children must know the laws and the Covenant]; how were they to know if we did not teach them?” COMMENTARY OF NACHMANIDES, IN 5 MIKRAOS GEDOLOS 85–86 (1971, Rabbi Yaakov Menken trans.).

To that end, although *Yeshivas* teach subjects also found in secular schools, *Yeshivas* emphasize Jewish culture, history, ethics, and principles. And the idea that the state has an interest in discouraging religious schools because a secular school is necessary for academic success flies in the face of the real-world data. “Yeshiva graduates . . . outperform in law, medicine, computer science, and a host of other technical fields, none of which they learned in yeshiva itself.” COAL. FOR JEWISH VALUES, *Submitted Comment Regarding Proposed Regulations Relating to Substantially Equivalent Instruction for Nonpublic School Students* (2022), <https://tinyurl.com/mrxm5yi3>.

The Orthodox educational model instills in students the need for lifelong study—in large part because of (not in spite of) its religious focus. “The Daf Yomi program—studying one page of Talmud per day—takes seven and a half years to complete the entire Talmud.” Chava, *The Orthodox Jewish Education System Explained*, *supra*. This religious component of education establishes from an early age that for observant Orthodox Jews, “education is not something you finish,” but “something you do every day for the rest of your life.” *Id.*

But Jewish schools are not feasible for every Jewish family. Some Jewish communities are not large enough to support these schools. And even when a school is theoretically available, as this Court has recognized, “alternatives” to public school “can be prohibitively expensive.” *Mahmoud*, 606 U.S. at 562.

“Parents send their children to Orthodox Jewish schools at tremendous personal expense,” “spend[ing] many thousands of dollars per child per year because they believe their child will receive a superior education.” COAL. FOR JEWISH VALUES, *Submitted Comment Regarding Proposed Regulations*, *supra*. California is no exception. Private school generally costs \$18,036 a year. *See Average Cost of Private School*, EDUCATION DATA INITIATIVE (2026), <https://tinyurl.com/5n86hhnk>.

Many parents must either rely upon public schools or various public programs offering funding, educational materials, administrative support, and assistance to make home-based education feasible and practical, like California’s independent study model. For parents who do not choose private school, whether for financial reasons or otherwise, such programs offer critical public aid that helps parents to direct the educational upbringing of their children. When such programs are available to parents who choose them for non-religious reasons, “[i]t is both insulting and legally unsound to tell parents that they must abstain from public education in order to raise their children in their religious faiths,” especially when “they already contribute to financing the public schools.” *Mahmoud*, 606 U.S. at 562.

California’s insistence that parents schooling their children must provide purely secular instruction is difficult—if not impossible—for many families with religious beliefs. The Constitution does not permit California to discriminate against parents with religious convictions just because they seek to teach their children with materials that involve—or emphasize—values consistent with their faith. The Court should grant review to confirm that when a state provides benefits for parents that choose to educate their children at home, the state cannot deny them public benefits on the basis that the materials are religiously influenced—a standard impossible for many religious families to satisfy.

II. A viable public school system does not require that free exercise rights be checked at the door of the public school.

The Ninth Circuit was wrong to suggest that labelling a school choice program as part of the public school system allows the deprivation of free exercise rights—much less that free exercise rights somehow harm secular education. *See* App. 16a. Its holding will have adverse consequences on Jewish families.

The Ninth Circuit reasoned that free exercise rights are not implicated because California’s “independent study program[] share[s] the features of public education that the Court emphasized in *Carson*,” so parents utilizing that independent study program become a part of California’s “public school program[.]” App. 17a-18a. Insofar as the Ninth Circuit believed that this result was compelled by *Carson v. Makin*, 596 U.S. 767 (2022) or the history of American education, it was wrong.

The Ninth Circuit’s reading of *Carson* does not withstand scrutiny. In *Carson*, Maine contended that its tuition-assistance program could discriminate against religion because it simply delivered the “rough equivalent” of public education. 596 U.S. at 782. *Carson* made short shrift of Maine’s argument. *Carson* held that education is “public” where the state “operate[s] schools *of its own*.” *Id.* at 785 (emphasis added). As petitioners correctly observe, *Carson* does not purport to “hold that an educational program becomes a public school merely because it shares some features of public schooling.” Pet. 21.

It is dangerous—and wrong—to suggest that free exercise rights end in the public school system. *Mahmoud* confirmed that parents do not lose free exercise rights merely because the state assists in the education of their children. Indeed, even in “a public school setting,” parents continue to retain “the right . . . ‘to direct the religious upbringing of their’ children.” *Mahmoud*, 606 U.S. at 547. “The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 535 (1925); cf. 2 SAMUEL VON PUFENDORF, ON THE DUTY OF MAN & CITIZEN ch. 3 ¶ 9 (1673), <https://tinyurl.com/rsf3a25m> (“[A]lthough the obligation to educate their children has been imposed upon parents by nature, this does not prevent the direction of the same from being intrusted to another . . . with the understanding, however, that the parent reserves to himself the oversight of the person so delegated.”).

Nor does our country's history demand that free exercise rights be checked at the door of a public school. "[P]ublic education was virtually unknown" at the time of this country's founding. *Mahanoy Area Sch. Dist. v. B.L. ex rel. Levy*, 594 U.S. 180, 203 n.14 (2021) (Alito, J., concurring). At the time of the founding, private schools and tutors were the dominant source of education. *Morse v. Frederick*, 551 U.S. 393, 411 (2007) (Thomas, J., concurring). American education is not threatened by free exercise rights.

The "eminent common-law authorities" at the time of the founding, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 242 (2022), recognized the rights given to parents regarding the education of their children by the natural law. Sir William Blackstone's treatise recounts that "the duties of parents to legitimate children: which principally consist in three particulars; their maintenance, their protection, and their education." 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, *Of Parent and Child*, ch. 16(I)(1), <https://tinyurl.com/ptf3v4u9>. The last of those duties—"that of giving them an education suitable to their station in life"—is "pointed out by reason, and of far the greatest importance of any." *Id.* Other authorities agreed. See 2 PUFENDORF, ON THE DUTY OF MAN & CITIZEN ch. 3 ¶ 9 ("[T]he obligation to educate their children has been imposed upon parents by nature[.]"); 2 JAMES KENT, COMMENTARIES ON AMERICAN LAW, *Of Parent and Child* (1826), <https://tinyurl.com/yha2t7ep> ("[T]he voice of nature has pointed out the parent as the most fit and proper person" for "educating" their children.).

The mischief that arises from a holding like the Ninth Circuit’s—that free exercise rights are checked at the door of a public school—is demonstrated by this case. The petition discusses one example where California refused to credit a student’s sentence-structure assignment because one example included the sentence: “God sends the rain to help plants grow.” Pet. 11. The program also rejected curriculum—like a textbook that school employees said “sounds amazing”—merely because it came from a religious publisher. *See id.* Nothing in this Court’s jurisprudence—or our country’s history—requires such a result.

Jewish families will suffer the consequences without this Court correcting the Ninth Circuit’s decision. Orthodox Jewish students may be unable to receive independent-study credit for history courses—if such textbooks include Jewish history, tradition, or texts. *See, e.g.,* The Lookstein Center, *Independent Study for Sukkot*, THE JEWISH EDUCATOR PORTAL, <https://tinyurl.com/5e6rs7u2>; Hershorin Schiff Cmty. Day Sch., *Torah Academy: Independent Study*, <https://tinyurl.com/ybkyjk6d>. They may be unable to purchase or use even secular curricula or materials so long as they are published by Jewish entities. *See Curriculum by Subject*, ANI VE AMI: A JEWISH LIVING EDUCATION CURRICULUM, <https://tinyurl.com/3fxamxm5> (distinguishing between “secular” subjects like “math” or “geography” and “Judaic” or “interwoven” subjects). Again, nothing in American law or history should compel Jewish families to disavow such materials to obtain generally available education benefits in California.

The petitioners argued that “[o]ne might think it would go without saying that parents teaching their children around the kitchen table aren’t **running** ‘public school programs.’” Pet. 2 (emphasis added). Amici do not disagree. But it is also important to these amici to confirm what should be obvious: that religious parents teaching their children around the kitchen table aren’t **ruining** public schools.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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