
IN THE
Supreme Court of the United States

ST. MARY CATHOLIC PARISH IN LITTLETON, *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 AMICI CURIAE OF NEW WAYS MINISTRY;
MIGUEL H. DIAZ, AMBASSADOR TO THE HOLY
SEE, RET.; FATHER BRYAN MASSINGALE;
WOMEN'S ALLIANCE FOR THEOLOGY, ETHICS,
AND RITUAL; WOMEN'S ORDINATION
CONFERENCE; QUIXOTE CENTER; AND CALL
TO ACTION IN SUPPORT OF RESPONDENTS**

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<i>Brown v. Bd. of Educ.</i> , 347 U.S. 483 (1954).....	13
<i>Carson v. Makin</i> , 596 U.S. 767 (2022).....	16, 17, 18
<i>Christian Legal Soc’y Chapter of the Univ. of Cal.</i> , <i>Hastings Coll. of the Law v. Martinez</i> , 561 U.S. 661 (2010).....	14
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<i>City of Boerne v. Flores</i> , 521 U.S. 507 (1997).....	4, 9, 17
<i>Emp’t Div., Dep’t of Hum. Res. of Or. v. Smith</i> , 494 U.S. 872 (1990).....	4, 7, 8, 9, 10, 14, 22

Cited Authorities

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<i>Espinoza v. Mont. Dep't of Revenue</i> , 591 U.S. 464 (2020).....	16, 17, 18
<i>Fraternal Order of Police Newark Lodge No. 12 v. City of Newark</i> , 170 F.3d 359 (3d Cir. 1999)	13
<i>Fulton v. City of Phila.</i> , 593 U.S. 522 (2021).....	4, 6, 13, 18
<i>Jacobson v. Massachusetts</i> , 197 U.S. 11 (1905).....	22
<i>Larson v. Valente</i> , 456 U.S. 228 (1982).....	17
<i>Lyng v. Northwest Indian Cemetery Protective Ass'n</i> , 485 U.S. 439 (1988).....	4, 5
<i>Obergefell v. Hodges</i> , 576 U.S. 644 (2015).....	15, 16
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<i>Prince v. Massachusetts</i> , 321 U.S. 158 (1944).....	22
<i>Reynolds v. United States</i> , 98 U.S. 145 (1878).....	4, 7, 9, 10

Cited Authorities

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<i>Roberts v. United States Jaycees</i> , 468 U.S. 609 (1984)	18
<i>Sherbert v. Verner</i> , 374 U.S. 398 (1963)	4, 8, 18-19
<i>St. Dominic Acad. v. Makin</i> , 181 F.4th 11 (1st Cir. 2026)	16
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<i>Tandon v. Newsom</i> , 593 U.S. 61 (2021)	13
<i>Thomas v. Review Board of the Indiana Employment Security Division</i> , 450 U.S. 707 (1981)	8
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 582 U.S. 449 (2017)	16, 17, 18

CONSTITUTIONAL PROVISION

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--------------------------------	-----------

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Cited Authorities

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Colo. Rev. Stat. § 26.5-4-204(2) (2025)	8
Colo. Rev. Stat. § 26.5-4-204(6) (2025)	8
Colo. Rev. Stat. § 26.5-4-205(2)(b) (2025)	5, 8, 11, 14

OTHER AUTHORITIES

Abbie E. Goldberg & Randi Garcia, <i>Community Characteristics, Victimization, and Psychological Adjustment Among School-Aged Adopted Children with Lesbian, Gay, and Heterosexual Parents</i> , 11 <i>Frontiers Psych. art. 372</i> (2020)	21
Andrea L. Roberts et al., <i>Childhood Gender Nonconformity, Bullying Victimization, and Depressive Symptoms: An 11-Year Longitudinal Study</i> , 52(2) <i>J. Am. Acad. Child Adolescent Psychiatry</i> 143 (2013)	20
Brian William Kaufman, <i>After Catholic School Refuses to Re-Enroll Transgender Student, Neighbors Throw Pride Parade</i> , New Ways Ministry (Sept. 5, 2020), https://www.newwaysministry.org/2020/09/05/after-catholic-school-refuses-to-re-enroll-transgender-student-neighbors-throw-pride-parade/ . . .	25, 26, 27

Cited Authorities

	<i>Page</i>
Bryan N. Massingale, <i>Racial Justice and the Catholic Church</i> (2010)	2
Bryan N. Massingale, <i>Rev. Bryan Massingale on Black Theology, LGBTQ Catholics and the Future of the Church, Outreach</i> (July 14, 2026), https://outreach.faith/2026/07/rev-bryan-massingale-on-black-theology-lgbtq-catholics-and-the-future-of-the-church/	28
Caitlin Ryan et al., <i>Family Acceptance in Adolescence and the Health of LGBT Young Adults</i> , 23 J. Child & Adolescent Psychiatric Nursing 205 (2010)	27
Caleb Smith & Haley Norris, <i>The LGBTQI+ Community Reported High Rates of Discrimination in 2024</i> , Ctr. for Am. Progress (Mar. 12, 2025), https://www.americanprogress.org/article/the-lgbtqi-community-reported-high-rates-of-discrimination-in-2024/	10
Chelsea N. Proulx et al., <i>Associations of Lesbian, Gay, Bisexual, Transgender, and Questioning-Inclusive Sex Education With Mental Health Outcomes and School-Based Victimization in U.S. High School Students</i> , 64 J. Adolescent Health 608 (2019)	15

Cited Authorities

	<i>Page</i>
Diann L. Neu, <i>June 2021 WATERritual: Grateful, Proud, and Connected for Pride Month</i> , WATER (June 2021), https://www.waterwomensalliance.org/june-2021-waterritual-grateful-proud-and-connected-for-pride-month/	28
Dwayne Fernandes, <i>New Ways Ministry Launches New Book on LGBTQ Non-Discrimination</i> , New Ways Ministry (June 22, 2022), https://www.newwaysministry.org/2022/06/22/new-ways-ministry-launches-new-book-on-lgbtq-non-discrimination/	1
Elizabeth O’Gorek, <i>Transgender Boy Finds Support in Community</i> , HillRag (June 27, 2020), https://www.hillrag.com/2020/06/27/transgender-boy-finds-support-in-community/	24, 25, 26
Emma Cieslik, <i>Gender Diversity Has Always Been Part of the Church</i> , U.S. Cath. (June 3, 2024), https://uscatholic.org/articles/202406/gender-diversity-has-always-been-part-of-the-church/	28
Gwen Aviles, <i>Kansas Catholic School Rejects Kindergartner With Same-Sex Parents</i> , NBC News (Mar. 7, 2019, 4:52 PM CST), https://www.nbcnews.com/feature/nbc-out/kansas-city-catholic-school-rejects-kindergartner-same-sex-parents-n980781	24

Cited Authorities

	<i>Page</i>
Henny M.W. Bos & Frank van Balen, <i>Children in Planned Lesbian Families: Stigmatisation, Psychological Adjust-ment and Protective Factors</i> , 10 <i>Culture, Health & Sexuality</i> 221 (2008)	21
James Madison, <i>Memorial and Remonstrance Against Religious Assessments</i> (1785)	12
Jingyi Huang et al., <i>Peer Bullying Victimization Trajectories for Sexually and Gender Diverse Youth from Early Childhood to Late Adolescence</i> , 53 <i>J. Youth & Adolescence</i> 2589 (2024)	19
Kristie L. Seelman & Mary Beth Walker, <i>Do Anti-Bullying Laws Reduce In-School Victimization, Fear-Based Absenteeism, and Suicidality for Lesbian, Gay, Bisexual, and Questioning Youth?</i> , 47 <i>J. Youth & Adolescence</i> 2301 (2018)	23
Landon B. Krantz et al., <i>The Impact of Statewide Enumerated Antibullying Laws and Local School Interventions on School Spaces, Physical Harm, and Suicide Attempts for LGBTQ Youth</i> , 11 <i>LGBT Health</i> 531 (2024)	26
Laura S. Underkuffler, <i>Odious Discrimination and the Religious Exemption Question</i> , 32 <i>Cardozo L. Rev.</i> 2069 (2011)	29, 30

Cited Authorities

	<i>Page</i>
Marci A. Hamilton, <i>Employment Division v. Smith at the Supreme Court: The Justices, the Litigants, and the Doctrinal Discourse</i> , 32 Cardozo L. Rev. 1671 (2011).....	8, 22
Mark L. Hatzenbuehler & Katherine M. Keyes, <i>Inclusive Anti-Bullying Policies and Reduced Risk of Suicide Attempts in Lesbian and Gay Youth</i> , 53 J. Adolescent Health S21 (2013)	15, 26
Maureen Groppe, <i>LGBTQ+ vs. Religious Rights: Supreme Court Takes Big Case on Preschools</i> , USA Today (Apr. 20, 2026), https://www.usatoday.com/story/news/politics/2026/04/20/supreme-court-lgbtq-catholic-preschools-colorado/89436798007/	11
Miguel H. Díaz, <i>Queer God de Amor</i> 4 (2022).....	2, 28
New Ways Ministry, <i>Our Mission</i> , https://www.newwaysministry.org/about/ (last visited Aug. 11, 2026)	27
Quixote Center, June 22, 2026, https://www.instagram.com/p/DZv_jeuNqXR/	28
Rachel H. Farr, M.K. Oakley & Elizabeth W. Ollen, <i>School Experiences of Young Children and Their Lesbian and Gay Adoptive Parents</i> , 3 Psych. Sexual Orientation & Gender Diversity 442 (2016).....	21

Cited Authorities

	<i>Page</i>
Russell B. Toomey & Stephen T. Russell, <i>The Role of Sexual Orientation in School-Based Victimization: A Meta-Analysis</i> , 48 <i>Youth & Soc'y</i> 176 (2016)	20
Russell B. Toomey, Amy K. Syvertsen & Maura Shramko, <i>Transgender Adolescent Suicide Behavior</i> , 142 <i>Pediatrics</i> e20174218 (2018)	27
Sarah Netter, <i>Colorado Catholic School Boots Student With Lesbian Mothers</i> , <i>ABC News</i> (Mar. 8, 2010, 2:22 PM), https://abcnews.go.com/WN/colorado-catholic-school-kicks-student-lesbian-mothers/story?id=10043528	23
Simon R. Crouch et al., <i>Parent-Reported Measures of Child Health and Wellbeing in Same-Sex Parent Families: A Cross-Sectional Survey</i> , 14 <i>BMC Pub. Health</i> 635 (2014)	20
Stephen T. Russell & Jessica N. Fish, <i>Mental Health in Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth</i> , 12 <i>Ann. Rev. Clinical Psych.</i> 465 (2016)	19
Stephen T. Russell et al., <i>Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth</i> , 63 <i>J. Adolescent Health</i> 503 (2018)	27

Cited Authorities

	<i>Page</i>
Study Group N. 9, <i>Theological Criteria and Synodal Methodologies for Shared Discernment of Emerging Doctrinal, Pastoral, and Ethical Issues</i> , For A Synodal Church 10 (working trans., 2026), https://www.synod.va/content/dam/synod/process/implementation/10workinggroups/final-reports/sg9/SG-9_Final-Report.pdf	28-29
S. Ct. Rule 37.6.	1
Yun Zhang et al., <i>Family Outcome Disparities Between Sexual Minority and Heterosexual Families: A Systematic Review and Meta-Analysis</i> , 8 BMJ Glob. Health e010556 (2023)	20

BRIEF OF *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

Amici respectfully submit this brief as *amici curiae*.¹

INTERESTS OF THE *AMICI CURIAE*

New Ways Ministry is a national Catholic ministry of justice and reconciliation for lesbian, gay, bisexual, and transgender people and the wider Catholic Church. In its 49-year history, New Ways Ministry has worked with hundreds of parishes, schools, colleges, hospitals, religious communities of vowed men and women, promoting greater equality for LGBTQ people. Recently, it has been involved with numerous cases in which LGBTQ people and their allies have been fired from Catholic institutions due to their support for marriage equality and other issues. In 2022, New Ways Ministry published *A Home for All: A Catholic Call for LGBTQ Nondiscrimination*, a booklet based on a theological statement signed by 750 Catholic theologians and church leaders as well as over 2,000 Catholic laypeople. Dwayne Fernandes, *New Ways Ministry Launches New Book on LGBTQ Non-Discrimination*, New Ways Ministry (June 22, 2022), <https://www.newwaysministry.org/2022/06/22/new-ways-ministry-launches-new-book-on-lgbtq-non-discrimination/>. New Ways Ministry joins this amicus because it believes that the Catholic teaching of human dignity takes precedence over sexual politics.

1. Pursuant to S. Ct. Rule 37.6, counsel for *amici curiae* states they authored this brief in whole and no other person or entity other than amici or their counsel has made a monetary contribution to the preparation or submission of this brief. The views of this brief express the views of the authors and *amici curiae* and do not represent the views of the authors' institutions.

State funds should not aid in the discrimination of LGBTQ individuals by Catholic institutions.

Miguel H. Díaz served as the 9th United States Ambassador to the Holy See. Dr. Díaz is a respected and prominent Catholic theologian whose scholarship focuses on queer and Latinx theologies. He currently holds the John Courtney Murray, S.J., University Chair in Public Service at Loyola University Chicago. Dr. Díaz is the author of *Queer God de Amor* (2022) and previously served as the president of the Academy of Catholic Hispanic Theologians of the United States. Dr. Díaz has a direct interest in ensuring that this Court's decision reflects the reality that many prominent Catholic scholars do not support the idea that Catholic teachings require discrimination or that it must be funded by the government as part of religious liberty.

Father Bryan Massingale is the James and Nancy Buckman Chair in Applied Christian Ethics at Fordham University, where he has taught since 2017. A Catholic priest and leading scholar of Catholic social ethics, Fr. Massingale is the author of *Racial Justice and the Catholic Church* (2010), a foundational book on discrimination within the Church. The Catholic Theological Society of America awarded him the John Courtney Murray Award in recognition of his decades of scholarship on justice within the Church. Fr. Massingale has a direct interest in ensuring that this Court's decision reflects the reality that Catholic teaching on human dignity does not require state funding towards discrimination and that religious liberty does not require the government to fund discrimination.

The Women's Alliance for Theology, Ethics, and Ritual (WATER) is a non-profit educational organization

consisting of justice-seeking people. Members come from a variety of faith perspectives and backgrounds to promote the use of feminist religious values to make social change. WATER offers educational and spiritual programs that foreground women and non-binary people. WATER promotes the equality of all people, especially regarding religious expression. WATER joins this amicus brief because it believes that the legal right to discriminate does not include the legal right to have that discrimination underwritten by government funding.

The **Women's Ordination Conference (WOC)**, founded in 1975, is the oldest and largest national organization working to ordain women as deacons, priests, and bishops in an inclusive and accountable Roman Catholic Church. WOC upholds the dignity and equality of every person and rejects discrimination in church or society.

The **Quixote Center** dismantles oppressive systems and structures so that vulnerable people are empowered to become the artisans of their own destiny. Inspired by liberation theology, they further their mission through sustainable development, U.S. policy reform, economic justice, and educational initiatives. Quixote believes that human rights belong to everyone, regardless of who they love.

Since 1976, **Call To Action** has been a leader in the progressive Catholic movement in challenging Catholics to act for justice and build inclusive communities. We support a church that promotes and cultivates dignity among all peoples and families, regardless of their marital status or sexual and/or romantic relationships.

SUMMARY OF ARGUMENT

This Court has warned local, state, and federal lawmakers for decades that they must enact “neutral and generally applicable” laws or be subjected to strict scrutiny under the Free Exercise Clause of the United States Constitution. *Fulton v. City of Phila.*, 593 U.S. 522, 533 (2021); *Emp’t Div., Dep’t of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 890 (1990); *Sherbert v. Verner*, 374 U.S. 398, 408 (1963); *Reynolds v. United States*, 98 U.S. 145, 167 (1878). This case is about a state that faithfully followed that mandate by enacting a neutral and generally applicable state program. It is a preschool program funded by the state for which many religious organizations have applied and received state funding, including some Catholic groups. J.A. 306–07. The Petitioners, though, object to the state’s neutral and generally applicable anti-discrimination requirements and demand the state fund their intent to discriminate against LGBTQ people. The central question in this case is whether this Court should transform religious liberty into an unrecognizable doctrine that abandons the rule of law and forces states to fund discriminatory organizations because they are religious. Never has this Court held that a neutral and generally applicable law is unconstitutional because it fails to fund religious entities that seek to violate the law.

This Court has repeatedly affirmed that all Americans are bound by the rule of law, which means everyone must equally obey neutral laws of general applicability. *Smith*, 494 U.S. at 879; *Lyng v. Northwest Indian Cemetery Protective Ass’n*, 485 U.S. 439, 452 (1988); *Bowen v. Roy*, 476 U.S. 693, 703 (1986); *Reynolds*, 98 U.S. at 166; see also *City of Boerne v. Flores*, 521 U.S. 507, 514 (1997)

(majority of Court affirming history of free exercise cases embracing the rule of law). As this Court has stated, “[t]he First Amendment must apply to all citizens alike, and it can give to none of them a veto over public programs that do not prohibit the free exercise of religion.” *Lyng*, 485 U.S. at 452. Moreover, when believers “seek benefits from the Government” they are not “excused from compliance with a condition that is binding on all other persons who seek the same benefits from the government.” *Bowen*, 476 U.S. at 703.

Neutral and general laws form the backbone of the rule of law in the United States including criminal laws, traffic laws, child sex abuse laws, housing laws, food safety laws, and thousands of others. When lawmakers identify conduct that requires regulation and regulates every instance of it, there can be confidence that the law is aimed at the beneficial or harmful conduct itself and not targeting any particular religious believer or other person. There is also assurance that the duly enacted law will be able to achieve its intended purpose. Exceptions to neutral and generally applicable laws, according to this Court, show that such confidence may not be justified and, therefore, strict scrutiny should apply. The Colorado Universal Preschool Program (“UPK”) non-discrimination requirement is neutral and generally applicable. This child-centered law requires each participating preschool provider to provide young children an equal opportunity to enroll and receive preschool services regardless of, among other characteristics, sexual orientation or gender identity, as those characteristics apply to the child or the child’s family. Colo. Rev. Stat. § 26.5-4-205(2)(b) (2025). The program’s matching preferences are not allowed to override that requirement, the catch-all provision

is subjected to it, and the Department lacks discretion to grant individualized or temporary exemptions from the non-discrimination rules. *St. Mary Cath. Par. in Littleton v. Roy*, 154 F.4th 752, 768, 770-71, 774 (10th Cir. 2025). Compare *Fulton*, 593 U.S. at 543 (invalidating city ordinance with discretionary exemption to LGBTQ anti-discrimination requirements). Accordingly, rationality review is appropriate.

As part of their religious mission, Amici have long supported LGBTQ children and adults, advocating for them to be treated with dignity, compassion, and equality. They rely on the Bible, theology, and the plethora of well-documented scientific studies establishing the many harms that gays and lesbians suffer when injured by discrimination.

This case is not about whether a private entity can privately subsidize a program that rejects gay participants. Rather, it is about whether the state can be required to fund discrimination that harms children and families. The Petitioners are asking the Court to carve out an exception to the neutrality and general applicability standard for them and to gut this Court's nearly 150-year-old free exercise doctrine, which in turn would threaten to overturn the thousands of city, county, state, and federal neutral and generally applicable laws.

A ruling for the Petitioners will directly harm LGBTQ children and families if this Court requires the government to facilitate discrimination against them. Conversely, LGBTQ youth and children of LGBTQ parents have a chance to lead full and healthy lives with dignity if this Court rules the government is not required to fund discriminatory programs.

The Petitioners in this case enjoy complete religious freedom to operate their Catholic schools in accordance with their own interpretation of their faith, as do the other Catholic and religious schools that have opted to participate in the UPK. True religious freedom does not give religion the right to unconditional financial support from the government. Catholic parents may decide if they want their children to attend discriminatory schools, but the state should not be forced to underwrite discrimination in any of its education plans. As the lower courts correctly held in this case, Colorado legally set up a voluntary system with equal education for everyone. No schools are mandated to offer preschool, and no students are required to attend preschool. We urge this Court to affirm the lower courts that protected equality and dignity for all Coloradans. That leaves Petitioners free to discriminate in their privately funded schools without forcing taxpayers to pay for it. That is what healthy religious freedom allows, and what Amici respectfully request this Court hold.

ARGUMENT

I. Colorado's Law Is Neutral and Generally Applicable and Therefore Meets Every Free Exercise Standard Set by this Court

This Court has long held that religious actors are required to obey neutral, generally applicable laws because the rule of law protects everyone. Government schemes that are neutral and generally applicable are subjected to rationality review. *See, e.g., Reynolds*, 98 U.S. at 167; *Smith*, 494 U.S. at 879. Colorado's UPK anti-discrimination law is a neutral law of general applicability.

It requires every recipient to follow its non-discrimination rules.

Colorado’s universal preschool funding law, Colo. Rev. Stat. § 26.5-4-204(1)(a), (2), (6) (2025), is a neutral and generally applicable law that establishes a voluntary and clear-cut system for state funding for non-discriminating preschool programs. *St. Mary Catholic Parish*, 154 F.4th at 774-75. The UPK has fostered a community that welcomes every educational entity equally so long as they do not discriminate based on “race, ethnicity, religious affiliation, sexual orientation, gender identity, lack of housing, income level, or disability.” Colo. Rev. Stat. § 26.5-4-205(2)(b) (2025); 8 Colo. Code Regs. § 1404-1:4.110. It is like the neutral and generally applicable law of Oregon that prohibited unemployment compensation for those who violated the state’s drug laws. *See Smith*, 494 U.S. 872 (applying rationality review), and unlike this Court’s cases involving the government’s differential treatment of employees in unemployment compensation cases. *See, e.g., Sherbert v. Verner*, 374 U.S. 398, 399–403 (1963) (applying strict scrutiny); *Thomas v. Rev. Bd. of the Ind. Emp. Sec. Div.*, 450 U.S. 707, 709–12 (1981) (same). This Court did not struggle with the result in *Smith*, finding that a neutral, generally applicable state law did not violate the Free Exercise Clause, as one might have expected because the Justices did not view the decision as causing a radical change in the law. Marci A. Hamilton, *Employment Division v. Smith at the Supreme Court: The Justices, the Litigants, and the Doctrinal Discourse*, 32 *Cardozo L. Rev.* 1671, 1691–92 (2011) [hereinafter Hamilton, *Smith at the Supreme Court*]. This Court viewed the case as an opportunity to provide a comprehensive overview of longstanding doctrine.

The *Smith* majority, in an opinion by Justice Antonin Scalia, surveyed all of the Court's free exercise cases and endorsed the lynchpin in the system that has made the United States not only a haven for believers but also a safe place where believers do not have a right to harm others, as was first stated in *Reynolds*: "To permit this [mandated exemption to a neutral law] would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances." *Reynolds*, 98 U.S. at 167. That vision captures the genius of our First Amendment free exercise protection. The *Reynolds* Court was correct when it first coined the phrase critical of any "citizen becom[ing] a law unto himself" *Id.* Justice Scalia's opinion for the majority in *Smith* wisely repeated it, 494 U.S. at 879, and found that the same principle has run through the Court's free exercise doctrine, as this Court confirmed in *City of Boerne v. Flores*, 521 U.S. 507, 514 (1997) (majority holding that RFRA far exceeds the First Amendment's requirements).

Permitting religious organizations to discriminate against protected classes would make the organizations' beliefs superior to the states' legitimate and compelling purposes, a result that is simply unacceptable unless this Court's doctrine were to be reshaped to allow an established religion or make the religious a preferred and lawless class.

Because of the Court's longstanding doctrine summarized in *Smith* and squarely reiterated in *City of Boerne*, the First Amendment is no refuge for the sex abuse of children by clergy, the medical neglect of children,

forced child labor, wife-battering, government-supported discrimination in the marketplace, or harming LGBTQ children and families. While religious organizations have the absolute right to believe whatever they choose, *Smith*, 494 U.S. at 877; *Reynolds*, 98 U.S. at 166–67, they should not be allowed to use the Free Exercise Clause to co-opt the government into paying them to harm children and their families through exclusion and discrimination. “Discrimination affected the mental well-being of 52 percent of LGBTQI+ adults ‘significantly or more.’ . . . Discrimination also affected LGBTQI+ people physically, with 29 percent of LGBTQI+ survey respondents reporting at least ‘moderate’ impacts on their physical well-being in 2024.” Caleb Smith & Haley Norris, *The LGBTQI+ Community Reported High Rates of Discrimination in 2024*, Ctr. for Am. Progress (Mar. 12, 2025), <https://www.americanprogress.org/article/the-lgbtqi-community-reported-high-rates-of-discrimination-in-2024/>.

This voluntary state funding program does not discriminate against religion. The Department did not exclude faith-based preschools from UPK; it “welcomed and actively solicited their participation.” *St. Mary Catholic Parish*, 154 F.4th at 764. Indeed, 40 faith-based preschools are currently part of UPK, and Catholic Charities preschools under the Archdiocese of Denver also participate. *Id.* at 760, 768, 775. The district court and the Tenth Circuit recognized the state “has applied the [non-discrimination] requirement in a neutral and generally applicable manner, as dictated by the statute.” *Id.* at 761. Faith-based schools, including six Catholic Charities faith-based schools, participated in this program, which is proof that it is neutral and generally applicable in application

as well as wording. See Maureen Groppe, *LGBTQ+ vs. Religious Rights: Supreme Court Takes Big Case on Preschools*, USA Today (Apr. 20, 2026), <https://www.usatoday.com/story/news/politics/2026/04/20/supreme-court-lgbtq-catholic-preschools-colorado/89436798007/>.

Each preschool provider must “provide eligible children an equal opportunity to enroll and receive preschool services regardless of race, ethnicity, religious affiliation, sexual orientation, gender identity, lack of housing, income level, or disability, as such characteristics and circumstances apply to the child or the child’s family.” Colo. Rev. Stat. § 26.5-4-205(2)(b) (2025); 8 Colo. Code Regs. § 1404-1:4.110(B) (2025). This law is intended to ensure equal treatment of all eligible children and their families. It is obvious that Colorado voters approved public funding for universal preschool in the state because of their deep commitment to educational opportunity and equality. The plain purpose is to provide opportunities for each and every child. This is an intentionally child-centered law that promotes the preschool education and safety of Colorado’s children. The goal was to reach as many children as possible and to ensure children are not discriminated against in this state-sponsored system. While the state is not mandating preschool education, it is providing the healthiest choice possible for the states’ children and parents by funding it and making it an opportunity for all. For that reason, the law states that the state’s quality standards must have a non-discrimination component. Colo. Rev. Stat. § 26.5-4-205(2)(b) (2025).

The UPK law does not say that preschools are not allowed to discriminate based on religious beliefs. It simply says that the state will not subsidize such

discrimination. For instance, schools that want to admit Christians but not Muslims will not receive the state's funding and schools that prefer only their believers will not receive the funding. If a school says, "we will not admit you because you live in a poor neighborhood and can't afford tuition," it will not receive the state's funding. If a school insists it can handle healthy children, but no one with any disability, it will not receive the state's funding. There is no limiting Petitioners' arguments to LGBTQ issues, either. If this Court were to grant Petitioners' demands, this neutral and generally applicable program would become like Swiss cheese, with mandated funding for the religious organizations that believe in white supremacy, which would ban minority children, or the reversal of women's right to vote and have a career, which would ban girls, among many other beliefs in this country of religious diversity. Mandated religious accommodation for intentional discrimination would likely spell the end of the program altogether, depriving many of Colorado's children of preschool education in safe environments.

The Petitioners, along with some other Colorado Catholic schools, did not sign the state's non-discrimination requirement because they believe in discrimination against LGBTQ children and families. They argue that the religious freedom of the First Amendment gives them the right to discriminate with taxpayer dollars. Yet, the Framers of the First Amendment, James Madison, made it abundantly clear that government funding of religious education undermines religious liberty and civil government. *See generally* James Madison, Memorial and Remonstrance Against Religious Assessments (1785). In contrast to Petitioners, the Amici promote equality for *everyone* in the church, including LGBTQ individuals,

just as Colorado has done. The best way to protect all students in all schools is to admit student applicants without discriminating, as Colorado’s law requires.

The Free Exercise Clause does not and should not require the government to underwrite any religious organization’s discrimination. U.S. Const. amend. I. It is constitutional bedrock that education works best when it is equal, that is, equal in allowing all students to participate equally in class, regardless of the student’s status. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954). This Court should not undermine Colorado’s commitment to equality by transforming religious freedom into a doctrine that mandates taxpayer-subsidized discrimination.

Exemptions to neutral and generally applicable laws trigger strict scrutiny. *See Lukumi*, 508 U.S. at 546; *Fulton*, 593 U.S. at 533 (“A law is not generally applicable if it invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions.”); *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (“Government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise.”); *see also Blackhawk v. Pennsylvania*, 381 F.3d 202, 209 (3d Cir. 2004) (“A law challenged under the Free Exercise Clause must satisfy strict scrutiny if it permits individualized, discretionary exemptions.”); *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 364–66 (3d Cir. 1999) (holding that a department’s grant of medical exemptions while refusing religious exemptions to the same requirement was subject to strict scrutiny and violated the Free Exercise Clause).

Cf. Smith, 494 U.S. at 878–82 (neutral, generally applicable laws without exemptions are subject only to rational basis review). In this case, there are no exemptions or provisions inconsistent with the non-discrimination requirement and, therefore, rationality review applies.

The matching “preferences” Petitioners identify are consistent with, rather than exceptions to, the statute’s non-discrimination provisions’ general applicability and evidence of the state’s child-centered neutral and generally applicable program. Nor does the catch-all list show a lack of general applicability, because, as the Tenth Circuit held, the non-discrimination limitations apply to the catch-all as well. *St. Mary Catholic Parish*, 154 F.4th at 769. The “income level, or disability” categories are identified, because it is a straightforward fact that poor and disabled children have faced discrimination, along with the other categories recognized. Colo. Rev. Stat. § 26.5-4-205(2)(b). Protecting the disabled and the poor is not discrimination. It is broad and inclusive equality, which the Colorado statute commands. The poor and the disabled, just like LGBTQ parents and children, receive equal treatment under this neutral and general law. We ask this Court not to allow Petitioners to subvert equality through government-supported discrimination.

Religious freedom does not protect state-sponsored illegal conduct like disabilities discrimination, race discrimination, or LGBTQ discrimination. *Smith*, 494 U.S. at 879; *see also Christian Legal Soc’y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 697 n.27 (2010) (observing that, under *Smith*, the Free Exercise Clause did not require public law school to grant religious exemption to its “all-comers” policy forbidding

discrimination by student organizations). This case can and should be decided by requiring all funded groups to obey the neutral, generally applicable principles in the law.

Colorado's purpose is further buttressed by this Court's decision in *Obergefell v. Hodges*, 576 U.S. 644 (2015). In *Obergefell*, this Court noted that one of the reasons for protecting the right to marry "is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education." *Obergefell v. Hodges*, 576 U.S. at 667–68. *Obergefell* invalidated the same-sex marriage bans in part because the "marriage laws at issue here thus harm and humiliate the children of same-sex couples." *Id.* at 668 (citation omitted). This Court reiterated this teaching in *Pavan*, when it ruled that female spouses of women who gave birth should not be treated differently from male spouses, because both couples were entitled to the same equal benefits of marriage. *Pavan v. Smith*, 582 U.S. 563, 564 (2017). Neutral and generally applicable laws, which apply to everyone equally, similarly help children overcome discrimination and serve the whole community by leading to greater equality and mental health. *See, e.g.*, Chelsea N. Proulx et al., *Associations of Lesbian, Gay, Bisexual, Transgender, and Questioning-Inclusive Sex Education With Mental Health Outcomes and School-Based Victimization in U.S. High School Students*, 64 J. Adolescent Health 608, 608 (2019) (finding that students in states with greater use of LGBTQ-inclusive sex education had lower odds of school-based victimization and adverse mental-health outcomes); Mark L. Hatzenbuehler & Katherine M. Keyes, *Inclusive Anti-Bullying Policies and Reduced Risk of Suicide Attempts in Lesbian and Gay Youth*, 53 J. Adolescent Health S21, S21 (2013) (finding that

sexual-orientation-inclusive anti-bullying policies were associated with fewer suicide attempts among lesbian and gay youth, while noninclusive policies were not).

Under *Smith* and *Obergefell*, it is rational for the state to serve and protect all preschool students with a neutral and general law that grants the same equal benefits to all. Under this Court’s reasoning, children in all legal marriages deserve respect, dignity, and equality. Without equality for the children and their families, they will suffer the well-documented burdens that discrimination and exclusion impose, which are discussed in Part III.

Colorado has enacted a neutral and generally applicable law that serves and protects all children and, therefore, rationality review applies. *See also St. Dominic Acad. v. Makin*, 181 F.4th 11, 58–60 (1st Cir. 2026) (holding that Maine’s sexual-orientation and gender-identity non-discrimination rule is neutral and generally applicable). The Petitioners have the right to believe what they choose, of course, and can offer their own preschool program for parents inclined to select theirs. They should not, however, be able to force the government to fund their discriminatory practices, because Colorado’s law satisfies rationality review.

II. *Carson v. Makin* Does Not Require Colorado to Fund Discriminating Schools

Petitioners also argue that this Court’s cases—*Carson v. Makin*, 596 U.S. 767 (2022); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464 (2020); and *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017)—require Colorado to fund the Catholic schools that discriminate against gays and lesbians.

That argument misreads those cases, which address state laws that discriminate *on the basis of* religion. The cases hold that a State may not exclude an otherwise eligible organization from a generally available funding program solely because of its religious status or its religious use of the funds. *See Carson v. Makin*, 596 U.S. 767, 768 (2022); *Espinoza*, 591 U.S. at 487; *Trinity Lutheran*, 582 U.S. at 458, 462. As the Tenth Circuit explained, the *Carson* line addressed laws that targeted “religious status” or “religious use” because they were religious, whereas Colorado’s non-discrimination requirement applies to enrollment conduct by religious and secular preschools alike. *St. Mary Catholic Parish*, 154 F.4th at 763-65. Far from discriminating against religion, the UPK encompasses religious schools, including some Catholic schools.

Colorado’s law does not discriminate against organizations because they are religious. It requires all educational entities that receive state funding, religious and non-religious alike, to follow their neutral non-discrimination rules of general applicability, as *Smith* allows and *City of Boerne* confirms. They also serve a compelling government interest in treating children equally by keeping them from the deep harms of state-sponsored discrimination, as discussed in Part III. Religious freedom should not undermine the equality of citizens in their home state, to whom the state is offering an equal quality education.

“The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). The courts cannot prefer religion by saying one religion, or a subset of one religion, is exempt from

the neutral laws of general applicability for no reason other than the church's desire to discriminate. Colorado's *universal* program treats *every* religious organization the same so it cannot violate *Carson*, *Espinoza*, and *Trinity Lutheran*. They are simply beside the point. In fact, the Petitioners are demanding a dramatic expansion of the Free Exercise Clause to directly fund discrimination.

III. Colorado's Law Satisfies Strict Scrutiny

If this Court were to decide that strict scrutiny applies, the Respondents also win. Under *Roberts v. U.S. Jaycees*, the government has a compelling interest in eradicating discrimination in places of public accommodation; "acts of invidious discrimination in the distribution of publicly available goods, services, and other advantages cause unique evils that government has a compelling interest to prevent," as such discrimination "deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life." *Roberts v. United States Jaycees*, 468 U.S. 609, 628, 625 (1984). The Colorado Universal Preschool Program's non-discrimination requirement directly serves its compelling government interest in the equality of all Coloradans, educating its youngest children in safe environments, and the mental health of LGBTQ children and families in a narrowly tailored way.

Laws that are not generally applicable are subjected to strict scrutiny. Lack of general applicability can be a result of a law targeting a particular religion, *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546 (1993); or a law allowing the government unrestricted discretion to grant exceptions. *Fulton*, 593 U.S. at 537; *Sherbert*, 374

U.S. at 405. Further, laws that burden religious conduct must be neutral and generally applicable on their face as well as in practice. *Lukumi Babalu*, 508 U.S. at 540. Colorado satisfies all of these requirements.

Amici pursue their religious missions to reduce and eliminate the harm to the LGBTQ community that flows from rejection in religious communities. While the right to believe and the right not to participate in a state-funded program are rock solid free exercise rights for Petitioners, the state has a compelling interest in preventing the known harm to LGBTQ children and families that flows from exclusion and discrimination. The UPK program's anti-discrimination provisions serve this end in a narrowly tailored way.

There is a plethora of well-documented studies establishing the harm that results from discrimination and exclusion of LGBTQ individuals. *See, e.g.*, Jingyi Huang et al., *Peer Bullying Victimization Trajectories for Sexually and Gender Diverse Youth from Early Childhood to Late Adolescence*, 53 J. Youth & Adolescence 2589, 2589 (2024) (Victimization and its harms begin early, with mental-health vulnerabilities appearing already in childhood.); Stephen T. Russell & Jessica N. Fish, *Mental Health in Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth*, 12 Ann. Rev. Clinical Psych. 465, 470 (2016) ("US and international studies consistently conclude that LGBT youth report elevated rates of emotional distress, symptoms related to mood and anxiety disorders, self-harm, suicidal ideation, and suicidal behavior when compared to heterosexual youth and that compromised mental health is a fundamental predictor of a host of behavioral health disparities evident among

LGBT youth.”); Russell B. Toomey & Stephen T. Russell, *The Role of Sexual Orientation in School-Based Victimization: A Meta-Analysis*, 48 *Youth & Soc’y* 176, 176 (2016) (Sexual-minority youth experience significantly more school-based victimization than heterosexual peers ($d = .33$), and such victimization is tied to poorer developmental, academic, and health outcomes.); Andrea L. Roberts et al., *Childhood Gender Nonconformity, Bullying Victimization, and Depressive Symptoms: An 11-Year Longitudinal Study*, 52(2) *J. Am. Acad. Child Adolescent Psychiatry* 143, 143 (2013) (discrimination at the earliest ages affects gender non-conforming children and leads to lasting, not transient, harm).

The harm to children of LGBTQ parents flows from stigma and discrimination, not from family structure. A systematic review of 34 studies comparing sexual-minority and heterosexual families found that most child and family outcomes are comparable, with children of sexual-minority parents faring as well as—and in some respects better than—their peers, and identified experiences of discrimination, not family composition, as a risk factor for poorer outcomes. Yun Zhang et al., *Family Outcome Disparities Between Sexual Minority and Heterosexual Families: A Systematic Review and Meta-Analysis*, 8 *BMJ Glob. Health* e010556, at 13, 16 (2023). Studies of these children locate the source of harm in stigma, victimization, and hostile school climates rather than in the household. See Simon R. Crouch et al., *Parent-Reported Measures of Child Health and Wellbeing in Same-Sex Parent Families: A Cross-Sectional Survey*, 14 *BMC Pub. Health* 635, 6–7, 9–10 (2014) (children were healthy overall, but greater perceived stigma was associated with worse mental-health and family-cohesion

scores); Abbie E. Goldberg & Randi Garcia, *Community Characteristics, Victimization, and Psychological Adjustment Among School-Aged Adopted Children with Lesbian, Gay, and Heterosexual Parents*, 11 *Frontiers Psych.* art. 372, at 11 (2020) (victimization did not differ by family type, but a more negative school climate predicted more victimization, which in turn predicted more internalizing and externalizing symptoms); Henny M.W. Bos & Frank van Balen, *Children in Planned Lesbian Families: Stigmatisation, Psychological Adjustment and Protective Factors*, 10 *Culture, Health & Sexuality* 221, 229–30 (2008) (greater stigmatization was associated with lower self-esteem, while contact with other children of same-sex parents buffered that harm); Rachel H. Farr, M.K. Oakley & Elizabeth W. Ollen, *School Experiences of Young Children and Their Lesbian and Gay Adoptive Parents*, 3 *Psych. Sexual Orientation & Gender Diversity* 442, 445 (2016) (children’s adjustment was comparable to population norms and nearly all parents felt supported by their schools, though a small subset teased for having LG parents showed more difficulties). Colorado’s non-discrimination requirement does not dictate how families form, but forbids publicly funded providers from turning children away because of who their parents are.

The above studies, among many others, establish that if the government does not support equality, individuals suffer from their lesser treatment. They also suffer if their representative government sanctions the discrimination that harms them. Each instance of discrimination hurts individuals by showing them they are lesser and unequal in the eyes of their own government. Government-sponsored discrimination leaves a lasting legacy of pain. No government should be required to underwrite illegal

discrimination and harm to children. Colorado is trying to educate the youngest children and ensure taxpayer dollars foster healthy classrooms for every child. This Court should not do damage to its free exercise doctrine to allow evidence-based harm to children and their families.

This Court has repeatedly held that it would not permit religion to undo laws that protect everyone’s health and safety. *See, e.g., Smith*, 494 U.S. at 889; *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905) (upholding power of the state to regulate vaccines for the public’s health); *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944) (upholding child labor law and holding that religious freedom does not include the right of parents to make “martyrs” of their children). As this Court stated in *Smith*: “We have never held that an individual’s religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition.” *Smith*, 494 U.S. at 878–79. Instead, this Court embraced the doctrine that applies to this case: “Simply stated, when conduct jeopardizes human health and safety, government cannot deregulate for religion without sacrificing its health and safety interests in the regulation.” Hamilton, *Smith at the Supreme Court, supra*, at 1674–75 (footnotes omitted). *City of Boerne*, 521 U.S. at 534–35.

The undeniable harm to LGBTQ would be magnified if this Court were to not only permit discrimination by some religious groups, *303 Creative LLC v. Elenis*, 600 U.S. 570, 623 (2023) (Sotomayor, J., dissenting), but also require the state to pay for it. This Court has never held that the Free Exercise Clause goes so far as to require

that neutral, generally applicable laws must be applied by the government in a discriminatory manner for a religious actor to benefit financially. To the contrary, it has recognized the importance of the rule of law even for religious actors while state and local governments like Colorado have justifiably relied on this guidance. By forcing government to act in neutral and generally applicable ways for all, the Free Exercise Clause, at least to date, has been a partner to the rule of law for everyone. That bodes well for the many potential victims of discrimination Colorado is seeking to protect. *See, e.g.,* Kristie L. Seelman & Mary Beth Walker, *Do Anti-Bullying Laws Reduce In-School Victimization, Fear-Based Absenteeism, and Suicidality for Lesbian, Gay, Bisexual, and Questioning Youth?*, 47 J. Youth & Adolescence 2301, 2301 (2018) (finding that LGBQ youth, particularly boys aged 15 or younger, experienced less bullying victimization in states with general or enumerated anti-bullying laws).

The following examples provide case-specific instances of the harm that results from exclusion of LGBTQ individuals in the school context. In 2010, a Colorado Catholic School denied admission to a child with lesbian mothers. Some members of that community expressed frustration with the decision, carrying signs, saying “the true heart of Jesus has love for all,” and one Catholic parishioner said, “the Catholic Church is a church that should be teaching acceptance and tolerance.” Sarah Netter, *Colorado Catholic School Boots Student With Lesbian Mothers*, ABC News (Mar. 8, 2010, at 11:22 PST), <https://abcnews.go.com/WN/colorado-catholic-school-kicks-student-lesbian-mothers/story?id=10043528>.

In 2019, St. Ann Catholic School in Prairie Village, Kansas, refused admission to a kindergarten student with same-sex parents. More than 1,000 people, including St. Ann parishioners and members of other area parishes, signed a petition asking the school to “prayerfully reconsider” the decision. The petition argued that excluding “a child of God” because the child’s parents’ union was not consistent with church teaching on sacramental marriage lacked “the compassion and mercy of Christ’s message.” Gwen Aviles, *Kansas Catholic School Rejects Kindergartner With Same-Sex Parents*, NBC News (Mar. 7, 2019, 4:52 CST), <https://www.nbcnews.com/feature/nbc-out/kansas-city-catholic-school-rejects-kindergartner-same-sex-parents-n980781>. The petition also noted that St. Ann accepted children born through in vitro fertilization, children whose parents were divorced, and non-Catholic students and families, all of which potentially conflict with some Catholic beliefs. *Id.*

In September 2019, twelve-year-old Michael McKeon, whose birth gender was female, suffered depression that resulted in hospitalization. Elizabeth O’Gorek, *Transgender Boy Finds Support in Community*, HillRag (June 27, 2020), <https://www.hillrag.com/2020/06/27/transgender-boy-finds-support-in-community/>. While hospitalized, Michael came out to his family as transgender. *Id.* His parents, Robert and Erin McKeon, then met with Michael’s teachers at Our Lady of Victory, his Catholic school in the Palisades neighborhood of Washington, D.C., to explain that Michael was transgender and that his gender identity was linked to his hospitalization. *Id.* Afterward, school administrators told the McKeons not to speak with Michael’s teachers about his gender identity. *Id.* The family later asked whether Michael could wear a

bow tie, part of the boys' school uniform. *Id.* The school denied that request and told the family that it would continue to refer to Michael by his birth name. *Id.* At re-enrollment time, the school declined to re-enroll Michael and also declined to enroll his younger sister Molly. *Id.*

Michael was deeply hurt by his school's rejection. Michael stated "he does not feel his uniqueness was respected by the school" and that "[b]eing rejected for something that's caused me so much trouble, and something I've had to come to terms with for over—I don't know, a lot of years—and just finally having the courage to say and then just getting kicked in the face. It wasn't fun." *Id.* "What really hurt was that they knew that I was not feeling well emotionally, but they still decided to kick me out of the school, . . . [t]hey didn't listen to arguments against them that were true. They just didn't want anything to do with me." *Id.* "They were telling me that who I am isn't who I am, like I was in the wrong, I was faking it. And then they just kicked me to the curb, and that was stressful." *Id.*

Post-rejection, siblings Michael and Molly enrolled at Capitol Hill Day School, where they were recognized as Michael and Molly. Capitol Hill accepts Michael for who he is. The McKeons' neighbors arranged a Pride party to honor Michael and other neighbors. They are proud of him. Michael is very happy in his neighborhood and at his new school. *Id.*

Michael's experience is described in Brian William Kaufman, *After Catholic School Refuses to Re-Enroll Transgender Student, Neighbors Throw Pride Parade*, New Ways Ministry (Sept. 5, 2020), <https://www.newwaysministry.org/articles/after-catholic-school-refuses-to-re-enroll-transgender-student-neighbors-throw-pride-parade>.

newwaysministry.org/2020/09/05/after-catholic-school-refuses-to-re-enroll-transgender-student-neighbors-throw-pride-parade/. These are serious harms that the State can legitimately avoid in its funded schools only through anti-discrimination requirements. What have the McKeon parents learned that can help inform this Court? “The key take away from their advocacy efforts is a steadfast desire to support their child in his time of great emotional suffering. The outpouring love of Michael’s parents and his local neighborhood is a reflection of the unconditional love that God provides to all creation.” O’Gorek, *supra*.

The Catholic school traumatized Michael. This is what the Petitioners could inflict on a much larger group than the one student, Michael, in this case. The state’s unwillingness to fund such behavior is also amply supported by important studies in the field that have shown that rejection, discrimination, and lack of affirming school environments are associated with serious mental-health harms for LGBTQ youth, including an elevated suicide risk. *See, e.g.,* Landon B. Krantz et al., *The Impact of Statewide Enumerated Antibullying Laws and Local School Interventions on School Spaces, Physical Harm, and Suicide Attempts for LGBTQ Youth*, 11 *LGBT Health* 531, 531 (2024) (finding that enumerated statewide antibullying laws were associated with an 18 percent lower risk of suicide attempts among LGBTQ youth, while policies not specific to LGBTQ youth did not reduce that risk); Mark L. Hatzenbuehler & Katherine M. Keyes, *Inclusive Anti-Bullying Policies and Reduced Risk of Suicide Attempts in Lesbian and Gay Youth*, 53 *J. Adolescent Health* S21, S21 (2013) (Across 31,852 Oregon 11th-graders, lesbian and gay youth in areas with

fewer sexual-orientation-inclusive anti-bullying policies were more than twice as likely to have attempted suicide. Generic policies that did not name sexual orientation showed no protective effect); Kaufman, *supra*; Russell B. Toomey, Amy K. Syvertsen & Maura Shramko, *Transgender Adolescent Suicide Behavior*, 142 *Pediatrics* e20174218 (2018); Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 *J. Adolescent Health* 503, 503–05 (2018) (finding that chosen-name use in more contexts was associated with lower depression, suicidal ideation, and suicidal behavior); Caitlin Ryan et al., *Family Acceptance in Adolescence and the Health of LGBT Young Adults*, 23 *J. Child & Adolescent Psychiatric Nursing* 205, 205–13 (2010) (finding that family acceptance predicted improved health and protected against depression and suicidal ideation and behavior).

Colorado purposefully treats same-sex individuals equally to everyone else and listens to them. The Petitioners refuse to participate alongside LGBTQ individuals by banning them from their schools, unlike the forty faith-based schools and six Catholic Charities schools that participate in the program. For Amici, listening to experience—not banning it—is recognized as the proper way to deal with what modern life teaches us. Amicus New Ways Ministry has understood the experience of LGBTQ individuals since its founding in 1977. *See* New Ways Ministry, *Our Mission*, <https://www.newwaysministry.org/about/> (last visited Aug. 11, 2026) (“New Ways Ministry is a Catholic outreach that educates and advocates for equity, inclusion, and justice for LGBTQ+ persons.”). Amici Ambassador Díaz, Father

Massingale, WATER, WOC and Call to Action all advocate a church and state that treat LGBTQ people equally. See, e.g., Miguel H. Díaz, *Queer God de Amor* 4 (2022). (“Confronting and accepting one’s queer humanity in the midst of strong opposition from familial, cultural, and religious influences can be quite daunting and for some life-threatening.”); Bryan N. Massingale, *Rev. Bryan Massingale on Black Theology, LGBTQ Catholics and the Future of the Church, Outreach* (July 14, 2026), <https://outreach.faith/2026/07/rev-bryan-massingale-on-black-theology-lgbtq-catholics-and-the-future-of-the-church/>. (“Because somewhere, somehow, someday, a queer person, a gay man, a lesbian woman, a nonbinary individual... will hear ... ‘You belong. You have a place. You have worth. You have value.’”); Diann L. Neu, *June 2021 WATERritual: Grateful, Proud, and Connected for Pride Month*, WATER (June 2021), <https://www.waterwomensalliance.org/june-2021-waterritual-grateful-proud-and-connected-for-pride-month/> (“We gather to rejoice that LGBTIA+ people and allies are working on and bringing together many struggles for justice.”); Emma Cieslik, *Gender Diversity Has Always Been Part of the Church*, U.S. Cath. (June 3, 2024), <https://uscatholic.org/articles/202406/gender-diversity-has-always-been-part-of-the-church/> (“Refusing to acknowledge LGBTQ+ people by the names that we have chosen further invisibilizes LGBTQ+ Catholics and our fight for the expansion of rights to protect LGBTQ+ individuals and our basic needs to survive.”). “At Quixote Center, we believe that human rights belong to everyone... regardless of who they love, how they identify, where they were born, or where they call home.” See Quixote Center, June 22, 2026, https://www.instagram.com/p/DZv_jeuNqXR/. See also Study Group N. 9, *Theological Criteria and Synodal Methodologies for*

Shared Discernment of Emerging Doctrinal, Pastoral, and Ethical Issues, For A Synodal Church 10 (working trans., 2026), https://www.synod.va/content/dam/synod/process/implementation/10workinggroups/final-reports/sg9/SG-9_Final-Report.pdf (“Particular attention must be paid to those ‘who are most vulnerable, or those who are “out of the game” or “outside the box,” with a view to gathering their unique experiences (including . . . people with same-sex attractions . . .).”).

Amici urge this Court to uphold Colorado’s child-centered UPK program that serves the compelling interest in preventing the harms their ministries work to prevent every day. They support the state in opposing the long traditions of homophobia and transphobia that have made Americans of every age suffer. In doing so, Colorado has acted through a neutral and generally applicable law, and its choice is consistent with this Court’s long-recognized doctrine under the First Amendment’s Free Exercise Clause of the United States Constitution.

CONCLUSION

Amici curiae’s religious mission is to ensure LGBTQ individuals are treated with dignity and equality, and they support the UPK program because it prevents the harms of exclusion and discrimination. For them, odious discrimination includes “discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, or gender identity.” Laura S. Underkuffler, *Odious Discrimination and the Religious Exemption Question*, 32 Cardozo L. Rev. 2069, 2072 (2011). Professor Underkuffler asks:

In those cases in which particular identity-based discrimination (on the basis of race, color, religion, national origin, sex, sexual orientation, or gender identity) is prohibited by law, should religious exemptions be permitted to override those laws? Should we, in other words, sanction religiously based, odious discrimination?

Id. at 2072. Professor Underkuffler’s answer is no, as this Court’s answer has been in the past and should be again in this case. *Id.* If this Court were to side with the Petitioners and force the state to pay for a discriminatory program, it will make the Petitioners’ discrimination much stronger, more odious, and more harmful to children. It will also upend the rule of law.

Amici curiae urge this Court to affirm its longstanding rule that neutral and generally applicable laws are subject to rationality review under the Free Exercise Clause and uphold the lower courts’ opinions holding that Colorado’s Universal Preschool Program is consistent with the First Amendment. Were this Court to hold that strict scrutiny applies in this case, *Amici* further urge this Court to uphold the UPK, because the prevention of government-sponsored harm to LGBTQ children and families serves a compelling interest in a narrowly tailored fashion.

For the foregoing reasons, *Amici curiae* urge this Court to affirm the decisions below.

Respectfully submitted,

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