No. 25-581

IN THE

Supreme Court of the United States

ST. MARY CATHOLIC PARISH, LITTLETON, COLORADO, *et al.*,

Petitioners,

v.

LISA ROY, IN HER OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF EARLY CHILDHOOD, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF OF *AMICI CURIAE* COUNCIL FOR CHRISTIAN COLLEGES & UNIVERSITIES, BRIGHAM YOUNG UNIVERSITY, CROSS CATHOLIC OUTREACH, DIOCESE OF COLORADO SPRINGS, EVANGELICAL COUNCIL FOR FINANCIAL ACCOUNTABILITY, GULL LAKE MINISTRIES, SERVANT FOUNDATION dba THE SIGNATRY, TYNDALE HOUSE MINISTRIES, VALOR CHRISTIAN SCHOOLS, AND WESLEYAN INVESTMENT FOUNDATION, INC. IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Cited Authorities

Page

Constitutional Provisions

Statutes and Other Authorities

STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici constitute a diverse group of religious organizations and associations of such organizations. Like Petitioners the Archdiocese and the parishes, *amici* exercise and express their religious beliefs in part by nurturing communities of like-minded believers. Colorado excludes religious organizations from an otherwise generally available public benefit unless the organization reflects Colorado's approved form of associational religious exercise. That approach will impair *amici*'s ability to conduct their activities in accordance with their religious beliefs and will undermine this country's signature commitment to religious liberty.

A list of *amici* along with a short description of each organization appears in the Appendix.

SUMMARY OF ARGUMENT

Every community of faith defines its distinct—and distinctly—religious identity in some form or another when it decides who will be served by its activities. Some organizations conduct activities that serve only co-religionists (e.g., a church ministry that cares for widows in the church, or a Methodist seminary that trains only Methodists). Others require that those who serve in the organization's name be co-religionists

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

(e.g., a youth outreach ministry that requires volunteer leaders to subscribe to its statement of faith). Still others require both those who serve and those who are served to agree to respect the organization's mission and beliefs (e.g., a faith-based recovery program that requires participants to adhere to a code of conduct but otherwise accepts all comers).[2] The question here is whether the First Amendment protects each form of defining and maintaining a religious community. Contrary to Colorado and the Tenth Circuit, the answer is yes.

Amici conduct all their activities as an exercise of their religious beliefs and in furtherance of their respective religious missions. In addition, and importantly, *amici* are guided by their sincerely held beliefs to build communities of faith. That is, they carry out their activities *as communities or associations* of like-minded believers, and doing so is an expression of their religious beliefs. Indeed, the experience of community within religious associations often inspires and energizes their service to others. Moreover, the shared religious beliefs and practices among those carrying out and participating in *amici*'s activities ensure that these activities occur in a manner that distinctly expresses and exercises each organization's religious convictions.

Our country has a long history of recognizing religious association as a form of protected exercise and expression. Today, this tradition is reflected in many statutes, such as Title VII of the Civil Rights Act, which contains a religious exemption codified at 42 U.S.C. § 2000e-1(a). This

2. Of course, one organization might engage in different ministries that fall into different buckets.

exemption accommodates and preserves associational religious exercise and expression by permitting religious employers to require their employees to agree with or live in accordance with their religious beliefs. As courts have recognized, the purpose of this particular exemption is "to enable religious organizations to create and maintain *communities* composed solely of individuals faithful to their doctrinal practices." *Kennedy v. St Joseph's Ministries*, 657 F.3d 189, 194 (4th Cir. 2011) (emphasis added) (quoting *Little v. Wuerl*, 929 F.2d 944, 951 (3rd Cir. 1991)).

This case challenges Colorado's departure from this tradition. For its so-called universal preschool program ("UPK"), the state has said religious schools are welcome to participate. Yet Colorado has conditioned participation on adherence to a "nondiscrimination requirement" that precludes some religious schools from maintaining communities of faith in accordance with their sincerely held religious beliefs. That means the state has effectively barred many religious schools from participating in the program *just because* of their expressive associational activity.

These institutions now face a dilemma: Either jettison their religious practices or forgo participation in a valuable "universal" benefit program. As this Court's cases establish, the First Amendment prohibits states from forcing religious organizations into that choice.[3]

3. Families of students face a similar dilemma: Either enjoy the benefits of the UPK program or attend a religious school that embraces and expresses their beliefs about religious community. This runs contrary to the Court's affirmation of parents' rights to direct the religious upbringing of their children by sending

ARGUMENT

I. Religious institutions express their beliefs as communities of faith.

Religious exercise often includes both individual and associational (or communal) elements. In a case protecting employers' religious exercise rights, Justice Kennedy described how our country's commitment to religious liberty encompasses the individual element as exercised throughout society:

> In our constitutional tradition, freedom means that all persons have the right to believe or strive to believe in a divine creator and a divine law. For those who choose this course, free exercise is essential in preserving their own dignity and in striving for a self-definition shaped by their religious precepts. Free exercise in this sense implicates more than just freedom of belief. It means, too, the right to express those beliefs and to establish one's

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them to religious schools. *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 486 (2020) (citing *Wisconsin v. Yoder*, 406 U.S. 205, 213–214 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510, 534–535 (1925)). Indeed, "a statutory scheme that requires a family to 'forgo a sectarian education in order to receive' . . . education benefits otherwise available in a private school setting imposes a 'burden on their free exercise rights.'" *Loffman v. Cal. Dep't of Educ.*, 119 F.4th 1147, 1168 (9th Cir. 2024) (quoting *Zobrest v. Catalina Foothills Sch. Dist.*, 963 F.2d 1190, 1196 (9th Cir. 1992)). The UPK's nondiscrimination requirement impermissibly "penalizes that decision by cutting families off from otherwise available benefits if they choose a religious private school rather than a secular one, and for no other reason." *Espinoza*, 591 U.S. at 486.

> religious (or nonreligious) self-definition in the political, civic, and economic life of our larger community.

Burwell v. Hobby Lobby, 573 U.S. 682, 736–37 (2014) (Kennedy, J., concurring).

On this same foundation, the Court has regularly recognized that our laws also protect the communal element of religious exercise. For example, in *Wisconsin v. Yoder*, this Court held that the Free Exercise Clause protects Amish communities from mandatory school attendance obligations. The Court observed that "Old Order Amish communities today are characterized by a fundamental belief that salvation requires life in a church *community* separate and apart from the world and worldly influence." 406 U.S. 205, 210 (1972) (emphasis added). The Court further noted that the Amish base this concept not on "secular considerations" or "personal preference" but on "their literal interpretation of the Biblical injunction from the Epistle Of Paul to the Romans, 'be not conformed to this world. . . .'" *Id.* at 216.

In the Court's leading case upholding the religious employer exemption in Title VII, Justices Brennan and Marshall accurately captured the associational aspect of religious exercise when they observed that "determining that certain activities are in furtherance of an organization's religious mission, and that only those committed to that mission should conduct them, is . . . a means by which a religious community defines itself." *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 342 (1987) (Brennan and Marshall, JJ., concurring). They further explained:

> [R]eligious organizations have an interest in autonomy in ordering their internal affairs so that they may be free to: select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions. Religion includes important communal elements for most believers. They exercise their religion through religious organizations. . . . For many individuals, religious activity derives meaning in large measure from participation in a larger religious community. *Such a community represents an ongoing tradition of shared beliefs, an organic entity not reducible to a mere aggregation of individuals.*

Id. at 341–42 (emphasis added) (internal quotation marks omitted).

Different religious organizations—even those of the same general faith tradition—will reach different conclusions regarding the associational requirements of their faith. Perhaps not many religious organizations believe the requirements apply as extensively as do the Amish. What matters is that in each case the determination is based on religious beliefs as interpreted and applied by the religious community and is therefore an instance of religious exercise and expression (and self-definition) by such community.

For example, religious organizations often require employees and volunteers to embrace and model the organization's religious beliefs. *Amici* and other such organizations intertwine their carrying out of activities in service to God and society with their cultivating of an

association of employees and volunteers committed to their beliefs and mission. Indeed, the latter often energizes and reinforces the former. A community of Lutherans, for example, may be inspired *by being an association of likeminded Lutherans* to start a soup kitchen, and set out to operate that soup kitchen in a manner consistent with—and as a distinct expression of—their Lutheran beliefs.

The requirement that employees and volunteers affirm and exemplify the organization's religious beliefs helps religious organizations ensure that their activities—some of which may be facially similar to those of secular organizations—maintain their distinctive religious character. The point is not just that services are provided, but that services are provided by individuals committed to the organization's religious beliefs as an expression and exercise of those beliefs.

The community aspects of religious exercise are especially pronounced in religious education. *See*, *e.g.*, Nicholas P. Wolterstorff, EDUCATING FOR LIFE: REFLECTIONS ON CHRISTIAN TEACHING AND LEARNING 52–53 (2002). For religious organizations that operate schools and provide other educational services, their religious beliefs sometimes dictate a requirement that students in these programs be fellow believers. That is, these students are expected to subscribe to the organization's core religious tenets, often as expressed in a statement of faith.[4] Other religious schools may invite nonbelievers to enroll, perhaps as a portion of the student population, but only if these students respect the school's doctrinal

4. In the Christian tradition, this approach is sometimes called a "confessional," "covenantal," or "covenant-based" model.

positions and live in accordance with them.[5] In either case, the enrollment standards flow from the organization's religious beliefs about education, community, spreading the faith, and more. *See Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 250 (2025) (explaining that religious organizations' decisions about "whether to proselytize or serve only co-religionists" are "inherently religious choices").

When it comes to religious organizations that educate the youngest children—those who have not reached an age of maturity when they can personally affirm the faith or join the religious community—the organization's associational requirements naturally flow to the parents or other responsible adults. Religious elementary schools and preschools commonly require that one or both parents of enrolled students be fellow believers or, at a minimum, commit to respect and live in alignment with the organization's religious beliefs.[6]

The reason is that religious organizations view parents as key participants in the faith community being nurtured by and in the context of the school. *See*, *e.g.*, Paul VI, Gravissimum Educationis Nos. 3, 6, 8 (1965).[7] In the

5. This approach can be referred to as a "missional," "evangelistic," or "open-enrollment" model.

6. A strict approach to this principle is seen in Orthodox Jewish schools that follow Halachic matrilineal descent, in which a student's mother must be born Jewish or have undergone an Orthodox conversion.

7. Available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_gravissimum-educationis_en.html.

present case, the court of appeals completely missed this reality when it simply assumed that "[t]eachers and staff are the ones responsible for disseminating a preschool's message and developing the curriculum, not the preschool children they teach" or "a student's parents," the latter of which the court deemed to be even further "separat[ed] from . . . the school's expressive association." *St. Mary Catholic Parish v. Roy*, 154 F.4th 752, 776 & n.20 (10th Cir. 2025).

Parents of enrolled students contribute to the religious community and the experiences of others in the community, even if they are not paid teachers or leaders of that community. And they contribute to the accomplishment of the organization's religious mission. *See*, *e.g.*, Congregation for Catholic Education, *The Catholic School on the Threshold of the Third Millennium* (1997) ("Parents have a particularly important part to play in the educating community.").[8]

These parental contributions take a variety of common forms, such as volunteering in classrooms, encouraging other parents, helping with extracurricular activities, and representing the school (and the faith) to outsiders. Most importantly, these parents work hand-in-hand with teachers and staff to impart the faith to their children. The key point is that these associational requirements flow from the organization's religious beliefs and are part of how the religious community defines itself.

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8. Available at: https://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_27041998_school2000_en.html.

II. The government may not exclude participants from public benefits based on religious identity, exercise, or character, which includes associational religious exercise as communities of faith.

"The Free Exercise Clause of the First Amendment protects against 'indirect coercion or penalties on the free exercise of religion, not just outright prohibitions.'" *Carson v. Makin*, 596 U.S. 767, 778 (2022) (quoting *Lyng* v. *Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 450 (1988)). This Court has "repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits." *Id.* That's precisely what Colorado has done here by conditioning its "universal" preschool benefit on Petitioners' relinquishment of associational religious exercise.

The rule that the government may not exclude religious participants from a public benefit because of their religious exercise and expression has been affirmed by this Court three times in the past decade. In *Trinity Lutheran Church of Columbia, Inc. v. Comer*, a religious preschool was denied a playground resurfacing grant because the government had an express policy of excluding applicants owned or controlled by a church, sect, or other religious entity. 582 U.S. 449, 455–56 (2017). The Court held the policy unconstitutional insofar as it excluded eligible recipients "from a public benefit solely because of their religious character," thereby imposing a "penalty on the free exercise of religion." *Id.* at 462.

In *Espinoza v. Montana Dep't of Revenue*, the Court invalidated a state constitution's "no-aid provision" to the

degree it "bar[red] religious schools from public benefits solely because of the religious character of the schools." 591 U.S. 464, 476 (2020). The Court explained that once a state decides to "subsidize private education . . . it cannot disqualify some private schools solely because they are religious." *Id.* at 487.

Finally, in *Carson v. Makin*, the Court held that a state could not exclude sectarian private schools from its tuition assistance program. 596 U.S. at 781. The state argued that it did not exclude religious schools based on their religious status, but rather based on religious use, claiming that "a school is excluded only if it promotes a particular faith and presents academic material through the lens of that faith." *Id.* at 787. But the Court rejected that argument, noting that "[e]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school." *Id.* (quoting *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 753–54 (2020)).

The rule of these cases is unquestionable: A state may not "exclude otherwise eligible schools on the basis of their religious exercise." *Carson*, 596 U.S. at 789. Without this rule, the school's religious exercise would "come[] at the cost of automatic and absolute exclusion from the benefits of a public program for which the [school] is otherwise fully qualified." *Trinity Lutheran*, 582 U.S. at 462. Such discrimination against religious institutions "is odious to our Constitution" and "cannot stand." *Id.* at 467.

Applied to religious schools like Petitioners, the Colorado UPK program's nondiscrimination requirement

violates this rule because it targets the associational religious exercise that is at the core of their identity and character as religious communities. These schools must choose between UPK benefits and continuing to define their organic religious communities in accordance with their sincerely held beliefs, such as by requiring the parents of enrolled children to respect and live in accordance with their religious tenets, which Petitioners implement by requiring parents to affirm a "Statement of Community Beliefs." *St. Mary*, 154 F.4th at 759. The communal elements of their religious exercise are what disqualify these religious schools from participation in the program, and that kind of "indirect coercion . . . on the free exercise of religion" is inconsistent with the protections of the First Amendment. *Carson*, 596 U.S. at 778.

For this reason, Colorado cannot avoid the rule of *Trinity Lutheran*, *Espinoza*, and *Carson* by arguing the UPK's nondiscrimination requirement merely excludes schools on the basis of their "enrollment practices," as though religious admissions standards could be divorced from a religious school's mission and communal religious exercise. Such an argument overlooks the vital role enrollment standards for students (and sometimes their parents) play in how a religious school defines itself as a faith community and expresses its sincerely held beliefs about associational religious exercise. Religious enrollment criteria are no less significant for religious schools than religious hiring criteria.

It also makes no difference that Colorado's conditions do not exclude *every* religious school from the UPK program. Under the *Trinity Lutheran* line of cases, the First Amendment is offended not just by blanket exclusions

of sectarian or religiously affiliated organizations, but by any restriction that has the *effect* of excluding at least "some" religious participants because of their religious character or exercise. *Carson*, 596 U.S. at 780. That's precisely what the nondiscrimination requirement does. *See Loe v. Jett*, 796 F. Supp. 3d 541, 569–70 (D. Minn. 2025) (invalidating intertwined "Faith Statement Ban" and "Nondiscrimination Requirement" under *Carson* because "the effect" was to "only exclude[] institutions . . . that require applicants to attest to their *faith*"); *Oral Roberts Univ. v. American Bar Association*, No. 81-C 3171, 1981 U.S. Dist. LEXIS 18628, at *1 (N.D. Ill. July 17, 1981) (enjoining ABA from denying provisional accreditation to religious law school based on the school's religious admission criteria).[9]

To be sure, a handful of religious organizations have opted to participate in the UPK program. For them, the nondiscrimination requirement is consistent with their religious beliefs. Some believe in religious education as a means of proselytization—spreading the faith to nonbelievers, even hostile ones. The associational requirements of their faith do not dictate that students and parents affirm the faith or live in accordance with its moral teaching. But again, religious organizations define their communities in their own way and reach different conclusions about the associational elements of their religious exercise. It should not be surprising that many religious schools are compelled by their religious beliefs to maintain admissions standards for students and their

9. For an overview of the ORU case, see Stuart Taylor Jr., *Bar Unit Reviews Oral Roberts Bid*, N.Y. Times, Aug. 9, 1981, https://www.nytimes.com/1981/08/09/us/bar-unit-reviews-oral-roberts-bid.html.

families that require the sort of faith alignment that would run afoul of the UPK's nondiscrimination requirement. The exclusion of these religious organizations is the problem.

Moreover, to uphold the UPK's nondiscrimination requirement on the ground that some religious schools but not others are able to submit to it would simply multiply the constitutional problems. That's because it would amount to official government preference "along theological lines," which is "textbook denominational discrimination" in violation of the Establishment Clause. *Catholic Charities*, 605 U.S. at 248.

Colorado's implementation of the UPK's non-discrimination requirement shows "favoritism" by bestowing benefits upon faith groups whose beliefs about communal religious expression inspire them to maintain an all-comers approach to the education of young children. *Catholic Charities*, 605 U.S. at 248 (quoting *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 305 (1963)). Meanwhile, sects that draw tighter lines around associational religious exercise in the school context, e.g., by limiting enrollment of young students whose parents hold beliefs and engage in practices antithetical to the faith, are excluded. This type of government-supported theological partiality "is fundamentally foreign to our constitutional order." *Id.* at 249. Even the mere "scrutinizing" of "how a religious school pursues its educational mission . . . raise[s] serious concerns about state entanglement with religion and denominational favoritism." *Carson*, 596 U.S. at 787.

CONCLUSION

Because the nondiscrimination requirement in Colorado's UPK program excludes participants based on their associational religious exercise, it violates the Free Exercise Clause as applied to them. The Tenth Circuit's contrary ruling should therefore be reversed.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX — LIST OF *AMICI*

The **Council for Christian Colleges & Universities** ("CCCU") is a higher education association of more than 170 accredited, comprehensive Christian institutions around the world. The CCCU's mission is to advance the cause of Christ-centered higher education and to help its member schools transform lives by faithfully relating scholarship and service to biblical truth.

Brigham Young University ("BYU") is a religious institution of higher education located in Provo, Utah, with more than 35,000 daytime students. BYU was founded and is guided and supported by The Church of Jesus Christ of Latter-day Saints. BYU's mission is to assist individuals in their quest for perfection and eternal life, by providing an educational experience that is spiritually strengthening, intellectually enlarging, and character building, leading to lifelong learning and service.

Cross Catholic Outreach partners with bishops, priests, and religious and lay workers to provide food, water, housing, education, orphan support, medical care, microenterprise, and disaster relief—and the love of Jesus Christ—to the poorest of the poor in more than 30 countries around the world.

The **Diocese of Colorado Springs** covers ten counties in central Colorado and serves more than 190,000 Catholics across 38 parishes. The Diocese provides religious education and formation to more than 5,000 students in part through its seven Diocesan schools.

Appendix

The **Evangelical Council for Financial Accountability** ("ECFA") provides accreditation to leading Christian nonprofit organizations that faithfully demonstrate compliance with established standards for financial accountability, fundraising, and board governance. ECFA has over 2,700 accredited member organizations—including several hundred schools—that collectively impact an estimated two billion people globally each year.

Gull Lake Ministries operates a Christian summer family camp and year-round retreat center in Southwest Michigan. Gull Lake Ministries exists to exalt Jesus Christ, proclaim the Word of God, encourage personal commitment to Christ, share God's work around the world, and provide opportunity for physical refreshment and spiritual renewal.

Servant Foundation dba The Signatry is a Christian ministry that seeks to build the kingdom of God by inspiring world-changing generosity. Since 2000, The Signatry's donors have recommended grants to over 13,000 nonprofits, working to bring the hope of the gospel to all.

Tyndale House Ministries is an independent Christian publishing ministry founded in 1962 by Dr. Kenneth N. Taylor as a means of publishing The Living Bible. Tyndale publishes Christian fiction, nonfiction, children's books, and other resources, including Bibles in the New Living Translation. Its supporting ministry, Tyndale House Foundation, distributes grants to Christian ministries around the globe.

Appendix

Valor Christian Schools operates a Christian college preparatory school in Highlands Ranch, Colorado. In partnership with committed parents, Valor's mission is to provide a purpose-driven educational program within a vibrant Christ-centered environment that empowers students to discover their passions and to develop their unique gifts and abilities while growing in wisdom, knowledge, leadership, faith, and service.

Wesleyan Investment Foundation is a nonprofit that serves ministries through strategic, faith-based financing with the goal of seeing more people personally encounter Jesus Christ. Since 1946, the foundation has partnered with churches and other religious entities to empower them to purchase property, expand facilities, renovate spaces, and refinance existing debt.