No.

In the Supreme Court of the United States

AZADEH KHATIBI, M.D.; DO NO HARM, INC., A VIRGINIA NONPROFIT CORPORATION,
Petitioners,

v.

RANDY HAWKINS, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE MEDICAL BOARD OF CALIFORNIA, ET AL.,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

California requires physicians to complete 50 hours of Continuing Medical Education (CME) every two years as a condition of maintaining their medical licenses. In 2022, the State began requiring that every CME course—even highly technical instruction on subjects such as retinal tumors—address implicit bias and its role in producing disparities in healthcare.

Petitioners—an ophthalmologist who teaches CME courses and a professional association whose members develop and teach accredited CME programs—challenged this mandate as compelled speech in violation of the First Amendment. Because CME courses are produced and delivered by private actors, California cannot require them to convey the State's message on a controversial subject.

The district court dismissed the complaint, and the Ninth Circuit affirmed, holding that CME courses constitute government speech based on the State's extensive regulation of the medical field—even though the State does not create, review, or edit the content of CME courses. In one of two three-judge dissents from the denial of rehearing en banc, Judge VanDyke warned that the decision puts the Ninth Circuit "out of step with the precedent of the Supreme Court" and its "sister circuits."

The question presented is:

Whether private instruction in courses required for state licensure constitutes government speech.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The Petitioners are Azadeh Khatibi, M.D., and Do No Harm Inc., a nonprofit corporation.

Respondents are Randy W. Hawkins, Laurie Rose Lubiano, Ryan Brooks, Reji Varghese, and Marina O'Connor in their official capacities as members and officials of the Medical Board of California.[1]

CORPORATE DISCLOSURE STATEMENT

Do No Harm Inc. has no parent corporation and no publicly held company owns 10% or more of any of its stock.

[1] Since the proceedings below, Kristina D. Lawson has replaced Randy D. Hawkins as President of the Board, Felix C. Yip has replaced Laurie Rose Lubiano as Vice President of the Board, Veling Tsai has replaced Ryan Brooks as Secretary of the Board, and Douglas Hock has replaced Marina O'Connor as Chief of Licensing for the Board.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Khatibi v. Hawkins, No. 24-3108 (9th Cir. Dec. 29, 2025) (en banc).

Khatibi v. Hawkins, No. 24-3108 (9th Cir. Jul. 25, 2025).

Khatibi v. Hawkins, No. 2:23-cv-6195 (C.D. Cal. May 2, 2024).

Khatibi v. Hawkins, No. 2:23-cv-6195 (C.D. Cal. Dec. 11, 2023).

TABLE OF CONTENTS

Petition for Writ of Certiorari 1
Opinions Below 3
Jurisdiction 3
Constitutional and Statutory Provisions Involved 4
Statement of the Case 5
I. Petitioners 5
II. California's Implicit Bias Training Mandate 6
III. This Lawsuit 8
Reasons for Granting the Petition 10
I. Certiorari Should Be Granted Because the Decision Below Conflicts with This Court's Precedents 10
II. Certiorari Should Be Granted to Resolve a Conflict Between the Courts of Appeals 14
III. The Petition Raises Questions of National Importance 17
Conclusion 21

APPENDIX

Opinion (Corrected), No. 24-3108, U.S. Court of Appeals for the Ninth Circuit, July 28, 2025 ..... 1a
Order Granting Defendants' Motion to Dismiss First Amended Complaint, No. 2:23-cv-06195, U.S. District Court for the Central District of California, May 2, 2024 ..... 39a

Order Denying Petition for Rehearing En Banc, No. 24-3108, U.S. Court of Appeals for the Ninth Circuit, Dec. 29, 2025 ..... 62a

Order Granting Defendants' Motion to Dismiss, No. 2:23-cv-06195, U.S. District Court for the Central District of California, Dec. 11, 2023 .... 92a

Cal. Bus. & Prof. Code § 2190.1, in relevant part 103a

First Amended Complaint for Declaratory and Injunctive Relief, No. 2:23-cv-06195, U.S. District Court for the Central District of California, Dec. 22, 2023 ..... 104a

TABLE OF AUTHORITIES

Page(s)

Cases:

Brown v. Yost,
133 F.4th 725 (6th Cir. 2025).....14, 16

Cajune v. Indep. Sch. Dist. 194,
105 F.4th 1070 (8th Cir. 2024).....16

Chiles v. Salazar,
No. 24-539, 2026 WL 872307
(U.S. Mar. 31, 2026) 10, 13, 19

Colorado v. Griswold,
99 F.4th 1234 (10th Cir. 2024).....16

Davison v. Randall,
912 F.3d 666 (4th Cir. 2019) 16

GLBT Youth in Iowa School Task Force v. Reynolds,
114 F.4th 660 (8th Cir. 2024).....16

Khatibi v. Hawkins,
145 F.4th 1139 (9th Cir. 2025).....3

Khatibi v. Hawkins,
164 F.4th 1105 (9th Cir. 2025).....3

Khatibi v. Hawkins,
No. 2:23-cv-06195, 2023 WL 12095047
(C.D. Cal. Dec. 11, 2023) 3

Khatibi v. Hawkins,
No. 2:23-cv-06195, 2024 WL 3802523
(C.D. Cal. May 2, 2024) 3

Little v. Llano County,
138 F.4th 834 (5th Cir. 2025).....16

Matal v. Tam,
582 U.S. 218 (2017) 2, 10-12, 18-19

National Institute of Family & Life Advocates v. Becerra, 585 U.S. 755 (2018) 2, 10, 13, 19

New Hope Family Services, Inc. v. Poole, 966 F.3d 145 (2d Cir. 2020) 16

Shurtleff v. City of Boston, 596 U.S. 243 (2022) 8, 10, 12

Walker v. Texas Div., Sons of Confederate Veterans, Inc., 576 U.S. 200 (2015) 10, 12

West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) 2

Women for Am. First v. Adams, No. 21-485-cv, 2022 WL 1714896 (2d Cir. May 27, 2022) 15-16

Statutes:

28 U.S.C. § 1254(1) 3

42 U.S.C. § 1983 ..... 4, 8

Cal. Bus. & Prof. Code § 2190.1 ..... 1, 6-7

Cal. Bus. & Prof. Code § 2190.1(d)(1) 4, 5, 6

Cal. Bus. & Prof. Code § 2190.1(d)(3) 11

Cal. Bus. & Prof. Code § 2190.1(e) 7

Constitutional Provision:

U.S. Const. amend. I, cl. 3 4

Other Authority:

Cal. Code Regs. tit. 16, § 1337.5(b) 11-12

PETITION FOR WRIT OF CERTIORARI

May a State compel private professionals to convey a contested ideological message as a condition of teaching courses required for a professional license? The Ninth Circuit answered "yes," holding that such private instruction constitutes government speech. That sweeping ruling erases the constitutional boundary between government and private speech, threatens the speech rights of countless professionals, and directly conflicts with this Court's precedents limiting the government speech doctrine and protecting against compelled speech.

California law requires that nearly every continuing medical education (CME) course—regardless of specialty, scientific judgment, or the actual subject of the course—must include specific discussion of "implicit bias" and its purported effects on medical decision-making or healthcare disparities. *See* Cal. Bus. & Prof. Code § 2190.1. As Judge Tung observed in dissent from the denial of rehearing en banc, the concept of implicit bias is "controversial," reflecting a contested view that unconscious biases drive disparities in outcomes. *See* Petitioners' Appendix (App.) 84a-85a. Petitioners dispute that premise and object to being compelled to teach it.

Courses that omit the mandated content are ineligible for CME credit. Instructors who refuse to voice the State's preferred message thus face professional consequences, including loss of business, reputational harm, and barriers to future teaching opportunities.

Petitioners Dr. Azadeh Khatibi, a board-certified ophthalmologist, and Do No Harm, a national organization of physicians and healthcare professionals, challenge this mandate as a classic case of compelled

speech. They create and deliver their own original CME content without State drafting, editing, assignment of topics, or meaningful oversight; the State neither controls the message of their CMEs nor presents the instruction as its own. Yet a panel of the Ninth Circuit held, on a motion to dismiss and without factual development, that these private lectures are government speech—categorically exempt from First Amendment review. The full court denied a petition for rehearing en banc over the dissents of Judges VanDyke, Bumatay, and Tung. *See* App. 63a.

The panel's decision cannot be reconciled with this Court's teachings. The government speech doctrine is "susceptible to dangerous misuse" and must remain "narrow." *Matal v. Tam*, 582 U.S. 218, 235 (2017). Nor can it be reconciled with the approach of other circuits, which have ruled that regulation alone is insufficient to transform private speech into government speech absent evidence the government has historically regulated for the purpose of expressing its own viewpoint. When the government compels private individuals to speak its message in their own voices before professional audiences, the First Amendment demands scrutiny—not immunity. *See National Institute of Family & Life Advocates (NIFLA) v. Becerra*, 585 U.S. 755, 766-67 (2018) (rejecting attempts to evade compelled-speech protections through professional regulation); *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

The panel's holding, if left undisturbed, would license states to conscript private professionals—doctors, lawyers, teachers, engineers, and others—into advancing contested government ideologies whenever their instruction occurs in a licensure-related setting. It transforms a narrow doctrine meant to protect the

government's own expressive choices into a broad shield for compelled private speech. That expansion warrants this Court's review to reaffirm the limits of government speech, protect the First Amendment rights of licensed professionals, and preserve the line between state and private expression.

OPINIONS BELOW

The Order of the Ninth Circuit denying the petition for panel rehearing and rehearing en banc is reported at 164 F.4th 1105 (Mem) and is reprinted in Petitioners' Appendix at App. 62a.

The panel opinion of the Ninth Circuit is reported at 145 F.4th 1139 and reprinted at App. 1a.

The opinion of the United States District Court for the Central District of California dismissing the First Amended Complaint is published at 2024 WL 3802523 and reprinted at App. 39a.

The opinion of the United States District Court for the Central District of California dismissing the Complaint with leave to amend is published at 2023 WL 12095047 and reprinted at App. 92a.

JURISDICTION

The Ninth Circuit rendered its judgment affirming the district court's dismissal of the First Amended Complaint on July 28, 2025, App. 1a, and issued its mandate on January 6, 2026, after denying Petitioners' en banc petition on December 29, 2025, App. 62a. On March 23, 2026, Justice Kagan granted an extension of time to file a petition for writ of certiorari until April 29, 2026. This petition is timely filed and the Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I, cl. 3, provides: "Congress shall make no law . . . abridging the freedom of speech."

Cal. Bus. & Prof. Code § 2190.1(d)(1) provides, in relevant part: "all continuing medical education courses shall contain curriculum that includes the understanding of implicit bias."

42 U.S.C. § 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

I. Petitioners

Azadeh Khatibi fled Tehran as a child after the Iranian Revolution of 1979. App. 111a; ¶32. Upon settling in Los Angeles with her family, Dr. Khatibi eventually earned an M.D. from the University of California, San Francisco. App. 111a; ¶¶32, 33. She is now a California physician. App. 111a; ¶33. In addition to practicing ophthalmology, she organizes and teaches continuing medical education (CME) courses on many topics in medicine and ophthalmology, including retinal tumors, glaucoma, and other ocular diseases, as well as systemic diseases. App. 112a; ¶¶34-36.

Dr. Khatibi enjoys teaching CMEs, which are created and compiled by her alone and approved by private accreditors. App. 112a-113a; ¶¶34-36, 41. But California's implicit bias requirement, Cal. Bus. & Prof. Code § 2190.1(d)(1), is problematic for her and the CME courses she teaches. She does not want to include discussion of implicit bias in her courses because it is not relevant to her topics and would eat away at the limited time available to discuss topics that are relevant. App. 113a; ¶¶42-43. This is especially true given the lack of evidentiary support for implicit bias training and the significant time constraints usually present when delivering CMEs, which limit the amount of information that can be presented. App. 113a; ¶43. Dr. Khatibi also disagrees that implicit bias is the primary factor driving disparities in healthcare and regards the theory's assumption to the contrary as divisive. *Ibid.* Because Dr. Khatibi's courses do not generally cover disparities in care, and given that there is limited time avail-

able for instruction, section 2190.1(d)'s mandate to include discussion of implicit bias prevents her from having a more robust and appropriate discussion of the relevant topics in her CMEs. *Ibid.*

Do No Harm is a nonprofit organization that includes over 50,000 members, comprised of physicians, healthcare professionals, medical students, patients, and policymakers. United by a mission to protect healthcare from radical, divisive, and discriminatory ideologies, Do No Harm's members believe that all patients deserve access to the best possible care and that barriers to care should be broken down. App. 116a; ¶¶58-59. Do No Harm has at least one member who teaches, has taught, and intends to teach CMEs in the future for credit in California. App. 116a; ¶60. That member does not want to include discussion of implicit bias in those CMEs because such trainings have not been shown to successfully reduce barriers to healthcare, and instead risk infecting healthcare decisions with divisive and discriminatory ideas. App. 116a; ¶61.

II. California's Implicit Bias Training Mandate

In 2019, the California legislature amended Cal. Bus. & Prof. Code § 2190.1 to require that "[o]n and after January 1, 2022, all continuing medical education courses shall contain curriculum that includes the understanding of implicit bias." § 2190.1(d)(1); App. 103a. Rather than "hir[ing] its own employees to spread its message of 'implicit bias,'" or "enlist[ing] volunteers," or "creat[ing] a program" through which it edited and selected course material, App. 88a (Tung, J., dissenting), the state enlisted private CME providers. To qualify for continuing education credit with the Medical Board of California, all CMEs must now

include: "[e]xamples of how implicit bias affects perceptions and treatment decisions of physicians and surgeons, leading to disparities in health outcomes," or "[s]trategies to address how unintended biases in decisionmaking may contribute to health care disparities by shaping behavior and producing differences in medical treatment along lines of race, ethnicity, gender identity, sexual orientation, age, socioeconomic status, or other characteristics," or a combination of both. § 2190.1(e); App. 103a.

There is no consensus definition of "implicit bias," but the term generally refers to the idea that stereotypical beliefs or attitudes that individuals unconsciously possess toward others result in discriminatory actions. App. 110a; ¶25. Some are concerned that a physician implicitly biased toward a patient under his or her care will deliver worse care and that these implicit biases are the cause of racial disparities in healthcare. App. 110a; ¶26. However, that point of view is not commonly accepted and is controversial. Evidence that implicit bias is even prevalent in healthcare or that it causes disparate treatment outcomes is inconsistent at best. App. 110a; ¶27.

More controversial still is the effectiveness of implicit bias *training*. Assuming there are implicit biases in healthcare that cause disparate outcomes, there remains a dearth of evidence that trainings intended to reduce implicit bias are effective. App. 110a-111a; ¶28. Instead, ample evidence shows that such trainings can be counterproductive by causing anger, frustration, and resentment among attendees. App. 111a; ¶29. Neither section 2190.1 nor any other California law addresses the risk that implicit bias trainings may be counterproductive by requiring that they meet recognized standards for effectiveness.

App. 111a; ¶30. Nevertheless, California law requires CME providers to include examples of implicit bias or strategies to address it.

III. This Lawsuit

Petitioners initiated suit on August 1, 2023. Under 42 U.S.C. § 1983, Petitioners challenged California's implicit bias requirement for CMEs as unconstitutional compelled speech in violation of the First Amendment free speech rights of CME instructors. They also challenged the CME mandate as an unconstitutional condition on the exercise of CME instructors' First Amendment rights.

Respondents (officials for the Medical Board of California) sought dismissal of the complaint, asserting that continuing education courses required for state-issued professional licenses are "government speech" not subject to the First Amendment. The United States District Court for the Central District of California agreed and dismissed the complaint with leave to amend. App. 92a. After Petitioners amended the complaint to add allegations relevant to this Court's test for government speech, *see* App. 104a, the district court dismissed the First Amended Complaint, again holding that CME courses are the government's speech. App. 39a.

On appeal, the Ninth Circuit affirmed. App. 1a-38a. Purportedly applying this Court's "holistic inquiry" for determining whether speech is unprotected government speech, *see Shurtleff v. City of Boston*, 596 U.S. 243, 252 (2022), the Ninth Circuit held that each of the three factors weighed in favor of government speech. First, given California's extensive history of regulating medical professionals and its high-level

regulation of CMEs, the history of government regulation weighed in favor of the government. Petitioners argued that the State has no history of using CME regulation to convey a viewpoint. The panel disagreed, holding that regulation itself necessarily expresses a governmental view. App. 20a (noting that "California's lengthy history of regulation . . . reflects the State's evolving judgment").

On the second factor, public perception, the panel ruled that it "d[id] not seem unreasonable to infer" that the public perceives the providers' speech as coming from the government. App. 24a. And on the third factor, the panel ruled that California's high-level subject matter requirements meant that the state actively controlled the message of CMEs, even though the State does not create, edit, or review the courses. App. 25a-37a. "On balance," then, CMEs are government speech. App. 4a.

Petitioners filed a petition for rehearing en banc, which was denied over two dissents. App. 62a. Judge VanDyke, joined by Judges Bumatay and Tung, concluded that the panel's holding that "a medical course taught by a private instructor and accredited by private entities is government speech . . . isn't merely incorrect—it puts our circuit out of step with Supreme Court precedent, our sister circuits' precedent, and even our own precedent." App. 63a-64a. Judge Tung, joined by Judges Bumatay and VanDyke, noted that a state law mandating that CME instructors convey a controversial "viewpoint they find objectionable [] restricts their private expression and is not exempt from First Amendment scrutiny." App. 84a.

REASONS FOR GRANTING THE PETITION

I. Certiorari Should Be Granted Because the Decision Below Conflicts with This Court's Precedents

The decision below warrants review because it dramatically expands the government speech doctrine beyond the narrow limits this Court has repeatedly emphasized. The panel held that CME courses—created by private instructors and approved by private accreditors—are government speech wholly exempt from First Amendment protection. That conclusion cannot be reconciled with this Court's decisions in *Matal v. Tam*, 582 U.S. 218 (2017), *Shurtleff v. City of Boston*, 596 U.S. 243 (2022), *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015), and *Nat'l Inst. of Fam. & Life Advocs. (NIFLA) v. Becerra*, 585 U.S. 755 (2018). It's also in tension with *Chiles*, which recently ruled that a restriction on the speech of licensed counselors is a restriction on private speech. *Chiles v. Salazar*, No. 24-539, 2026 WL 872307, at *9 (U.S. Mar. 31, 2026). As two dissents from denial of rehearing en banc explained, the panel reached the result here only by treating extensive regulation as enough to convert private speech into the State's own—an approach that conflicts with this Court's cases and threatens to allow governments to compel ideological orthodoxy in any regulated profession. *See* App. 63a-65a, 68a-72a (VanDyke, J., dissenting); App. 84a, 90a-91a (Tung, J., dissenting).

Start with *Tam*. There, the Court rejected the argument that trademarks become government speech merely because they are subject to extensive regulation, reviewed by a federal agency, and recorded in an official registry. 582 U.S. at 233-39. It emphasized

that the government did not "dream up" the marks or edit or control their content, and that the public would not reasonably perceive them as government-authored. *Id.* at 234-38. And it warned that the government speech doctrine must be applied with "great caution," lest the State "silence or muffle the expression of disfavored viewpoints." *Id.* at 235.

But each of those features is present here—and in key respects, more so. Like trademarks, CME courses exist within a regulatory scheme, are subject to general standards, and determine eligibility for an official credential. Yet California exercises even less control than the PTO did in *Tam*. The State does not create CME content, does not edit it, does not preapprove individual courses, and in most instances never even sees them. Cal. Bus. & Prof. Code § 2190.1(d)(3); Cal. Code Regs. tit. 16, § 1337.5(b). There is no government-authored message, no centralized review, and no basis for any reasonable observer to attribute a CME instructor's speech to the State. If trademarks—subject to federal registration and agency review—remain private speech, then privately created and largely unreviewed CME courses are not government speech.

The panel nonetheless concluded that CME instruction is government speech based on the State's asserted authority to "dictate[], control[], and approve[] the provider, form, purpose, and content" of courses within a comprehensive regulatory scheme. App. 4a. That reasoning mirrors—and effectively adopts—the very theory *Tam* rejected: that extensive regulation, combined with approval and eligibility criteria, suffices to convert private expression into the government's own speech. *See* App. 77a (VanDyke, J.,

dissenting) (referring to the panel's reasoning as the "exact opposite" of *Tam*).

Tam undermines the decision below; *Walker* and *Shurtleff* ought to foreclose it. *Walker* marks the "outer bounds" of the government speech doctrine—where the State itself used specialty license plates to convey its own messages, the public understood those messages as governmental, and the State exercised direct, hands-on control over the content conveyed. *Tam*, 582 U.S. at 238; *Walker*, 576 U.S. at 210-13. And *Shurtleff* confirms that the inquiry is demanding: the question is whether the government actually "intends to speak for itself" by shaping the *message*, not whether it merely regulates the underlying activity. 596 U.S. at 252.

The CME regime bears none of those hallmarks. CME instruction is created by private speakers, delivered in private settings, and developed without State involvement in the substance of what is said. California does not preapprove individual lectures, does not review or edit their content, and delegates accreditation to private entities, retaining only the ability to conduct occasional, after-the-fact audits. *See* Cal. Code Regs. tit. 16, § 1337.5(b); *see also* App. 33a (where the panel below holds that it is "of no moment that the Board normally accredits CMEs without an audit"). But, that absence of direct, message-level control is exactly what places this case outside *Walker*'s narrow bounds and confirms, under *Shurtleff*, that the State is regulating private speech—not speaking for itself. *See* App. 91a (Tung, J., dissenting) ("If *Shurtleff* is being applied (as here) to deny First Amendment protection to undeniably private instructors, compelled by the State to teach a

doctrine they disbelieve, then something has gone seriously awry and we have lost the plot.").

Step back from the government-speech doctrine, and the conflict becomes even clearer: the decision below cannot be squared with this Court's compelled-speech precedents, most notably *NIFLA*. There, the Court struck down a California law requiring licensed medical providers to disseminate a government-drafted message, holding that professional regulation does not give the State license to "co-opt the licensed facilities to deliver its message." 585 U.S. at 775. The Court rejected the argument that speech loses First Amendment protection merely because it occurs within a regulated profession, emphasizing that "[t]he dangers associated with content-based regulations of speech are also present in the context of professional speech." *Id.* at 771.

The same is true here. California's law does not merely regulate conduct or require disclosure of uncontroversial facts; it compels instructors to incorporate discussion of implicit bias, a contested and ideologically charged topic, into their own lectures. Rather than subject that mandate to First Amendment scrutiny, the panel avoided scrutiny altogether by recharacterizing the entire instructional activity as government speech. App. 37a-38a.

NIFLA should foreclose that maneuver. There, the Court rejected California's attempt to compel speech within a heavily regulated medical context, making clear that the State cannot avoid First Amendment scrutiny simply by invoking its regulatory authority over professionals. 585 U.S. at 767; *see also Chiles v. Salazar*, No. 24-539, 2026 WL 872307, at *9 (U.S. Mar. 31, 2026). The CME law does not transform

these instructors into government speakers; it "require[s] them to convey a viewpoint they find objectionable," which is the paradigmatic form of compelled speech. App. 84a (Tung, J., dissenting).

The decision below thus effects a sweeping expansion of the government speech doctrine that cannot be reconciled with this Court's precedents. It collapses the critical distinction between *regulating* private speech and *speaking for* the government. It allows the State to convert vast swaths of professional discourse into its own voice simply by imposing licensing requirements and content mandates. That result not only conflicts with *Tam*, *Walker*, *Shurtleff*, and *NIFLA*, but also threatens to place a wide range of private speech—across medicine, law, finance, and other regulated professions—beyond the reach of the First Amendment.

II. Certiorari Should Be Granted to Resolve a Conflict Between the Courts of Appeals

The decision below exposes a fundamental disagreement among the circuits about how to apply this Court's government speech framework, and, as Judge VanDyke observed, puts the Ninth Circuit in conflict with several circuit courts. App. 64a (VanDyke, J., dissenting). All courts of appeals purport to apply *Shurtleff*'s three-factor inquiry. But they diverge sharply on what those factors are asking. Most circuits treat the factors as an inquiry into whether the government is *conveying its own message*. The courts examine history, public perception, and governmental control over the content as tools for identifying whether the government has meaningfully shaped the content of the expression for the purpose of expressing its own view. *See, e.g.*, *Brown v. Yost*, 133 F.4th 725,

734-35 (6th Cir. 2025) (asking whether summaries of ballot initiatives convey government messages); *Women for Am. First v. Adams*, No. 21-485-cv, 2022 WL 1714896, at *2 (2d Cir. May 27, 2022) (asking whether roadway markings communicate government messages).

The Ninth Circuit applied the same factors but asked a different question. Rather than asking whether the message is the government's or a private speaker's, the panel used *Shurtleff*'s factors to ask whether regulation, history, and oversight involve sufficient government intervention to treat a private message as the government's. App. 4a. Or, as Judge VanDyke put it, the panel focused on the "scope" of regulation rather than the way that regulation "shape[s] or convey[s]" a message. App. 64a-65a (VanDyke, J., dissenting). In fact, the panel assumed that any time the government imposes a regulation, it espouses a viewpoint and used regulation as a proxy for public perception. App. 9a. Under that approach, because California regulates the medical profession, mandates continuing education, and imposes general content requirements, *Shurtleff*'s factors—history, perception, and control—were satisfied across the board.[2] App. 37a.

[2] The panel below wavered on the public-perception factor, finding it wasn't "unreasonable to assume" (without the benefit of fact-finding and contrary to the plaintiffs' allegations on a motion to dismiss) that the public perceived CMEs as the government suggested, but ultimately concluded that "the remaining factors of history and extent of state control" were sufficient to find CMEs are government speech as a matter of law. App. 25a fn.9.

Courts applying *Shurtleff* as a message-focused inquiry reach results that turn on whether the government is communicating its own message—not on the mere existence of regulation. Thus, the Second Circuit held that roadway markings were government speech because the State had historically used them to "communicate[] messages." *Women for Am. First*, 2022 WL 1714896, at *2. The Fifth Circuit likewise found government speech where a public library curated its collection for expressive purposes. *Little v. Llano County*, 138 F.4th 834, 860-66 (5th Cir. 2025) (en banc). By contrast, the Sixth Circuit held that ballot summaries were private speech because they had not "historically conveyed government messages." *Brown*, 133 F.4th at 734-35. Across these decisions, the inquiry is consistent: history, perception, and control matter only insofar as they show that the government itself is conveying a message.

Other circuits similarly emphasize that government involvement—even substantial involvement—is not enough absent meaningful control over the message itself. *See, e.g.*, *New Hope Family Services, Inc. v. Poole*, 966 F.3d 145, 174 (2d Cir. 2020) ("State authorization by itself does not transform the authorized actor's speech into government speech"); *Davison v. Randall*, 912 F.3d 666, 687 (4th Cir. 2019) (focusing on "effective[] control" over content); *GLBT Youth in Iowa School Task Force v. Reynolds*, 114 F.4th 660, 667-68 (8th Cir. 2024) (same). Even preapproval is insufficient without actual message control, and post hoc review—like the audits here—plainly does not suffice. *See Cajune v. Indep. Sch. Dist. 194*, 105 F.4th 1070, 1080-81 (8th Cir. 2024). Only when the government itself crafts or controls the message—as with ballot titles written "fully and exclusively" by the

State—do courts find government speech. *Colorado v. Griswold*, 99 F.4th 1234, 1241 (10th Cir. 2024).

The conflict is thus square. In most circuits, *Shurtleff*'s factors are tools for identifying whose message is being conveyed; regulation alone is insufficient to label a private message "government speech." Instead, the state must be regulating content to express its own message. The Ninth Circuit's analysis, by contrast, "boils down to a single-factor analysis: does the government 'heavily' or 'actively' regulate" speech or the relevant profession? App 69a (VanDyke, J., dissenting). The consequence is that the same law the Ninth Circuit deemed as regulating government speech is likely to be considered a regulation of private speech in the Second, Fourth, Fifth, Sixth, Eighth, and Tenth Circuits.

III. The Petition Raises Questions of National Importance

This case presents a question of profound and recurring national importance: May a State compel private speakers in regulated professions to deliver the government's preferred message? The decision below answers that question yes—and in doing so, it authorizes a sweeping expansion of the government speech doctrine with consequences far beyond continuing medical education.

Professional speech is ubiquitous. States license and regulate physicians, lawyers, accountants, financial advisors, engineers, real-estate professionals, and countless others. In doing so, they routinely require those professionals to complete continuing education as a condition of practice. In each of these fields, private actors create and deliver instructional content to

private audiences through CME, CLE, and similar programs.

Under the decision below, that entire landscape is vulnerable. If the government may transform private instructional speech into its own simply by imposing licensing requirements, setting broad standards, and mandating certain content, then vast domains of private expression—and the industries built around them—fall outside the First Amendment. The rule has no limiting principle: any sufficiently regulated profession becomes a vehicle for government speech. And discussions of technical expertise that are important to practitioners will take a backseat to the government's preferred ideological messaging.

The implications are immediate and concrete. Even on its own terms, the decision means California is effectively "babbling prodigiously and incoherently" through thousands of privately created CME courses reflecting divergent viewpoints. *Tam*, 582 U.S. at 236. And the logic does not stop there. Continuing legal education operates the same way—privately created courses, delivered by private speakers, often reflecting competing views. Judges themselves rely on those programs for training and certification and often participate as presenters. Yet under the panel's reasoning, those programs too could be recharacterized as the government's own speech, subject to legislative control.

That is not a theoretical concern. The decision below permits States to compel ideological content on contested issues—so long as the speech occurs within a regulatory framework. Today, the mandate concerns "implicit bias." Tomorrow, it could involve deeply disputed medical and ethical questions, from

gender-transition care to abortion-related treatment to emerging therapies and medical standards of care. In the legal sphere, it could involve issues ranging from the scope of Presidential power to questions of government liability—or even the scope of the First Amendment's protection of free speech. Because the panel's reasoning turns on the existence of regulation rather than the government's authorship of the message, it allows States to impose a single orthodoxy across fields where viewpoint diversity has long been essential to professional and scientific progress. "History is littered with examples of governments that have sought to manipulate professional speech 'to increase state power,' 'suppress minorities,' and censor 'unpopular ideas.'" *Chiles*, No. 24-539, 2026 WL 872307, at *2 (quoting *NIFLA*, 585 U.S. at 771).

That authority carries immediate consequences for those who dissent. Physicians, instructors, and organizations who object—on scientific, ethical, or religious grounds—must either conform their speech to state-approved views or risk exclusion from the licensing regimes that permit them to practice and teach. That is a paradigmatic First Amendment harm: compelled speech enforced by the threat of professional exclusion.

This Court has warned that the government-speech doctrine is "susceptible to dangerous misuse" because it can be used to silence disfavored viewpoints. *Tam*, 582 U.S. at 235. The decision below does exactly that. By collapsing the distinction between regulating speech and speaking itself, it allows the State to compel private speakers to deliver its message while avoiding First Amendment scrutiny altogether.

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The need for review is immediate. And this is an ideal vehicle for review: The panel resolved this case at the pleading stage based on a categorical rule that CME instruction is government speech. There is no justiciability problem, and the Court need not reach the merits. It need only stop the drastic expansion of the government speech doctrine—one that has the potential to affect all sorts of private instruction that's required for licensure. If this rule stands, it will foreclose First Amendment challenges to similar mandates nationwide, and do so long before any factual record can be developed. Given the ubiquity of professional licensing regimes, the effects will be both immediate and widespread.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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