

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 THE ASSOCIATION OF CHRISTIAN
SCHOOLS INTERNATIONAL AS *AMICUS CURIAE*
SUPPORTING PETITIONERS**

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INTEREST OF *AMICUS CURIAE*¹

The Association of Christian Schools International (“ACSI”) is a nonprofit association that supports 24,000 Christian schools in over 100 countries. ACSI’s mission is to contribute to the public good through effective teaching and learning. It serves member schools worldwide, including 2,200 Christian preschools, elementary and secondary schools, and 90 post-secondary institutions in the United States. Member schools educate approximately 5.5 million children worldwide.

ACSI’s publishing arm, Purposeful Design Publications, offers member schools access to “academically rigorous textbooks”² that “meet or exceed national and other college-and-career-readiness standards”³ at every education level—elementary, middle, and high school. These books include instructional materials, daily lesson objectives, and opportunities for students to develop critical-thinking skills. ACSI also accredits pre-K–12 schools, provides professional development and teacher certification, and offers student testing.

¹ No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus* or its counsel made any monetary contribution to the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties received notice of *amicus*’s intention to file this brief at least ten days prior to the due date.

² Purposeful Design Publications, *Textbooks*, <https://shorturl.at/kULFq>.

³ Purposeful Design Publications, *Values*, <https://shorturl.at/co8ll>.

ACSI has filed amicus briefs in other First Amendment cases in this Court, including *Carson ex rel. O.C. v. Makin*, 596 U.S. 767 (2022); *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464 (2020); and *Mahmoud v. Taylor*, 606 U.S. 522 (2025). ACSI also regularly communicates with the U.S. Department of Education on non-public school participation in federal education programs, which implicates the constitutional questions presented in this case. See U.S. Dep't of Educ., *School Choice: Education Organizations*, <https://shorturl.at/tTHU6>.

For these reasons, ACSI has a strong interest in this case.

SUMMARY OF THE ARGUMENT

It is hard to imagine speech more obviously private than parental instruction within the home using materials selected by the parent to fit the child's specific needs. Yet in just two paragraphs, the Ninth Circuit held the opposite: It classified *private* parental instruction as *government* speech because it was done under a state-funded homeschool program administered by charter schools that are subject to state oversight. Worse, the panel did so without reference to, much less application of, the three factors this Court highlighted in *Shurtleff v. City of Boston* to guide courts in carefully parsing the line between private and government speech. See 596 U.S. 243, 252 (2022).

The Ninth Circuit's erroneous conclusion that charter-homeschool programs are public schools causes it to get the government-speech doctrine backwards. Its characterization transforms a narrow doctrinal shield into a sword for the government when

it wants to suppress certain viewpoints. The panel’s decision adds to the worrisome trend of courts extending the government-speech doctrine to regulatory schemes driven primarily by non-governmental speakers. *See Khatibi v. Hawkins*, 145 F.4th 1139 (9th Cir. 2025), *petition for cert. filed* (Apr. 28, 2026) (No. 25-1240); *cf.* *Petition for Writ of Certiorari, Cambridge Christian Schs., Inc. v. Fla. High Sch. Athletic Ass’n.* (2025) (No. 24-1261). This Court should grant the petition to ensure the government-speech doctrine does not swallow the First Amendment. After all, “[i]f educating one’s children in the privacy of one’s own home according to one’s private choices constitutes ‘public school’ activity, then pretty much anything can qualify as a governmental program exempt from First Amendment scrutiny.” App. 30a (Bumatay, J., dissenting from denial of rehearing en banc).

1. Because the government-speech doctrine is “susceptible to dangerous misuse,” *Matal v. Tam*, 582 U.S. 218, 235 (2017), this Court has directed courts to consider three factors—(1) “the history of the expression at issue;” (2) “the public’s likely perception as to who (the government or a private person) is speaking;” and (3) “the extent to which the government has actively shaped or controlled the expression”—before classifying speech as government speech. *Shurtleff*, 596 U.S. at 252. In doing so, the court must conduct a “holistic inquiry” “driven by a case’s context.” *Id.* That inquiry ensures that the government-speech doctrine does not become a tool for unconstitutional censorship.

The Ninth Circuit did not follow this Court's instructions. It did not even identify the three factors from *Shurtleff*, much less apply them. Nor did it consider the context in which the speech at issue arose—in the home, in instruction between a parent and child. Had it done so, it would have had no choice but to conclude that in-home instruction in a charter-homeschool program is not government speech in the slightest. As to the first factor, there is no clear history of government expression through the charter-homeschool program curriculum selected by parents, spoken by parents, and heard by their children within their own homes. As to the second factor, the public would perceive parents instructing their children at home as private speech. And as to the third factor, California's final oversight over the charter-homeschool program's curriculum does not transform private speech into government speech. The charter-homeschool curriculum thus has all the markers of private speech, rendering California's prohibition against the use of sectarian materials in the charter-homeschool program subject to the Free Speech Clause.

Because the charter-homeschool curriculum is private speech, California's content-based restriction must satisfy strict scrutiny. *See Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 171 (2015). Respondents identify no compelling interest that justifies regulating parental instruction within the home. Nor is their policy narrowly tailored: the schools rejected even facially secular materials simply because they came from religious publishers. California's restriction thus fails strict scrutiny.

2. The implications of the Ninth Circuit’s sweeping decision extend beyond the charter-homeschool program here. Charter and homeschool programs are increasingly attractive to parents around the country because they empower independent choices about what and how children will learn. In equating *private* parental instruction within the home as *government* speech, the panel opens the door for California and other states to remove “choice” from school choice. Parents now have little room to avoid the top-down standards of uniformity California and other states expect in their public schools, subverting the charter school system’s core principle of parental choice. And because the panel’s opinion now paints curricula from publishers like ACSI as government speech, these publishers can be pushed out of the market purely based on viewpoint discrimination. That result is not one that our Constitution tolerates, finds no support in the government-speech doctrine, and warrants this Court’s immediate intervention.

ARGUMENT

I. This Court Should Grant Certiorari To Confirm That The “Public School” Label Does Not Eliminate First Amendment Protections For Parent-Directed Home Instruction.

The Ninth Circuit’s government-speech holding is yet another consequence of the erroneous premise the petition challenges: labeling these programs “public school” transforms parent-directed home instruction into the State’s own activity, thereby eliminating

First Amendment protections that would otherwise apply in full force.

This Court’s decision in *Shurtleff* cemented the test for determining what constitutes government speech. The Ninth Circuit disregarded that test and concluded that in-home parental instruction—which involves no government official or public audience—is government speech simply because it involves education. That nonsensical result is irreconcilable with a faithful application of *Shurtleff*. When the three *Shurtleff* factors are properly applied, it becomes clear that California’s restriction on homeschool materials regulates private speech and thus must survive strict scrutiny—which it does not.

A. *Shurtleff* Clarified The Government-Speech Test.

“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). But the government-speech doctrine exempts the government from this rule when it is speaking for itself: “When the government wishes to state an opinion, to speak for the community, to formulate policies, or to implement programs, it naturally chooses what to say and what not to say.” *Shurtleff*, 596 U.S. at 251. Otherwise, “imposing a requirement of viewpoint-neutrality on government speech would be paralyzing.” *Matal*, 582 U.S. at 234.

Because the government-speech doctrine allows the government to engage in otherwise impermissible content and viewpoint discrimination, it “is a powerful weapon in a state’s arsenal for expression—one

deployable both for promoting the government’s own viewpoint and, conversely, for squelching the views of others with which it disagrees.” Clay Calvert, *The Government Speech Doctrine in Walker’s Wake: Early Rifts and Reverberations on Free Speech, Viewpoint Discrimination, and Offensive Expression*, 25 Wm. & Mary Bill Rts. J. 1239, 1243 (2017). And it is “susceptible to dangerous misuse.” *Matal*, 582 U.S. at 235. As this Court has explained, “If private speech could be passed off as government speech by simply affixing a government seal of approval, government could silence or muffle the expression of disfavored viewpoints.” *Id.* Accordingly, this Court has “exercise[d] great caution” before labeling private speech as government speech. *Id.* This caution is especially important where the “boundary between government speech and private expression [is] blur[red],” such as when “a government invites the people to participate in a program.” *Shurtleff*, 596 U.S. at 252.

This Court recently cemented the test on the line between private speech and government speech in *Shurtleff*. There, Boston allowed private groups to ask to fly “flags of their choosing” outside City Hall. *Id.* at 248. Boston had never denied a request until one involved a Christian flag. *Id.* This Court held that Boston’s denial violated the First Amendment. *Id.* at 259. This Court conducted a “holistic inquiry” of the flag program guided by three factors from its government-speech precedents: “the history of the expression at issue; the public’s likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression.” *Id.* at 252.

This Court noted that while the “general history” of flag flying “at the seat of government” weighed in favor of Boston, that analysis operated at too high a level of generality. *Id.* at 253. Instead, this Court assessed whether the history of “the 20 ... times a year when Boston allowed private groups to raise their own flags, those flags, too, expressed the city’s message.” *Id.* at 255. When looking at “the details of *this* flag-flying program,” the Court concluded that (1) the general history of flag flying did not illuminate the history of the private flag flying program; (2) the public would not necessarily construe the private flags as bearing Boston’s message; and (3) most “salient[ly],” Boston did not “actively control[] these flag raisings and shape[] the messages the flags sent.” *Id.* at 255-56. Thus, the Court concluded the flag at issue was private speech protected by the First Amendment. *Id.* at 259.

B. The Ninth Circuit’s Government-Speech Analysis Disregarded *Shurtleff*.

Analyzing the charter-homeschool curriculum here compels the same narrow construction. Yet the Ninth Circuit skipped this analysis entirely. It treated the “public school” label as sufficient to classify parental instruction within the home as government speech—thereby giving the government a license to engage in blatant viewpoint discrimination—without even mentioning, much less analyzing, the three factors this Court set forth in *Shurtleff*. Had the Ninth Circuit done the requisite analysis, it would have concluded that California’s secular education requirement regulates private, not government, speech and fails strict scrutiny.

1. In-Home Instruction Under The Charter-Homeschool Program Is Private Speech.

Parents instructing their child within the confines of their own home is quintessential private speech. This Court in *Shurtleff* set forth three factors that courts must consider before construing speech as government speech: (1) “the history of the expression at issue;” (2) “the public’s likely perception as to who (the government or a private person) is speaking;” and (3) “the extent to which the government has actively shaped or controlled the expression” before holding that seemingly private speech is government speech. 596 U.S. at 252. When viewed holistically, these factors weigh in favor of concluding that the expression here is private.

a. The Government Has Not Historically Spoken Through Charter-Homeschool Curricula.

There is no clear history of government speaking through charter-homeschool program curricula selected by parents, spoken by parents, and heard by their children within their own homes. Courts must look at the specific expression at issue—here, in-home parental instruction using hand-selected curricula—in assessing the government’s history of regulating the expression. *See id.* at 255.

The lack of historical record on the government speaking through the charter-homeschool program sets this case apart from those where there was a long history of government regulation. Education “is not and never has been a function reserved to the state.” *Logiodice v. Trs. of Me. Cent. Inst.*, 296 F.3d 22, 26 (1st

Cir. 2002) (citing *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534 (1925)). Public education is a modern invention. *See generally* Michael W. McConnell, *Establishment and Disestablishment at the Founding, Part I: Establishment of Religion*, 44 Wm. & Mary L. Rev. 2105, 2171 (2003). Charter schools even more so. *See Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 150 (4th Cir. 2022) (en banc) (Wilkinson, J., dissenting).

Indeed, the entire point of the charter-homeschool program here is to “operate independently from the existing school district structure,” Cal. Educ. Code § 47601, and be “run by private individuals or entities rather than traditional public school districts.” *Today’s Fresh Start, Inc. v. L.A. Cnty. Off. of Educ.*, 57 Cal. 4th 197, 205 (2013). The Legislature propounded a framework of independence “as a method to accomplish,” among other things, “[i]mprov[ing] pupil learning,” “[i]ncreas[ing] learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving,” and “[e]ncourag[ing] the use of different and innovative teaching methods.” Cal. Educ. Code § 47601.

In conformity with the Legislature’s goal of independence, the California Department of Education, Blue Ridge, and Visions—two of California’s largest tuition-free, independent-study charter schools—all tout independence and flexibility as advantages to this regulatory framework. *See* Cal. Dep’t of Educ., *Charter Schools in California—CalEdFacts*, <https://shorturl.at/Fqj78>; *see* Blue Ridge Acad., *Our Approach*, <https://shorturl.at/FmJkZ>;

Visions in Educ., *Home School* (TK-8), <https://shorturl.at/hBilX>.

The Ninth Circuit circumvented the plainly private nature of the in-home instruction by pointing to regulations on California’s public curriculum generally, which, it concluded, “is ‘an expression of [California’s] policy.’” *Woolard v. Thurmond*, 152 F.4th 1050, 1057 (9th Cir. 2025) (citation omitted). But the question is about the history of “*this*” specific type of expression—curriculum delivered by a parent within the home as part of the charter-homeschool program. *Shurtleff*, 596 U.S. at 255. Neither the decision below nor the cases it cites answer that question. See *Downs v. L.A. Unified Sch. Dist.*, 228 F.3d 1003, 1006-08 (9th Cir. 2000) (regulation of materials posted on a bulletin board on school property); *Riley’s Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 716 (9th Cir. 2022) (whether a district can “sever[] [a] longstanding business relationship” because “the principal shareholder of the field trip vendor made controversial tweets on his personal social media account”).

When viewing the history of this expression specifically, this first factor weighs in favor of finding the charter-homeschool program curriculum is private speech. See *Shurtleff*, 596 U.S. at 255. The Ninth Circuit’s contrary holding “disturbing[ly]” transforms private speech in the home into state-regulated speech exempt from First Amendment protections. App. 30a-31a (Bumatay, J., dissenting from denial of rehearing en banc).

**b. The Public Would Not Perceive
Parental Instruction Within The
Home As Government Speech.**

There is no danger of the public perceiving teaching in a private home as public speech. Even speech that might ordinarily seem to be government speech can be private speech in certain instances. For example, this Court in *Shurtleff* acknowledged that “[o]n an ordinary day” the public will likely “see the flags as conveying some message on the government’s behalf.” 596 U.S. at 255 (citations omitted). But that was not “necessarily true for the flags at issue” there. *Id.*

Likewise here, the public may “ordinarily,” *id.*, view school curriculum as coming from the government, but the curriculum here is different from ordinary school curriculum because (1) a parent delivers the curriculum without any direct involvement from a state actor; (2) the curriculum is taught within the privacy of the home; and (3) California itself has stated that charter schools are different.

First, parents deliver their chosen curriculum without the granular involvement of a state actor. “Under the programs at issue, parents do the day-to-day teaching, educate their children in the home, and choose the substance of their curricula.” App. 25a-26a (Bumatay, J., dissenting from denial of rehearing en banc). While it is true that charter schools must meet statewide standards, hire state-certified teachers as supervisors, and approve curriculum, *see* Cal. Educ. Code § 47605(d)(1), (l)(1); Cal. Code Regs. tit. 5, § 11700(f), “the nature and extent of that involvement

is not meaningful enough to transform the comments into the [State's] speech." *Krasno v. Mnookin*, 148 F.4th 465, 481 (7th Cir. 2025). The supervising teachers do not scrutinize the curriculum to ensure it "convey[s]" California's "approved messages," *id.*, beyond objective learning criteria. Blue Ridge instructors meet with parents every twenty days to ensure compliance with attendance and work completion criteria. CA9.ER.480. Similarly at Visions, parents are the "primary instructor." CA9.ER.428. Credentialed teachers only "review and approve all expenditures of instructional budget funds" and "samples" of a student's work "for quality, completion, and mastery of California State Standards." CA9.ER.481.

Second, the instruction is within the home. There is no public to view the speech because the speech does not occur in public. *Contra Downs*, 228 F.3d at 1006-07 (information posted on school bulletin boards on school grounds). This alone sets the expression apart from those in public schools. *See App. 29a* (Bumatay, J., dissenting from denial of rehearing en banc) (public schools involve "government employees" who teach "government-mandated curricula in a government-built classroom," while the charter programs at issue allow parents to "design and teach their chosen curricula in the privacy of" their own homes). *Third*, any possible perception of government speech is offset by statements made by California, Blue Ridge, and Visions advertising the homeschool program as being independent and private actor driven. The Legislature has stated that charter schools "operate independently from the existing school district structure." Cal. Educ. Code § 47601.

Blue Ridge’s “independent study model” seeks “to provide a safe, collaborative and individualized learning experience in partnership with families and the community.” See Blue Ridge Acad., *Our Approach*, <https://shorturl.at/FmJkZ>. And Visions “partners with families to offer flexibility and support, allowing them to provide each student with a high quality education.” See Visions in Educ., *Home School (TK-8)*, <https://shorturl.at/hBilX>.

Considering the nature of the speech at issue, it “defies common sense as well as established law ... that parents teaching their own children in their own home, based on a curriculum of their own choosing, somehow transforms them into ‘public school’ teachers.” App. 28a-29a (Bumatay, J., dissenting from denial of rehearing en banc). Indeed, nothing about the speech has a direct tie to the government: it is made by non-governmental actors (parents) to non-governmental actors (their children) about non-governmental materials (parent-selected textbooks) on non-governmental property (private homes). There is no credible danger of the public perceiving that speech as coming from the government.

c. Final Approval Authority Alone Is Not Enough To Transform Private Speech Into Government Speech.

California has not “actively controlled” the curriculum here at a granular level, and the fact that the supervising teacher provides final approval is not enough to change that. *Shurtleff*, 596 U.S. at 256.

Final authority alone is not sufficient to turn private speech into government speech. In other words, “neither ‘control’ nor ‘final approval authority’ can in itself distinguish government speech from censorship of private speech.” *Shurtleff*, 596 U.S. at 264 (Alito, J., concurring). In *Matal v. Tam*, for example, this Court found it “far-fetched to suggest that the content of a registered mark is government speech,” even though the PTO maintained final approval authority over trademark registration. 582 U.S. at 236. The Court observed that “private speech [cannot] be passed off as government speech by simply affixing a government seal of approval.” *Id.* at 235. So too here: “[a]dhering to modest state requirements simply doesn’t transform parents teaching their children around the kitchen table with textbooks they choose into agents of the State.” App. 29a (Bumatay, J., dissenting from denial of rehearing en banc). Where control is little or “not at all,” this factor is “salient” and counsels against concluding the speech is government speech. *Id.*

In reaching the opposite conclusion, the Ninth Circuit broke from the Eighth Circuit, which has correctly held that, “[w]ithout more, the mere existence of a review process with approval authority is insufficient by itself to transform private speech into government speech.” *Cajune v. Indep. Sch. Dist.* 194, 105 F.4th 1070, 1081 (8th Cir. 2024).

Here, California does not exercise significant control over the charter-homeschool program curriculum. To be sure, supervising teachers “provide ‘continuing oversight of the study design, implementation plan, allocation of resources, and

evaluation[s].” *Woolard*, 152 F.4th at 1056 (quoting Cal. Code Regs. tit. 5, § 11700(b)). And the school contract requires that a family comply with the “objectives and methods of study for the pupil’s work, and the methods used to evaluate that work.” *Id.* (quoting Cal. Educ. Code § 51747(g)(2)). But this authority is no more granular than the kind of final-approval oversight the above cases show is insufficient to transmogrify private speech of parents into government speech. *Contra Khatibi*, 145 F.4th at 1152-54 (citation omitted) (historically not only giving approval but also “detail[ing] the themes to be emphasized, the actors to be used, the demographics to be targeted, and the media to be employed”); *see also Cajune*, 105 F.4th at 1081 (holding that “[w]ithout more, the mere existence of a review process with approval authority is insufficient by itself to transform private speech into government speech”).

Indeed, while California imposes various programmatic requirements, the categorical content restriction challenged here is the prohibition on religious materials. As Judge Bumatay recognized in his dissent from the denial of rehearing en banc: “Adhering to modest state requirements simply doesn’t transform parents teaching their children around the kitchen table with textbooks they choose into agents of the State providing ‘public school’ education. Doing so casts parents into the equivalent of state workers and parent-designed curricula into state-mandated curricula.” App. 29a (Bumatay, J., dissenting from denial of rehearing en banc). That cannot be right.

2. Given The Law Regulates Private Speech, It Must Satisfy Strict Scrutiny, And It Does Not.

The Ninth Circuit's misapplication of the government-speech doctrine under the premise that the program here is a public school cascades throughout the constitutional analysis. Because the narrow government exception to the Free Speech Clause is inapplicable here, California's policy of restricting the charter-homeschool program curriculum based on the religious content is subject to strict scrutiny. California must show that restricting religious curriculum here is the narrowest solution to achieve a compelling government interest. *See Reed*, 576 U.S. at 171. The policy fails the standard at every step.

Respondents uniformly admit to excluding religious curriculum because of its religious nature. The question, then, is what compelling interest is served by extending California's strictly secular education policy into the homes of students in the charter-homeschool program? Respondents invoke California's "longstanding constitutional commitment to secular public school curricula" and the principle that a State "may provide a strictly secular education in its public schools." *E.g.*, Addendum to *Thurmond Br.* at 18, *Woolard v. Thurmond*, No. 24-4291, (9th Cir. Jan. 22, 2025), ECF No. 65-1 (quoting *Carson*, 596 U.S. at 785). But Respondents identify no authority for the proposition that a State's interest in secular public education empowers it to regulate the content of parental instruction in a private residence. *Carson* addressed only a tuition-assistance program for

private schools and said nothing about regulating parental speech within the home. Worse, Respondents often take contradictory positions on what “compelling” interests are even implicated here: Blue Ridge Respondents argue such viewpoint discrimination is necessary to comply with the Establishment Clause, *see* Blue Ridge Acad. Br., *Woolard v. Thurmond*, No. 24-4291 (9th Cir. Jan. 22, 2025), ECF No. 68, but the Visions in Education Respondents criticize appellants for “attack[ing] an ‘assumed’ Establishment Clause position the district court did not adopt,” Visions in Educ. Charter Sch. Br. at 55, *Woolard v. Thurmond*, No. 24-4291 (9th Cir. Jan. 22, 2025), ECF No. 69.

Setting aside the inconsistency, “[a] State’s antiestablishment interest does not justify enactments that exclude some members of the community from an otherwise generally available public benefit because of their religious exercise.” *Carson*, 596 U.S. at 781. The government need not “purge from the public sphere anything an objective observer could reasonably infer endorses or partakes of the religious.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535 (2022) (citation omitted). To the extent Respondents argue otherwise, they do nothing but rehash their government-speech arguments, which get them nowhere. *See supra* Part I.B.

Nor is California’s policy narrowly tailored to any purported government objective, because it suppresses more speech than necessary to further the government’s stated goals. *Tandon v. Newsom*, 593 U.S. 61, 63 (2021) (per curiam) (“[N]arrow tailoring requires the government to show that measures less

restrictive of the First Amendment activity could not address its interest.”). The schools refused to give students credit for worksheets that were entirely secular in nature simply because they are from a religious publisher. CA9.ER.488, 518. To the extent California has Establishment Clause concerns, excluding non-sectarian materials does not achieve that goal.

Respondents have not demonstrated and cannot demonstrate either that their viewpoint discrimination is in service of a compelling interest or that it is narrowly tailored to achieve such an interest. The Ninth Circuit’s decision allowing viewpoint discrimination nonetheless paves the way for the government-speech doctrine as a tool for unconstitutional censorship of parents’ educational choices across the country. That consequence is a direct effect of the foundational mistake the petition asks this Court to correct: treating the “public school” label as sufficient to strip parent-directed home instruction of the First Amendment protections it would otherwise enjoy.

II. The Ninth Circuit’s Decision Has Broad Ramifications.

The decision below undermines the fundamental premise of a charter school program in one of the largest states in the Union, threatens charter school and homeschool programs everywhere, and pushes publishers like ACSI out of the market based on viewpoint. As two U.S. Presidents acknowledged, “[c]harter schools play an important role in our country’s education system,” including “[s]upporting some of our Nation’s underserved communities.”

Barack H. Obama, *Presidential Proclamation—National Charter Schools Week*, 2016 (Apr. 29, 2016); see also George W. Bush, *Presidential Proclamation—National Charter Schools Week*, 2007 (Apr. 27, 2007).

Droves of American families have taken advantage of their state’s deliberate decision to create better educational outcomes by introducing more parental choice into their education systems. Between 2010 and 2021, the number of public charter schools in the United States grew from approximately 5,300 to 7,800, and charter school enrollment more than doubled—from 1.8 million to 3.7 million students. Nat’l Ctr. for Educ. Statistics, *Public Charter School Enrollment* (May 2023), <https://perma.cc/3555-YTUQ>. Charter schools disproportionately serve families who need free education options most: roughly 31 percent of charter-school students attended high-poverty schools in 2021, compared to only 21 percent of traditional public school students. *Id.* For many families, free charter schools are the only means of exercising any real choice in their children’s education.

Parents opt out of public schools for a variety of reasons, including to improve academic outcomes for their children and to better address the specific needs of their children. See Kevin S. Huffman, *Charter Schools, Equal Protection Litigation, and the New School Reform Movement*, 73 N.Y.U. L. Rev. 1290, 1290 (1998). That is the heart of school choice programs: Students are better off when their parents can *choose* an educational program that best suits their family’s—and in particular, the students’—needs. The Ninth Circuit’s decision puts these

outcomes at risk, not just in California, but across the country. Extending the government-speech doctrine to instances where a parent teaches their child within the confines of their own home stifles the intention of charter schools “to widen the range of educational choices available within the public school system.” *Wells v. One2One Learning Found.*, 39 Cal. 4th 1164, 1202 (2006), *as modified* (Oct. 25, 2006) (discussing California’s Charter Schools Act); *see also, e.g.*, 24 P.S. § 17-1702-A(5) (purpose of Pennsylvania’s charter schools is to “[p]rovide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system”); C.R.S.A. § 22-30.5-102(2)(f) (the Colorado Charter Schools Act “provide[s] parents and pupils with expanded choices in the types of education opportunities that are available within the public school system”); Tex. Educ. Code § 12.001(a)(2) (“increase the choice of learning opportunities within the public school system”); Fla. Stat. § 1002.33(2)(a)(1) (“providing parents flexibility to choose among diverse educational opportunities within this state’s public school system”).

Worse, states like California forbid these plaintiffs to use the curriculum of their choice simply because, as a whole, the curriculum evinces a particular religious worldview. Visions, for example, rejected a math worksheet that contained no reference to God, cited no religious text, and did nothing to promote a religious worldview. CA9.ER.518. And Blue Ridge denied the use of an economics textbook that included a historic Christian perspective on money solely *as one of several competing options*—alongside communism and socialism—in the curriculum and

without commentary on the primary texts. CA9.ER.484-85. If the decision below stands, states can push religious publishers out of the charter-school market entirely.

ACSI is illustrative. The Ninth Circuit's decision renders ACSI's publishing house a de facto arm of the government. By concluding that a parent's chosen curriculum is government speech, the panel necessarily holds that *ACSI's own publications*, when selected by *parents* for use by *their children*, are nevertheless *the state's speech*. That conclusion is obviously wrong; ACSI does not speak for the State of California, and the State of California does not speak through ACSI. When publishing books through Purposeful Design, ACSI speaks for itself, provides its own religious perspective, and seeks to accomplish *its own mission*. That does not change simply when its books are selected as charter curriculum. The same is true when parents select ACSI's textbooks for their children; they, too, are speaking for themselves. In holding otherwise—that ACSI's textbooks selected for use in the home is *government speech*—the Ninth Circuit has assured that ACSI will lose a significant potential audience for its materials for no other reason than a state's unnecessary and illegal viewpoint discrimination.

The same is true for other religious publishers who provide educational materials to the charter-homeschool market. *See, e.g.*, BJU Press Homeschool, <https://www.bjupresshomeschool.com>; Master Books, *Top Christian Homeschool Curriculum and Programs*, <https://shorturl.at/AZXaI>; The Good and the Beautiful, *How to Start Homeschooling*,

<https://shorturl.at/9RspB>. Under the Ninth Circuit’s reasoning, these publishers’ materials would likewise be classified as “government speech” when selected by parents for use in their charter-homeschool curriculum, subjecting them to the same viewpoint-based exclusion that now threatens to push ACSI out of the charter-school market. This Court should grant the petition to prevent the government-speech doctrine from becoming a tool for states to purge religious viewpoints from the educational marketplace.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

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