

December 12, 2025

Via hand delivery and electronic filing

Scott S. Harris, Clerk
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Re: *St. Mary Catholic Parish, et al., v. Lisa Roy, et al.*, No. 25-581
Response to Respondents' Waiver of Brief in Opposition

Dear Mr. Harris:

This afternoon, Respondents filed a waiver in the above-captioned case. Petitioners respectfully request that if this Court orders a response, it also order Respondents to file their brief in opposition by January 5, 2026 (24 days from today, rather than the usual 30-day deadline). That would allow the petition to be distributed on January 7 for the Court's January 23 conference, thus preserving the Court's ability to hear this case this Term.¹

Delaying this case until next Term would mean that Catholic preschools and families in Denver would be excluded from yet another year of "universal" preschool funding. Pet. 7-8, 10-11. Colorado's exclusion has already had devastating consequences: Two of Petitioner Archdiocese of Denver's preschools have closed and overall enrollment is down almost 20 percent. Pet. 12. For Petitioners Daniel and Lisa Sheley, getting relief by June 2026 instead of June 2027 would mean the difference between paying thousands of dollars out of pocket for another year of preschool and receiving equal access to this "universal" benefit. Pet. 8, 12. And other children who might have received a Catholic education will instead need to spend the year in preschools that share the State's views on sex and gender rather than the excluded Catholic preschools.

Petitioners have acted diligently. To allow this Court the opportunity to hear the case this Term, they filed their petition for certiorari in under half the time allotted by this Court's rules. And Petitioners' request to shorten the time for a response

¹ If this request is granted, Petitioners will waive the 14-day waiting period for distribution. Petitioners would also consent to an abbreviated merits briefing schedule. See, e.g., *Oklahoma Statewide Charter School Board v. Drummond*, No. 24-394 (2025) (granting petition on January 24, 2025, and ordering expedited briefing to hear argument the same Term); Stephen M. Shapiro et al., *Supreme Court Practice* 13-5, 14-13 & n.25 (11th ed. 2019) ("When certiorari is granted late in the term *** it is not unusual for the Court to advance the briefing schedule.").



would still give Respondents more than adequate time. Respondents would have 49 days after the docketing of the petition (compared to the ordinary deadline of 30 days). That is longer than Petitioners took to file the petition (44 days).

This Court is also likely to grant review. The petition presents a square, acknowledged, 7-4 circuit split that three members of this Court have already said is “widespread, entrenched, and worth addressing.” *Dr. A v. Hochul*, 142 S. Ct. 2569, 2570 (2022) (Thomas, J., dissenting). The petition also asks this Court to clarify or revisit a precedent that a majority of current Justices have already suggested or determined is wrong. See *Fulton v. City of Philadelphia*, 593 U.S. 522, 543 (2021) (Barrett, J., concurring); *id.* at 545 (Alito, J., concurring). And this petition is an ideal vehicle—on appeal from a final judgment, following a three-day bench trial, and with no obstacles to reaching the questions presented. Pet. 11-12, 33.

Although this case squarely presents multiple legal issues likely of interest to the Court, Respondents chose to file a waiver. That strategic choice should not be allowed to deprive the Court of an opportunity to hear this case this Term. Regardless, whether for this Term or next, the petition should be granted.

Respectfully submitted,

/s/ Eric C. Rassbach
Eric C. Rassbach
Counsel for Petitioners

cc: Counsel for Respondents, via U.S. mail and email