

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 Third Circuit**

**BRIEF OF AMERICAN ATHEISTS, INC.
AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENTS**

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INTEREST OF AMICUS CURIAE¹

American Atheists, Inc., is a national 501(c)(3) civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the “wall of separation” between government and religion created by the First Amendment. American Atheists strives to promote understanding of atheists through education, advocacy, and community-building; works to end the stigma associated with atheism; and fosters an environment where bigotry against our community is rejected.

In 2019, American Atheists conducted the largest survey of nonreligious Americans ever fielded, including more than 1,000 Colorado residents and represents Colorado families eligible for the program at issue here. Based on data from this survey and the testimonials of atheists and other nonreligious Americans who face discrimination because of their nonreligious identity, American Atheists is uniquely able to illustrate the harms of discrimination faced by the people it represents. As a membership organization representing the interests of atheist and nonreligious families across the country, American Atheists opposes any effort to allow invidious religious discrimination against children participating in publicly funded education programs in the United States.

¹ Amicus has no parent company nor has it issued stock. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than amici made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

The Petitioners seek a complete exemption from the nondiscrimination requirement the State of Colorado imposes on preschools participating in its Universal Preschool Program. Such an exemption would allow Petitioners and other religious preschools participating in the program to engage in invidious discrimination, including discrimination that the Constitution prohibits, while receiving government backing. Such a holding would have serious consequences throughout the country, particularly in states where leadership is overtly hostile toward minority communities.

Colorado seeks to provide its people with the opportunity to receive a high-quality preschool education. *St. Mary Cath. Par. in Littleton v. Roy*, 154 F.4th 752, 757 (10th Cir. 2025). Colorado, like every other state, has a compelling interest in preventing invidious discrimination in publicly funded education programs. *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983).

In order to ensure that it achieves that aim, Colorado implemented a requirement that all preschools participating in the program agree to a nondiscrimination provision. Accommodating the Petitioner's religious exercise in this case would impose an unconscionable burden on those who are not receiving the accommodation, *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710 (1985), namely, the children and families of Colorado.

The nonreligious community has long suffered from invidious discrimination by religious entities providing education, as well as social support services. This discrimination comes in numerous forms and has

longlasting, deleterious consequences for children and families. Children from nonreligious families who manage to get enrolled at religious schools have been denied food, excluded from group activities, and been denied opportunities for academic achievement and advancement.

No American should be forced to fund, through their own tax dollars, their own mistreatment. Colorado, rightly, imposes its nondiscrimination requirement in order to avoid exactly that. It must be allowed to continue protecting its residents.

ARGUMENT

I. Colorado’s nondiscrimination requirement meets strict scrutiny.

Colorado established its UPK program so that all families in the state could provide their children with a high-quality preschool education. *St. Mary Cath. Par. in Littleton v. Roy*, 154 F.4th 752, 757 (10th Cir. 2025). A key mechanism used by the state to ensure that such an opportunity is not a hollow promise was the requirement that all preschools participating in the program agree to a nondiscrimination provision. Preventing such invidious discrimination is a compelling government interest that justifies a restriction on religious exercise. *Bob Jones Univ. v. United States*, 461 U.S. 574, 604 (1983). Accommodating the Petitioner’s religious exercise in this case would impose an unconscionable burden on those who are not receiving the accommodation, *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710 (1985), namely, the children and families of Colorado.

A. The prevention of invidious discrimination is a compelling government interest.

Over 40 years ago, this Court found that the government’s interest in preventing invidious discrimination in education is “fundamental [and] overriding.” *Bob Jones* at 604. The Court explained that “not all burdens on religion are unconstitutional. The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.” *Id.* at 603 (cleaned up). The Court in *Bob Jones* specifically concluded that the denial of a financial benefit to a religious school, while burdensome, “will not prevent those schools from observing their religious tenets.” *Id.* at 604; *see also Bowen v. Roy*, 476 U.S. 693, 706 (1986).

The Petitioners here seek a complete exemption from the UPK’s nondiscrimination requirements, permitting them to discriminate on the basis of not only sexual orientation and gender identity but also on the basis of religion and race. *St. Mary*, 154 F.4th at 757. As will be discussed below in Part II, permitting invidious religious discrimination in government funded social programs, and in education specifically, can have disastrous long-term consequences for children and families, exactly the kind of harm Colorado seeks to prevent through the nondiscrimination provision. Nondiscrimination provisions like Colorado’s, which have no exemptions or carve-outs and are limited to suspect classes, have been found to be narrowly tailored to the compelling interest of preventing discrimination in education. *St. Dominic Acad. v. Makin*, 744 F. Supp. 3D 43, 79 (D. Me. 2024), *aff’d in part and rev’d on separate grounds*, 181 F.4th 11 (1st Cir. 2026).

B. Accommodating Petitioners by removing nondiscrimination requirements causes substantial harm to children and families.

Exempting religious entities from legal obligations in a manner that directly and substantively harms others “contravenes a fundamental principle of the Religion Clauses.” *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710 (1985). A religious exemption that gives “preference [to] some at the expense of others” does not accommodate religion, but rather amounts to an unconstitutional establishment of religion. *ACLU v. Black Horse Pike Regional Bd. of Educ.*, 84 F.3d 1471, 1488 (3d Cir. 1996); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 729 n.37 (2014); *Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005); *Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 28 (1989); *Edwards v. Aguillard*, 482 U.S. 578, 617-18 (1987); *Corp. of Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 334-35 (1987); *Thornton*, 472 U.S. at 710; *Wis. v. Yoder*, 406 U.S. 205, 220-21 (1972). Such preferential treatment bends the “play in the joints” between the religion clauses beyond the breaking point. *Walz v. Tax Com. of New York*, 397 U.S. 664, 669 (1970); *see also Hobbie v. Unemployment Appeals Com.*, 480 U.S. 136, 144-45, 145 n.11 (1987); *Presiding Bishop*, 483 U.S. at 334-35 (“At some point, accommodation may devolve into an unlawful fostering of religion.” (internal quotation marks omitted)). It is a perversion of religious liberty and turns the intent of the Framers on its head.

This Court regularly strikes down purported accommodations of religious exercise that place substantive burdens on the shoulders of those not benefiting from the exemption and thus violate the government’s

obligation of neutrality between religious denominations and between religion and nonreligion, *Thornton*, 472 U.S. at 710 (statute’s “unyielding weighting in favor of Sabbath observers over all other interests” was invalid); *see also Texas Monthly*, 489 U.S. at 15, while exemptions that have a *de minimus* impact on the interests of third parties have been deemed permissible accommodations, *Hobby Lobby*, 573 U.S. at 732; *Hobbie*, 480 U.S. at 145 n.11; *Yoder*, 406 U.S. at 234; *Walz*, 397 U.S. at 673; *Zorach v. Clauson*, 343 U.S. 306, 315 (1952). *Compare Illinois ex rel. McCollum v. Bd. of Educ.*, 333 U.S. 203 (1948) with *Zorach v. Clauson*, 343 U.S. 306 (1952).

As will be discussed in the next section, accommodating religious preschools by absolving them of any need to comply with nondiscrimination requirements does substantial harm to the children and families that Colorado’s UPK program is intended to serve. Nonreligious children at religious schools have been denied meals, denied opportunities for academic advancement, excluded from activities, and excluded from enrollment altogether as a result of their families’ nonreligious beliefs. Discriminatory actions like these, which the Court would allow if it sides with the Petitioners, cause serious, long-lasting damage to the children and families subjected to invidious discrimination. This Court must balance these harms against the interests of the Petitioners, who face only a financial loss.

II. Widespread, religiously motivated, invidious discrimination against the nonreligious does serious, lasting harm.

Atheist children and families, both in Colorado and around the country, experience the harmful consequences of invidious religious discrimination first

hand each and every day. In 2019, American Atheists conducted the U.S. Secular Survey in order to assess the needs and experiences of atheist, agnostic, Humanist, and otherwise-nonreligious Americans. Somjen Frazer, Abby El-Zhifei, & Alison M. Gill, *Reality Check: Being Nonreligious in America*, 4 (2020), <https://www.secularsurvey.org/s/Reality-CheckBeing-Nonreligious-in-America.pdf> (hereinafter “Reality Check”). Nearly 34,000 individuals responded to the survey.² *Id.* at 15. More than one thousand respondents were Colorado residents. *Id.* More than one in ten (3,421) participants were between the ages of 18 and 24 (inclusive). S. Frazer, A. El-Shafei, & Alison Gill, *The Tipping Point Generation: America’s Nonreligious Youth* (2020), <https://www.secularsurvey.org/s/The-Tipping-Point-Generation-Americas-Nonreligious-Youth.pdf> (hereinafter “Tipping Point”). Their individual experiences, and the trends captured by the survey, put the impact of invidious discrimination by religious entities into stark relief.

A. Nonreligious Americans face widespread religious discrimination.

Participants in the U.S. Secular Survey were given an opportunity to describe their experiences of invidious religious discrimination in their own words. Over 9,000 of them provided written responses. Survey Responses, 2019 U.S. Secular Survey (Nov. 2, 2019) (on file with amicus) (“Survey Responses”). Many described instances in which they faced discrimination in

² The 33,897 participants are a convenience sample and the survey “is not generalizable to the entire nonreligious population of the United States.” *Reality Check* at 48. The individual experiences of discrimination experienced by the participants, and the resulting harm to them, are nonetheless probative. Their voices must be heard.

religious private education and by religious entities providing community services. The responses illuminate the many forms religious discrimination can take and the degree to which discrimination, or the threat thereof, discourages people from seeking out services.

1. Religious private schools discriminate against nonreligious Americans.

In the present case, invidious discrimination by religious preschools and daycares is often framed as a question of merely whether a child is *admitted* to a particular daycare. However, nondiscrimination provisions generally, and Colorado’s UPK nondiscrimination requirement specifically, protect against more insidious forms of discrimination as well. One American Atheists member and Colorado resident,³ who attended a religious daycare as a child, described being “sent away from the snack table” after they “refus[ed] to pray before daycare snacks.” They also faced harassment for “refus[ing] to say ‘one nation under God’ in the pledge.” *See Survey Responses*. It is one thing for a daycare or school to simply refuse a child’s enrollment. There, a family can (hopefully) receive services from a different facility more interested in caring for children than indoctrinating its own religious beliefs. But to enroll a child, to be entrusted by parents with the care of their child, and then *deny that child food* because the family’s beliefs are different than the daycare’s beliefs is truly heinous. Yet Petitioners here argue that religious entities *must*

³ Respondents were anonymous but did provide demographic information, including the state in which they resided at the time of their participation in the U.S. Secular Survey. *See Survey Responses*.

be allowed to engage in such discrimination while administering a government program.

Many parents⁴, either because of their nonreligious beliefs or simply out of a concern to avoid harmful religious discrimination, may desire to send their children to participating preschools with specifically secular curricula. Those parents are likely to face two significant hurdles: First, there may be “preschool deserts,” areas in which the only practical preschool options are sectarian. Second, schools with religious elements in their curricula often do not make that fact apparent prior to a child’s enrollment.

Secular preschool deserts (ie., communities in which there are no practical secular preschool options for nonreligious parents) exist in communities around the United States. Multiple participants in the U.S. Secular Survey reported having no choice but to enroll their child in a religious preschool or daycare⁵ because secular options simply were not available.⁶ *See Id.* One Alabama resident explained: “It has been hard to find a daycare that isn’t Christian, let alone atheist. Our daughter is in a Jewish daycare and they respect that our family is atheist and that we don’t say the pledge

⁴ While the present case arises only from Colorado’s UPK program, other states may create similar programs. Parents residing in those states would face essentially the same circumstances as parents residing in Colorado.

⁵ Nonreligious parents who homeschool their children reported similar struggles. *See Id.*

⁶ This Court recently dealt with the situation faced by the State of Maine, where significant portions of the population reside in what can only be characterized as public school deserts. *Carson v. Makin*, 596 U.S. 767, 773 (2022).

of allegiance.” *See Id.* An American Atheists member in California recalled:

The greatest stigmatization occurred when I was a child. The best day care and after school programs were religious. At first, I was included in activities, like choir and church services, and I could choose to participate or just sit quietly, but later I was asked to not even attend, so I had to sit outside with a single guardian and no other children.

See Id.

Even when parents are able to find a preschool or daycare that presents itself as secular, they cannot be sure the program will *actually* meet that expectation. One Mississippian explained: “My son’s private, supposedly secular daycare apparently says prayers before lunch every day and puts on an incredibly awkward and racist Thanksgiving celebration.” *See Id.* A parent in Texas described a similar experience, stating “I have to allow my 4 yr old to be a part of the ‘traditional’ nativity Christmas program at his NONRELIGIOUS school.” *See Id.* (emphasis in original).

Nonreligious parents whose choices are limited to religious preschools and daycares face burdens that parents able to enroll their children in preschools that share their beliefs do not face. One parent (a different California resident) described the challenge of having to constantly counter the religious indoctrination their child was subjected to:

[M]y son went to a religious preschool for the sake of affordability and we were very careful to talk to him about what he learned in chapel every [morning]. It was a STEM school

outside of that, so he got a heaping dose of science too, and we always checked to make sure it was real science.

See Id. The challenges go beyond the need to engage in more vigilant oversight of the education of their children. One Michigan parent described the constant fear they face: “I am terrified for my children if their daycare teachers find out we are an atheist family. I am scared that they will no longer receive equal or adequate care.” *See Id.*

Of course, this discrimination is not limited to the daycare and preschool settings. Several parents who participated in the survey described having the same struggles when homeschooling their children. A Texas parent explained:

I homeschool my two youngest daughters, both teenagers, and find that the majority of homeschool groups and classes are religious based, and non-religious people are not welcome. Many co-op groups require signed statements of faith! Although there are secular groups and classes, their definition of secular is often not the same as mine (there is often a lack of fact based science or the idea that curriculum with religious over/undertones is acceptable if it is otherwise a good curriculum, neither of which is acceptable to me.) ... There is definitely a stigma among homeschoolers against non-religious homeschoolers, and even against religious homeschoolers who teach using only secular materials.

See Id.

Nonreligious grade school students at religious private schools regularly face discrimination that can have serious academic consequences. One Florida resident described their childhood experience:

I was sent to Christian schools when I was young. I was a good student. In my junior year, I did not get into the National Honor Society even though I met all the criteria — my principal called me into his office and told me that while my grades and activities were excellent, they felt that I did not ‘have a strong enough relationship with the Lord’ so they did not put me into National Honor Society. I will never forget the anger I felt in that moment.

See Id. A Massachusetts child was subjected to even more severe treatment:

I was indifferent to religion until I attended a private Catholic school. My teacher told me that if I didn't eat the ‘flesh of Christ’ I wouldn't be allowed to pass into the next grade. I ate the pasty wafer and went back to public school the next year.

See Id.

It should not go unremarked upon that exempting religious schools from nondiscrimination requirements impacts the employees of these facilities as well. Eight educators who participated in the survey remarked upon the issues they face on the job at religious private schools. One Texas teacher explained:

[W]hen I am with students, I must be mindful of only expressing opinions that align with the Catholic faith tradition. At other times, I

use the socratic method to encourage students [to] use their critical thinking skills when I cannot answer their queries directly.

See Id. A Utah teacher had a similar experience:

I teach at a Christian school. The administration is aware that I am secular, but feels that I am a good enough teacher so that they're comfortable having me around. However, I am under a gag order so I can't be openly secular in front of my colleagues, let alone the students. (Since my colleagues regularly talk about their faith in front of students, my reticence in the matter has often led to awkward conversations.)⁷

See Id. Another participant, an Ohioan, described how broadly the restrictions can spread:

I work at a religious daycare, where I have to hide my true beliefs. We've had physical therapists be told they can't do yoga with the kids, as well as teachers they couldn't meditate/do yoga in the lounge. The kids can dress up for Halloween (after a lot of fighting for it) but can't be witches or ghosts. I regularly lie about believing in god... just for fear of my coworkers judging me.

See Id. Similarly, an Indiana professor stated, "I work at a Catholic University and do not feel comfortable

⁷ If they worked at a preschool in Colorado, these Texas and Utah residents' responses would bring this Court's recent religious jurisprudence into direct conflict with its recent free speech jurisprudence. Their employers would be restricting their expressive activity while administering a government program, implicating *Kennedy v. Bremerton School District*, 597 U.S. 507, 543-44 (2022).

telling people I'm an atheist. If directly asked I would answer truthfully, but I do not volunteer that information." *See Id.*

Beyond discrimination is the specter of actual abuse. One Californian put this into stark relief:

As an infant and toddler I was abused in a church owned daycare, and the pastor of our church sexually abused my mom. We left that church when I was 4. We went to many churches throughout my childhood, but it was clear no church would accept us as abuse victims/survivors of the church, and I couldn't stand the hypocrisy of Christians who turned their back on us because my mom refused to "forgive" the pastor.

See Id. A Missouri parent described daycare staff's emotionally abusive tactics:

My child's day care discovered that I was an atheist. At the time, I had just left my husband because he treated me like dirt because I came out as an atheist. He was stalking me, I had a restraining order and the day care workers were well aware of it. One day, I arrived to pick up my daughter and the day care worker pretended that [my husband] picked up my child, leading me to believe that she had been kidnapped. It was a cruel prank on her behalf because she thought I'd beg her god for help.

See Id.

Were this Court to side with the Petitioners in this case, it would be enabling preschools providing a government-funded service to engage in all the

discriminatory conduct described by these nonreligious Americans.

2. Religious social service providers discriminate against nonreligious Americans.

The states have enlisted the assistance of religious entities when providing numerous, vital social services. Unfortunately, invidious, religiously motivated discrimination against nonreligious Americans is just as prevalent in that context and often happens with the government's knowledge and support.

Over half a dozen participants in the survey faced discriminatory actions when receiving substance use disorder treatment services, often as part of a government-mandated recovery program. One South Carolinian said that, "[a]s a recovering addict, I have been mocked, ridiculed and told I have no chance of recovery unless I accept spiritual principles and believe in some deity." *See Id.* One Michigander described their experience and the steps they are trying to take to remedy the problem faced by nonreligious people recovering from addiction:

Religiosity and religious discrimination is rampant in Alcoholics Anonymous. That's why many of us with long-term sobriety in AA (36 years in my case) are advocating for a more secular AA by organizing and starting new secular AA groups and meetings.

See Id. A Texan recovering from addiction put it another way: "An atheist in conventional AA is highly problematic. 'Get God or die' doesn't work for us." *See Id.*

Nonreligious Americans seeking to volunteer and assist those in need face issues as well. Another Michigander recounted:

When I mentored refugees in Grand Rapids, the new person in charge dropped me from consideration upon learning that I was atheist. I spent six childhood years in WWII refugee camps and had something to [contribute].

See Id.

A Washington state educator described being “[s]urreptitiously removed from volunteer teaching math/science in a home school collaborative.” *See Id.*

One New Jersey family facing a truly tragic situation reported the mistreatment they faced:

Back in 2007, my wife and I had to relocate to Dallas and had to stay in a Christian-based homeless shelter with our two children. After about a month and a half, we were asked to leave because my wife identified as "Wiccan". They also had not just weekly chapel services (where they passed around the collection plate - to *homeless people*), but every Sunday was recycling chapel services. Ended one service, then back into another immediately in the same chapel. When we were asked to leave, they actually told us, "You two can leave, but you can leave your children with us." We took our children with us.

See Id (cleaned up) (emphasis in original).

B. Nonreligious Americans reported widespread religious discrimination and suffered serious, long-lasting harm.

These anecdotal experiences show the real-world impact that religious discrimination has on children and families and the numbers show that they are not outliers. Participants in the U.S. Secular Survey were asked whether, in the prior three years, they had “experienced a negative event related to being secular or nonreligious” in a variety of settings. *Reality Check* at 22. Nearly three in ten of those responding reported facing discrimination in education (29.4%).⁸ *Id.* at 24. That number was even higher for those between the ages of 18 and 24: “[N]early one third (33.6%) of youth participants who attend school or who have children attending school reported having had negative experiences in an educational setting within the past three years because of their nonreligious identity.” *Tipping Point* at 9.

Discrimination in education can have a life-long negative impact on young people, and unfortunately, the data shows that nonreligious youth experience significant discrimination across the country because of their nonreligious beliefs. This type of discrimination can lead to young people being

⁸ Another 7.2% reported being “unsure” if they faced discrimination in education.

The answer ‘unsure’ was included because it is common for members of stigmatized groups to be unsure whether discrimination is occurring, either because they have low expectations about their treatment by others or because of some other form of ambiguity in the situation.

Reality Check at 22.

pushed out of school, to young people choosing not to seek out higher education, and to negative health and psychological outcomes, all of which can have significant implications for employment and future earning potential.

Id.

One in ten (10.6%)⁹ reported facing potential discrimination when receiving public benefits. *Reality Check* at 24. Discrimination was also notable in other settings in which religious entities are the dominant players. More than 20% of respondents reported potentially facing discrimination when doing volunteer work. *Id.* A similar proportion of respondents faced potential discrimination in the provision of mental health services and, separately, substance abuse services. *Id.* Over 15% reported potential discrimination when receiving other forms of health care services. *Id.* Five percent faced discrimination when seeking to adopt or foster children. *Id.* at 25.

Experiences of discrimination (and the associated stigma) are linked to a significantly higher tendency to screen positive for depression. *Id.* at 30. In particular, those who reported facing discrimination in the provision of public benefits were twice as likely to suffer from depression (99.6% increase). *Id.* “Those [age 18-24] who reported education discrimination due to their nonreligious beliefs were 13.6% more likely to screen positive for depression than those that did not.” *Tipping Point* at 14.

This discrimination is widespread and leads to serious, long-lasting damage. States like Colorado

⁹ For younger participants (age 18-24), that proportion was higher: 13.7%. *Tipping Point* at 10.

have a compelling interest in guarding against such discrimination and the nondiscrimination requirement Colorado imposes on all providers in the UPK program is narrowly tailored to that end. The U.S. Constitution permits, and sound governance and common sense commend, the state to do so.

CONCLUSION

For the reasons stated above, American Atheists urges the Court to uphold Colorado's UPK program and find against the Petitioners on both questions presented.

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