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 FOR AMICUS CURIAE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS SUPPORTING PETITIONERS

MARK M. ROTHROCK
LEHOTSKY COHN LLP
8513 Caldbeck Drive
Raleigh, NC 27615

DANIELLE K. GOLDSTEIN
LEHOTSKY COHN LLP
3280 Peachtree Road NE
Atlanta, GA 30305

STEVEN P. LEHOTSKY
Counsel of Record
JONATHAN E. DEWITT
LEHOTSKY COHN LLP
200 Massachusetts Ave. NW
Suite 700
Washington, DC 20001
(512) 693-8350
steve@lehotskycohn.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Constitutions

Other Authorities

INTEREST OF AMICUS CURIAE

Amicus Curiae the United States Conference of Catholic Bishops ("USCCB") is a nonprofit religious organization dedicated to promoting and carrying out the Catholic faith in the United States and abroad.[1] The USCCB's members are the active Catholic Bishops in the United States. The USCCB works alongside the bishops of the Catholic Church to support their ministries and pastoral calling in diverse areas including the free expression of ideas, religious liberty, and the protection of the rights of parents and children.

USCCB has repeatedly advocated for the enforcement of First Amendment principles that prohibit governments from enacting laws that disqualify religious observers and organizations from generally available public benefits solely because of their religious character or exercise. *See* Br. of Amicus USCCB, *et al.*, *Carson v. Makin*, No. 20-1088 (U.S. Sept. 10, 2021); Br. of Amicus USCCB, *et al.*, *Espinoza v. Mont. Dep't of Revenue*, No. 18-1195 (U.S. Sept. 18, 2019); Br. of Amicus USCCB, *et al.*, *Trinity Lutheran Church of Columbia, Inc. v. Pauley*, No. 15-577 (U.S. Apr. 21, 2016). Yet the decision below upholds a statute that, in practice, denies Catholic preschools access to a state-run tuition assistance program solely

[1] In accordance with Rule 37.6, no counsel for any party has authored this brief in whole or in part, and no person or entity other than the USCCB, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

because those schools adhere to Catholic doctrine about gender and human sexuality. The USCCB has a keen interest in correcting that decision.

SUMMARY OF ARGUMENT

The Tenth Circuit below misapplied *Carson*, *Espinoza*, and *Trinity Lutheran*. Colorado has, by its own admission, disqualified Catholic preschools from participation in the State's universal preschool program solely because of their adherence to Catholic doctrine. That violates this Court's precedents, which bar States from rebranding sincerely held religious beliefs as "discrimination" in their efforts to impose a different, state-preferred orthodoxy.

The government may not deny religious entities the right to participate in an otherwise generally available public program because of their religious character or exercise. *See Carson v. Makin*, 596 U.S. 767, 778-80 (2022); *Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 475 (2020); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 458 (2017). That is indisputably true when the state-administered program discriminates against particular religious institutions—*i.e.*, ones that act on their sincerely held religious beliefs about gender and human sexuality—but not others. *See Carson*, 596 U.S. at 787 (stating "[a]ny attempt to" distinguish religious status from religious exercise "by scrutinizing whether and how a religious school pursues its educational mission would also raise serious concerns about state entanglement with religion and denominational favoritism."). Nor can

"religious practice" be "singled out for discriminatory treatment" through facially neutral "religious gerrymanders." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534, 538 (1993) (citation omitted).

The Tenth Circuit permitted exactly that kind of religious gerrymander here. It reasoned that the Colorado law's apparent facial neutrality distinguished it from the public programs at issue in *Carson*, *Espinoza*, and *Trinity Lutheran*—each of which, in the Tenth Circuit's view, targeted religion "explicit[ly]" not merely incidentally. Pet.App.21a. If the Tenth Circuit's reasoning suffices to evade those precedents, the Free Exercise Clause would be "reduced to a simple semantic exercise," easily circumvented by artful statutory drafting. *Carson*, 596 U.S. at 784 (citation omitted). Moreover, the "First Amendment ensures that religious organizations and persons [must be] given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." *Obergefell v. Hodges*, 576 U.S. 644, 679-80 (2015). This Court should therefore reverse the decision below to prevent *Carson*, *Espinoza*, and *Trinity Lutheran* from becoming "essentially meaningless." *Carson*, 596 U.S. at 784.

If allowed to stand, the Tenth Circuit's decision will embolden other states and municipalities to discriminate against religious adherents' rights by enacting ostensibly neutral statutes that discriminate in fact. This case is just the latest example of a

disturbing trend—states and cities across the country using nondiscrimination requirements to "covert[ly] suppress[] particular religious beliefs." *Church of Lukumi Babalu Aye*, 508 U.S. at 534 (citation omitted). For example, Maine has openly and explicitly executed an end-run around this Court's decision in *Carson*. *See St. Dominic Acad. v. Makin*, 744 F. Supp. 3d 43 (D. Me. 2024) (finding no likelihood of success in a challenge to Maine's revived tuition program, which now imposes a facially neutral "nondiscrimination" requirement); *see, e.g.*, Compl. ¶ 87, *Crosspoint Church v. Makin*, No. 1:23-cv-00146, ECF 1 at 17 (D. Me. Mar. 27, 2023) (citing social media post from then-speaker of the Maine House of Representatives, explaining that Maine had updated its guidelines in 2022 in response to the *Carson* litigation to allow the State to continue discriminating against schools that practice traditional Catholic doctrine: "Sure did. Anticipated the ludicrous decision from the far-right SCOTUS").

If this trend continues, it will impair the ability of Catholic organizations and other faith-based service providers to partner with state and local governments to serve the public. The resulting harm to the nation's social support infrastructure would be immense. Catholic charitable organizations are a profound force for good. They provide excellent education, heal the sick, care for the vulnerable, and feed the hungry. These and other faith-based organizations collectively provide billions of dollars in services to those in need every year. Reversal here—with a clear instruction to courts across the country that religious organizations

cannot be barred from participation in public life merely because they live out their sincerely held religious beliefs—will ensure that these organizations can continue providing vital, irreplaceable services in partnership with the states while freely exercising their faith.

ARGUMENT

I. The Tenth Circuit's decision should be reversed because it misapplied *Carson*, *Espinoza*, and *Trinity Lutheran*.

Under the Free Exercise Clause, the government may not exclude religious entities from public programs by adopting facially neutral requirements that in practice discriminate against disfavored faiths. This Court should reverse the Tenth Circuit's decision to the contrary.

A. The Tenth Circuit upheld a Colorado law that bars Catholic preschools from receiving tuition through the State's universal preschool program solely because those preschools adhere to Catholic doctrine regarding human sexuality in their admissions processes. But that law violates core Free Exercise Clause principles this Court recognized in *Carson*, *Espinoza*, and *Trinity Lutheran*.

The "Free Exercise Clause" protects "religious observers against unequal treatment and against laws that impose special disabilities on the basis of religious status." *Espinoza*, 591 U.S. at 475 (cleaned up). This bars not only "outright prohibitions" on the "free exercise of religion," but also "indirect coercion or penalties" on free exercise. *Trinity Lutheran*, 582

U.S. at 463 (cleaned up). Just as a state may not "regulate or outlaw conduct because it is religiously motivated," it may not require religious schools to "disavow [their] religious character" in order "to participate in a government benefit program." *Id.* at 461, 463. This Court has thus found it "'unremarkable'" that state laws that "disqualify[] otherwise eligible recipients" from public funding because of their religious exercise "trigger[] the most exacting scrutiny." *Espinoza*, 591 U.S. at 475 (quoting *Trinity Lutheran*, 582 U.S. at 462). "[A] person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program." *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981).

A long history of state laws targeting people of faith justifies this Court's concern with enforcing free exercise principles disallowing that type of discrimination. Take, for example, state Blaine Amendments, including Colorado's. Those provisions adopted in numerous state constitutions in the late 1800s and early 1900s were designed to suppress Catholic schools in favor of Protestant-dominated public schools. Coinciding with a failed attempt by then-Senator James G. Blaine to amend the federal constitution in 1875, a wave of "anti-sectarian" no-funding provisions crept into numerous state constitutions. *See* Joseph P. Viteritti, *Blaine's Wake: School Choice, the First Amendment, and State Constitutional Law*, 21 Harv. J.L. & Pub. Pol'y 657 (1998).

These state Blaine Amendments were a reactionary attempt to "protect" the dominant religious culture of mainstream Protestantism. They sought to ensure both that public schools would teach their brand of Christianity and also that private religious schools—branded as "sectarian"—would not receive state funding. To that discriminatory end, since 1876, Colorado's Constitution has prohibited government from making any appropriation "in aid of any church or *sectarian* society, or for any *sectarian* purpose," or to help any institution "controlled by any church or *sectarian* denomination whatsoever." Colo. Const. art. IX, § 7 (emphases added). It also prohibits government grants or donations "for any *sectarian* purpose." *Id.* (emphasis added). Similarly, Article IX, section 8 prohibits the teaching of "*sectarian* tenets or doctrines" in public schools. Colo. Const. art. IX, § 8 (emphasis added). At the time these provisions were enacted, "sectarian" was a well-understood euphemism for "Catholic"—in contrast to the mainstream, "nonsectarian" Protestantism—and the discriminatory intent of these amendments was clear. *See* Donald W. Hensel, *Religion and the Writing of the Colorado Constitution*, 30 Church History No. 3, 356 (1961) ("[R]eligious animosity" pervaded Colorado's 1875-1876 constitutional convention—culminating in bans on funding "parochial schools" and "sectarian" teaching. These were the only two issues on which the "convention refused to compromise contending factions. The Protestant majority saw to that.").

Notably, the State of Colorado has already *admitted* elsewhere that Article IX section 7 was, like

other state Blaine Amendments, motivated by anti-Catholic animus. *See* State Defendants' Cross Motion for Partial Summary Judgment, at 19 & n.18, *Colo. Congress of Parents, Teachers and Students v. Owens*, No. 03-cv-3734 (Dist. Ct., Denv. City and Cnty., Nov. 10, 2003). Despite this century and a half of anti-Catholic discrimination in Colorado, Respondent Dawn Odean, the director of Colorado's universal preschool program, testified at trial that she was "not aware" that Catholics have been historically discriminated against. Pet.App.363a. Colorado's anti-Catholic discriminatory policy here is thus rooted as much in historical ignorance as it is in animosity to faith-based views on gender, sexuality, and family.

Here, Colorado has excluded Catholic preschools "from [a] generally available benefit solely because of their religious character," thus "penaliz[ing] the free exercise of religion." *Carson*, 596 U.S. at 780 (cleaned up). Those preschools "adhere to Catholic faith, morals, and the building up of Catholic culture within the school." Pet.App.11a (cleaned up). And they "hold a sincere belief that Catholic teaching requires them to consider the sexual orientation and gender identity of a student and their parents before admitting them to a Catholic School." *Id.* (explaining the Archdiocese that oversees the preschools "does not recognize same-sex relationships or transgender status," and so "enrolling a child of same-sex parents in a Catholic school is 'likely to lead to intractable conflicts'" (citation omitted)). Yet Colorado's tuition program has a "nondiscrimination requirement," which prohibits the preschools from considering in their admissions

processes the "sexual orientation[or] gender identity" of any "child or the child's family." Pet.App.6a. The upshot is that these Catholic preschools, and the parents who wish to enroll their children in them, receive no tuition benefits solely because the preschools adhere to Catholic teaching.

Carson, *Espinoza*, and *Trinity Lutheran* forbid that result. A "State need not subsidize private education," but "once a State decides to do so, it cannot disqualify some private schools solely because they are religious." *Espinoza*, 591 U.S. at 487. Nor may it favor schools associated with "certain religions" or "sects" over others because of the "theological lines" they draw in their religious practice. *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 248-49 (2025).

B. The Tenth Circuit erroneously reached the opposite conclusion. It held that because "the nondiscrimination requirement . . . applies to all preschools regardless of whether they are religious or secular," Colorado may exclude Catholic preschools. Pet.App.21a.

If allowed to stand, that holding could render *Carson*, *Espinoza*, and *Trinity Lutheran* "essentially meaningless." *Carson*, 596 U.S. at 784. To be sure, the laws at issue in *Carson*, *Espinoza*, and *Trinity Lutheran* "explicit[ly]" targeted religion. Pet.App.21a. But the First Amendment also forbids the government from indirectly discriminating against religion. *See Nat'l Rifle Ass'n v. Vullo*, 602 U.S. 175, 190 (2024)

("[A] government official cannot do indirectly what she is barred from doing directly.").

The Court has already held this in the Free Exercise Clause context. "The Free Exercise Clause protects against governmental hostility which is masked, as well as overt." *Church of Lukumi Babalu Aye*, 508 U.S. at 534. The Constitution "forbids" both "subtle departures from neutrality," *Gillette v. United States*, 401 U.S. 437, 452 (1971), and "covert suppression of particular religious beliefs," *Bowen v. Roy*, 476 U.S. 693, 703 (1986). "[A] regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. at 717 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972)). In *Church of Lukumi Babalu Aye*, for instance, the discriminatory city ordinance was facially neutral. But that was "not determinative" because in "effect," the ordinance accomplished "a religious gerrymander." 508 U.S. at 534-35 (cleaned up). The "only conduct" that the ordinance would be enforced against was "the religious exercise of Santeria church members." *Id.* at 535. That facially neutral attempt "to suppress the conduct because of its religious motivation" was unconstitutional. *Id.* at 538.

Governments may not circumvent *Carson*, *Espinoza*, and *Trinity Lutheran* through this sort of "religious gerrymander[]," either. *Walz v. Tax Comm'n of City of N.Y.*, 397 U.S. 664, 696 (1970) (Brennan, J.,

concurring). Although each of those cases involved expressly discriminatory statutes, their reasoning applies equally to laws that appear neutral but in fact discriminate against religion.

Consider *Carson*. That case involved a tuition-assistance statute in Maine that imposed a "requirement that any school receiving tuition assistance payments must be 'a nonsectarian school.'" 596 U.S. at 774 (citation omitted). The Court held that facially discriminatory language triggered strict scrutiny. *Id.* at 780-81. But Maine had argued (and the court below had held) that the statute's requirement was properly viewed not as expressly discriminatory, but as merely providing funding for the "rough equivalent of [a] public school education that Maine may permissibly require to be secular." *Id.* at 782 (citation omitted).

This Court rejected that reasoning as incompatible with its "decision in *Espinoza*." *Id.* at 784. It explained that "[b]y Maine's logic," the Montana law at issue in *Espinoza* could have avoided strict scrutiny "simply by redefining its tax credit for sponsors of generally available scholarships as limited to 'tuition payments for the rough equivalent of a Montana public education'—meaning a secular education." *Id.* at 785. That approach would have been neutral on its face. But the *effect* would have been to exclude religious schools "on the basis of their religious exercise." *Id.* at 789. That was impermissible because the Court's "holding in *Espinoza* turned on the *substance* of free exercise protections, not on the

presence or absence of magic words" and it "applies fully whether the prohibited discrimination is in an *express* provision" like Maine's statute or in a *facially neutral* "reconceptualization of the public benefit." *Id.* at 785 (emphases added).

Trinity Lutheran confirms this, too. That case involved a Missouri grant program, which had "a strict and express policy of denying grants to any applicant owned or controlled by a church, sect, or other religious entity." *Trinity Lutheran*, 582 U.S. at 455. The Court applied strict scrutiny to strike down that program, relying on the "basic principle" that "denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion." *Id.* at 458. Yet *Trinity Lutheran* made clear that even "facial[ly] neutral[]" laws could unconstitutionally "single out the religious for disfavored treatment," citing *Church of Lukumi Babalu Aye* as an example. *Id.* at 460-61.

The Tenth Circuit below defied this clear guidance. It distinguished *Carson*, *Espinoza*, and *Trinity Lutheran* because Colorado's law does not overtly, facially discriminate against religion. But Colorado's law excludes Catholic preschools from funding *because of* their religious exercise, disqualifying them solely based on their religious conduct—adherence to traditional religious beliefs about human sexuality. Pet.App.6a, 11a. Colorado's law thus does exactly what this Court warned against in *Carson*, "redefining" sincerely held religious practice as discrimination and "exclud[ing] otherwise

eligible schools on the basis of their religious exercise." 596 U.S. at 785, 789. Colorado's tuition program excludes high-quality Catholic preschools from a generally available tuition-assistance program simply *because* those schools are putting into practice foundational Catholic doctrines by "liv[ing] out their faiths in daily life." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022). That violates the Free Exercise Clause because that "Clause protects not only the right to harbor religious beliefs inwardly and secretly," but also the right to live them outwardly and publicly. *Id*. That right encompasses religious schools. *See Carson*, 596 U.S. at 782.

Colorado has produced the same constitutional defect identified in *Carson*: A gerrymandered eligibility criterion that permits participation by *some* religious actors but excludes others who hold beliefs the State disfavors. Like Maine's "rough equivalent of . . . public education" argument, the Colorado nondiscrimination mandate here is facially neutral but operates to disqualify schools whose religious exercise conflicts with the State's preferred orthodoxy. *Carson*, 596 U.S. at 785. Both rules have legitimate secular targets but also target constitutionally protected religious conduct. *See id. Trinity Lutheran* and *Espinoza* make clear that religious entities cannot be excluded from generally available public programs based on religious status. *Carson* then confirmed that this protection extends to religious *exercise*, not merely inward belief. In *Carson*, that exercise was teaching a Catholic curriculum. Here, it is St. Mary's implementation of an admissions process

consistent with its Catholic beliefs on human sexuality for the ultimate purpose of facilitating an environment where the school can teach its faith with integrity. *Carson*'s logic prohibits the State from conditioning participation in the universal preschool program on the requirement that St. Mary abandon its free exercise of religion.

Yet under the Tenth Circuit's reasoning, any state could "manipulate" the scope "of a particular program" to *implicitly* exclude religious entities. *Id.* at 784 (citation omitted). That would "'reduce[]'" the "'First Amendment'" to a "'simple semantic exercise.'" *Id.* (quoting *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 215 (2013)). This Court should reverse to avoid that outcome.

II. The Tenth Circuit's decision will greatly harm those that rely on faith-based social services, who are some of our society's most vulnerable.

If the Tenth Circuit's decision stands, it will embolden other states and cities to violate religious adherents' rights. This will leave communities across the country worse off, because religious organizations shoulder an outsized share of the burden of our country's social safety net. This is already happening. Without this Court's intervention, the resulting harm will be immense.

A. Colorado is not alone in adopting facially neutral laws that punish religious exercise in practice.

The Colorado law at issue exemplifies a troubling trend. States and municipalities across the country are using facially neutral nondiscrimination requirements to "covert[ly] suppress[] . . . particular religious beliefs," while avoiding public statements of religious animus. *Church of Lukumi Babalu Aye*, 508 U.S. at 534 (citation omitted). This Court should stop this trend in its tracks.

Colorado itself has repeatedly wielded facially neutral nondiscrimination requirements to quash faithful religious exercise. *See, e.g.*, *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 584 U.S. 617, 640 (2018); *see also 303 Creative LLC v. Elenis*, 600 U.S. 570, 602-03 (2023) (holding Colorado's Anti-Discrimination Act violated Christian website designer's right not to speak a message with which she disagreed). Yet those losses before this Court have not deterred it from trying again here.[2]

Nor is Colorado alone. Maine has revived the town-tuition program this Court struck down in

---

[2] *See, e.g.*, H.B. 26-1292, § 22-2.5-103(1)(a), 75th Gen. Assemb., 2d Reg. Sess. (Colo. 2026) (proposed legislation that included a "Nondiscrimination" provision requiring a "participating [Colorado] school" that receives funds from a federally recognized "scholarship granting organization" "shall not discriminate on the basis of any student's, student's parent's, or student's family member's . . . sexual orientation, gender identity, gender expression, [or] family composition[.]").

Carson on purportedly neutral, antidiscrimination terms. *See St. Dominic Acad.*, 744 F. Supp. 3d 43 (D. Me. 2024); *Crosspoint Church v. Makin*, 719 F. Supp. 3d 99 (D. Me. 2024). Now, if religious schools want to accept public funding, they must admit students with beliefs about "their sexual orientation, gender identity, or religion" that conflict with the school's deeply held religious values. *Crosspoint Church*, 719 F. Supp. 3d at 117. Maine's Speaker of the House openly described the change as a direct response to "the ludicrous decision from the far-right SCOTUS." *Id.* at 107 (citation omitted). And commentators have held up this method as "a model for lawmakers" to "outmaneuver the [Supreme C]ourt and avoid the consequences of" the loss in *Carson*. Aaron Tang, Opinion, *There's a Way to Outmaneuver the Supreme Court, and Maine Has Found It*, N.Y. TIMES (June 23, 2022), https://perma.cc/L36M-GKRT.

The list of examples goes on. New York City's Human Rights Law's "public accommodations provision" has been used to force a Jewish university to recognize an LGBTQ group as an official student organization, in violation of its sincerely held religious values. *YU Pride All. v. Yeshiva Univ.*, 180 N.Y.S.3d 141, 144-46 (N.Y. App. Div. 2022). The Washington Supreme Court has interpreted the state's nondiscrimination law to require a Christian florist to create arrangements celebrating a same-sex wedding in violation of her sincerely held beliefs. *State v. Arlene's Flowers, Inc.*, 441 P.3d 1203 (Wash. 2019). And, as this Court well knows, Philadelphia attempted to exclude Catholic foster care agencies

from serving the city because of their religious beliefs. *Fulton v. City of Phila.*, 593 U.S. 522, 530-31 (2021).

Congress's recent enactment of a federal scholarship tax credit has prompted its own wave of discrimination against religious schools. Passed as part of the One Big Beautiful Bill Act (H.R. 1), the Educational Choice for Children Act ("ECCA") allows taxpayers to deduct from their federal tax bill donations made to eligible Scholarship Granting Organizations ("SGOs"). Those organizations in turn provide scholarships to individual students, who can use the money at public or private schools. But some states are attempting to interfere in this process in order to exclude certain religious schools. Vermont recently enacted a law that would bar an otherwise eligible private school from receiving funds from an SGO unless the school signs a "memorandum of understanding" stating that it "does not discriminate against any student" because of "sex, sexual orientation, [or] gender identity." Act 164, § 19, 2026 Vt. Acts & Resolves 18 (to be codified at 3 Vt. Stat. Ann. § 24(b)(5), (c)(3)). Virginia has pending legislation that would likewise bar a private school from receiving funds from SGOs unless it "publicly state[s] on its website, in enrollment materials, and in any promotional literature, that it admits students without regard to," among other characteristics, "sex, sexual orientation, gender identity or expression," and that it "will affirm the identities of all students while providing appropriate accommodations." H.B. 359, § 22.1-101.6(A)-(B), 2026 Gen. Assemb., Reg. Sess. (Va. 2026). Lawmakers in Kentucky have similarly

tried to prohibit private schools that adhere to traditional beliefs about human sexuality and gender from receiving funds from SGOs. *See* H.B. 1, Gen. Assemb., Reg. Sess., Proposed Amends. 2 & 3 (Ky. 2026) (conditioning ability to use scholarships at private schools based upon those schools agreeing "not [to] discriminate based on . . . sexual orientation[] or gender identity."). In North Carolina, Governor Stein's recent budget proposal would accomplish similar discrimination. *See* S.B. 915, § 115C-562.5(c1)(3), 2026 Gen. Assemb., Reg. Sess., Edition 1 (N.C. 2026) ("A nonpublic school shall not discriminate with respect to: . . . sexual orientation.").

This trend is corrosive. As these examples demonstrate, state and local governments often use generally applicable nondiscrimination laws *not* to root out invidious discrimination, but to "prescribe what shall be orthodox" in "matters of opinion," including religious doctrine. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). This case proves the point. Colorado admits it has *never* received a single complaint about discrimination at a Catholic preschool. Pet.App.141a. That lack of discrimination is because nothing in the universal tuition program *requires* families who disagree with the Catholic Church's views to send their children to St. Mary. Same-sex families are free to use the tuition program funds at *any* school they wish. Barring St. Mary from the universal preschool program thus forecloses access to a school with decades of successful performance for many parents seeking preschool education for their families and provides Denver

residents nothing in return. Nothing—except sending the unconstitutional message that Colorado condemns St. Mary's sincerely held religious views about sexuality, marriage, and the family.

B. If Catholic service organizations are driven from the public square, the harm to communities most in need would be immense.

If the trend the Tenth Circuit endorsed continues unchecked, it will deny Catholic organizations and other faith-based service providers access to the funds necessary to provide services to the public. And if that happens, "a major portion of the nation's social safety net of human services would be lost."[3]

1. Religious organizations—and Catholic organizations in particular—are a cornerstone in America's social infrastructure and a profound force for good. But antagonistic State governments—like Colorado—are actively chasing certain, disfavored religious entities from the nation's shelters, schools, and hospitals. If that conduct is permitted to continue, it is not hyperbole to say that the consequences to the social safety net will be devastating. The numbers bear this out. For example, "across a sample of six cities, which vary in size and demographics," research

[3] Stephen V. Monsma, *Pluralism and Freedom: Faith-Based Organizations In a Democratic Society* 16 (2012).

has shown that "faith-inspired organizations account for 40 percent of social safety net spending."[4]

Catholic institutions rank among the largest and most essential providers of human services both globally and in the United States. As Pope Benedict XVI wrote, "The Church cannot neglect the service of charity any more than she can neglect the Sacraments and the Word."[5] In 2024, Catholic Relief Services served 198 million people in 134 countries on an annual operating revenue of roughly $1.3 billion.[6] That same year, Catholic Charities USA, the national membership organization for Catholic Charities across the country, served millions domestically.[7] Specifically, the 168 agencies that make up the Catholic Charities network worked in 4,700 parishes across the country and served more than 28 million meals to hungry men, women and children; provided emergency housing services to more than 295,000 people; provided 526,000 people with behavioral health and wellness services; provided 2.8 million

---

[4] Jeri Eckhart Queenan, et al., *Elevating the Role of Faith-Inspired Impact in the Social Sector*, The Bridgespan Grp., 2 (Jan. 2021), https://perma.cc/BH87-7JEK.

[5] Pope Benedict XVI, *Deus Caritas Est* ¶ 22 (2005), https://perma.cc/L4GS-GGS6.

[6] Cath. Relief Servs., *2024 Annual Report* 4, 22 (2025), https://perma.cc/RD3W-5GQC.

[7] Cath. Charities USA, *Pathways Forward: 2024 Annual Report* 6, https://perma.cc/PFY3-JZSY.

nights of shelter; and responded to 52 natural and manmade disasters.[8]

Specific to education, Catholic schools enroll millions of students every year. For example, in the 2023-2024 school year, more than 1.69 million students enrolled in 5,905 Catholic schools across the country, with 38.7% of those schools in urban and inner-city locations.[9] Those students score higher in math and reading on the National Assessment of Educational Progress scale than public school students.[10] They also graduate at a high rate: For the 2021-2022 school year, Catholic high schools had a graduation rate of 98%,[11] eleven percent higher than the national average of 87%.[12]

Catholic charitable organizations heal the sick and care for the suffering. Catholic hospitals across the country help millions of patients each year. "Comprised of more than 600 hospitals and 1,600 long-term care and other health facilities in all 50 states," the Catholic Health Association, for example, "is the largest group of nonprofit health care providers

---

[8] *Id.* at 18-19.

[9] Nat'l Cath. Educ. Ass'n, *Data Brief: 2023-2024 Catholic School Enrollment* 1-2, https://perma.cc/G9FZ-U45X.

[10] Nat'l Cath. Educ. Ass'n, *U.S. Catholic School Data* (2025), https://perma.cc/6PG9-297Y (click "Download the 2024-2025 Infographic").

[11] *2021–2022 Highlights*, NCEA, https://perma.cc/6Z2M-ZRX7.

[12] *High School Graduation Rates*, Inst. of Educ. Scis. (May 2024), https://perma.cc/T2WN-Z6EF.

in the nation. Every day, more than one in seven patients in the U.S. is cared for in a Catholic hospital."[13] That includes nearly 19 million emergency room visitors and nearly 99 million outpatient visitors.[14]

Religious organizations are at the forefront of both care and recovery for the nation's homeless population, too. "A 2017 study found that 58 percent of the emergency shelter beds in 11 surveyed cities are maintained by religious providers—who also delivered many of the addiction, health-care, education, and job services needed to help the homeless regain their independence."[15] That study found that "[l]ocal congregations provide 130,000 alcohol-recovery programs," "120,000 programs that assist the unemployed," and "26,000 programs to help people living with HIV/AIDS—one ministry for every 46 people infected with the virus."[16]

Catholic foster care and adoption organizations care for children in need, placing thousands of children in permanent homes, especially "hard-to-

---

[13] Catholic Health Association of the United States, *About Us: Facts & Statistics* (June 2026), https://perma.cc/D76U-M8GB.

[14] *Catholic Health Care in the United States*, CHA (Apr. 2025), https://perma.cc/4XPE-L565.

[15] Karl Zinsmeister, *Less God, Less Giving?: Religion and Generosity Feed Each Other in Fascinating Ways*, PHILANTHROPY (Winter 2019), https://perma.cc/UCQ7-X8JY.

[16] *Id.*

place children with special needs."[17] In 2017, Catholic Social Services in Philadelphia served "more than 120 children in foster care," "supervise[d] around 100 different foster homes," and "served more than 2,200 different at-risk children." Compl. ¶ 3, *Fulton v. City of Phila.*, 2018 WL 11376235 (E.D. Pa. May 16, 2018).

Without these Catholic organizations, there would be major gaps in social services. For example, in New York alone, the organization Catholic Charities provides over 10 million meals and serves over 99,000 children every year by providing day care, foster care, after-school activities, and preventative services.[18] The agency provides emergency shelter, counseling, financial aid, and aid for the mentally ill, refugees, immigrants, those with special needs, and those with disabilities.[19]

2. The economic burden of replacing faith-based human services with alternative providers would be almost "incalculably large."[20]

Using conservative figures, faith-based organizations provide *billions* of dollars in services to

---

[17] Thomas C. Berg, *Progressive Arguments for Religious Organizational Freedom: Reflections on the HHS Mandate*, 21 J. Contemp. Legal Issues 279, 313 (2013).

[18] Cath. Charities, Archdiocese of N.Y., *2023 Annual Report: Charity in Action* 4, https://perma.cc/GF2U-TLLH.

[19] *Id.* at 2, 4-5.

[20] Brian J. Grim & Melissa E. Grim, *The Socio-economic Contribution of Religion to American Society: An Empirical Analysis*, 12 Interdisc. J. Rsch. on Religion 2, 26 (2016).

those in need every year. For example, congregation-based substance abuse recovery programs "contribute up to $316.6 billion in savings to the US economy" annually.[21] At the local level, the impact of faith-based organizations is also indispensable. A study of religious congregations in the Philadelphia area, for example, found that they provided, collectively, a quarter of a billion dollars in social services.[22] At that time, Philadelphia spent approximately $523 million a year on social services.[23] So roughly "one third of the [annual] cost to maintain quality of life in Philadelphia is voluntarily provided by local religious congregations."[24] A similar study in Michigan calculated that the annual replacement value of human services provided by local congregations was $95 to $118 million.[25]

Further, a February 2025 study conducted by researchers from the University of Colorado on the economic impact of the Catholic Church in Minnesota

---

[21] Brian J. Grim & Melissa E. Grim, *Belief, Behavior, and Belonging: How Faith Is Indispensable in Preventing and Recovering from Substance Abuse*, 58 J. Religion & Health 1713, 1737 (2019).

[22] Ram A. Cnaan, Jill W. Sinha & Charlene C. McGrew, *Congregations as Social Service Providers: Services, Capacity, Culture, and Organizational Behavior*, 28 Admin. Soc. Work 47, 55 (2004).

[23] *Id.*

[24] *Id.*

[25] Edwin I. Hernández et al., *Gatherings of Hope: How Religious Congregations Contribute to the Quality of Life in Kent County* 61 (Nov. 2008), https://perma.cc/D7YC-EZT9.

found that the "total economic value of Catholic programs" in the state "is estimated at $5.4 billion."[26] The study explains that healthcare institutions run by or affiliated with the Church generate $3.2 billion, Catholic schooling contributes $1.4 billion, and church events generate $56 million, to name just a few economic effects of the Catholic Church in the State.[27]

Catholic colleges and universities across the country make a similar impact. In the fall of 2023, Catholic colleges and universities enrolled 675,000 students in 230 institutions of higher learning.[28] About 84% of students at Catholic institutions receive some form of financial aid, averaging almost $24,000 per student in 2022-2023.[29] And graduates of these Catholic institutions have lower student-debt default rates than the national average.[30]

---

[26] Anna Faria & Grant Clayton, *Fruits of the Vine: The Economic Impact of the Catholic Church in Minnesota* 5 (Feb. 2025), https://perma.cc/LTD3-4Y8H.

[27] *Id.* at 6.

[28] *U.S. Catholic Higher Education Data*, Ass'n of Cath. Colls. & Univs., https://perma.cc/R5U3-JUXP (under "Catholic Higher Education FAQs," click "How many Catholic colleges are in the United States?" and "How many students are enrolled?").

[29] *Id.* (under "Catholic Higher Education FAQs," click "How much financial aid do students at Catholic institutions typically receive?").

[30] Quentin Wodon, *Catholic Higher Education in the United States: Exploring the Decision to Enroll from a Student's (or a Student Advisor's) Point of View*, 13 Religions (Special Issue) 7 (2022).

In short, the exclusion of faith-based charities from public programs both violates the First Amendment and inflicts "major public policy consequences."[31] Faith-based funds cannot be easily replaced. Forty-six states and the District of Columbia have balanced-budget requirements.[32] And "[a]fter years of record highs, states' rainy day fund capacity—the number of days that reserve balances could cover state operations—fell in fiscal year 2025, the first decline since the 2007-09 Great Recession."[33] So if state legislators bar the billions of dollars that Catholic and other faith-based organizations contribute, there is no mechanism to make up the difference. State legislators in Denver may not suffer, but the poor, the sick, and the downtrodden who rely on faith-based services certainly will. As a result, our most destitute citizens "would go without needed services and private secular agencies and government—which is already under pressure to cut back on its services to those in need—would have to scramble in an effort to find some way to make up for the major gaps now created."[34] This Court should

---

[31] Monsma, *supra* note 3, at 16.

[32] Kim S. Rueben & Megan Randall, *Balanced Budget Requirements: How States Limit Deficit Spending* (Nov. 27, 2017), https://perma.cc/85NR-N3UA.

[33] Page Forrest & Justin Theal, *Strength of State Rainy Day Funds Declines as Budgets Tighten*, Pew (Mar. 24, 2026), https://perma.cc/ZN84-ZVK2.

[34] *Id.*

reverse the Tenth Circuit's misguided decision to ensure that does not happen.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

STEVEN P. LEHOTSKY
Counsel of Record
JONATHAN E. DEWITT
LEHOTSKY COHN LLP
200 Massachusetts Ave. NW
Suite 700
Washington, DC 20001
(512) 693-8350
steve@lehotskycohn.com

DANIELLE K. GOLDSTEIN
LEHOTSKY COHN LLP
3280 Peachtree Road NE
Atlanta, GA 30305

MARK M. ROTHROCK
LEHOTSKY COHN LLP
8513 Caldbeck Drive
Raleigh, NC 27615

Counsel for Amicus Curiae

JULY 2026