

No. 25-581

IN THE
Supreme Court of the United States

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

Petitioners,

v.

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

Respondents.

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

**BRIEF OF *AMICI CURIAE* COLAGE,
FAMILY EQUALITY, AND ROCKY MOUNTAIN
EQUALITY IN SUPPORT OF RESPONDENTS**

NIKHIL VASHEE
FAMILY EQUALITY
475 Park Avenue South,
Suite 2100
New York, NY 10016

MARGARET YORK
Counsel of Record
COLAGE
P.O. Box 29295
Providence, RI 02909
(917) 979-3404
meg@colage.org

Counsel for Amici Curiae

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iii
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION.....	3
SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	5
I. Colorado designed its Universal Preschool program to give all eligible children equal opportunity to enroll in high- quality education while preserving family choice among participating providers, which include faith-based schools	5
II. LGBTQ+ families, like other families, may value the choice of religious education, even when a faith community or school does not fully embrace them	8
III. Colorado’s UPK program preserves faith- based schools’ curricular autonomy but does not permit participating providers to turn away eligible children based on their parents’ protected-class status	13

Table of Contents

	<i>Page</i>
IV. Petitioners’ requested exemption would deny children in LGBTQ+ families equal opportunity to access the universal public benefit Colorado chose to provide, with both dignitary and practical consequences	16
A. State-sponsored exclusion inflicts a dignitary harm that does not depend on a child’s immediate awareness	17
B. Exclusion would deny children with LGBTQ+ parents access to some participating providers, removing options Colorado made part of the public benefit	20
CONCLUSION	25

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES	
<i>Brown v. Bd. of Educ.</i> , 347 U.S. 483 (1954).....	17, 18
<i>Gilmore v. City of Montgomery</i> , 417 U.S. 556 (1974)	15
<i>Norwood v. Harrison</i> , 413 U.S. 455 (1973).....	15
<i>Plyler v. Doe</i> , 457 U.S. 202 (1982).....	17
<i>Roberts v. U.S. Jaycees</i> , 468 U.S. 609 (1984).....	18
STATUTES	
Colo. Rev. Stat. § 26.5-1-109(1)(a) (2025).....	5
Colo. Rev. Stat. § 26.5-1-113(1)(a) (2025).....	5
Colo. Rev. Stat. § 26.5-4-202 (2025)	5
Colo. Rev. Stat. § 26.5-4-202(1)(b) (2025)	8
Colo. Rev. Stat. § 26.5-4-203(12) (2025)	8
Colo. Rev. Stat. § 26.5-4-204(1) (2025)	8

Cited Authorities

	<i>Page</i>
Colo. Rev. Stat. § 26.5-4-204(2) (2025)	8
Colo. Rev. Stat. § 26.5-4-205(1)(a) (2025)	6
Colo. Rev. Stat. § 26.5-4-205(1)(b) (2025)	15
Colo. Rev. Stat. § 26.5-4-205(2)(b) (2025)	6, 14

OTHER AUTHORITIES

Children’s Bureau, U.S. Dep’t of Health & Hum. Servs., <i>Child Welfare Outcomes 2016: Report to Congress</i> (2019), https://www.acf.hhs.gov/sites/ default/files/cb/cwo2016_exesum.pdf	23
Colorado Health Institute, <i>2023 CHAS: LGBTQ+ Health</i> (2024), https://www. coloradohealthinstitute.org/research/2023-chas- lgbtq-health	23
Guthrie Gray-Lobe, Parag A. Pathak, and Christopher Walters, <i>The Long-Term Effects of Universal Preschool in Boston</i> , 138 Q.J. Econ. 363-411 (2023)	6
Nat’l Inst. for Early Educ. Rsch., Positive Effects of Universal High-Quality Preschool Persist Through 10 th Grade (2021), https://nieer.org/ research-library/positive-effects-universal-high- quality-preschool-persist-through-10th-grade	6

INTEREST OF *AMICI CURIAE*¹

Amici Curiae are nonprofit organizations that work to promote the best interests of children and families, in particular children with lesbian, gay, bisexual, transgender, or queer (LGBTQ+) parents and LGBTQ+ families. Each of the organizational *Amici* has heard from their constituents — typical American families, many of whom belong to communities of faith — about the legal, social, and psychological harm of overcoming official governmental opprobrium in the form of state-sponsored discrimination. *Amici Curiae* share these stories in this brief.

COLAGE is a national organization that unites people with one or more lesbian, gay, bisexual, transgender, queer, intersex, and/or asexual parents into a network of peers and supports them as they nurture and empower each other to be skilled, self-confident, and just leaders in our collective communities. Since 1990, COLAGE has worked to meet the needs of these individuals and maintains an ongoing interest in ensuring that children with LGBTQ+ parents are not subject to discrimination based on who their parents are. COLAGE submits this brief on behalf of all the children and youth the organization has supported and continues to support.

1. In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici Curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Family Equality is a national organization that connects, supports, and represents LGBTQ+ parents and their children. Since 1979, Family Equality has worked to support all families, regardless of creation or composition, through law, policy, and public education. Family Equality has an ongoing interest in ensuring that LGBTQ+ parents and their children have equal access to public benefits. Family Equality submits this brief in support of LGBTQ+ families.

Rocky Mountain Equality (RMEQ) is a nonprofit organization in Colorado that works collaboratively to create connection and provide advocacy, education, research, cultural events, and responsive programs and services that ensure LGBTQ+ people, families, and communities thrive. Since 1994, RMEQ has educated, advocated, and provided support to LGBTQ+ individuals and families in Colorado. RMEQ submits this brief in support of the Coloradans directly impacted by the outcome of this case.

INTRODUCTION

St. Mary wants public money to turn a four-year-old away based on who their parents are. I know what that message does to a child. A program called “universal” has to mean every family, including one like mine, full of love.

Joseph Wright, adult child of a lesbian mom.²

There is something uniquely insidious about using young children as the vehicle for denying families equal access to a public benefit. When the State permits discrimination against four-year-olds because of their family composition, the immediate sting is felt by their parents, but the corrosive message is that some children and families are less entitled than others to participate equally in public life.

In 2020, Coloradans voted to approve Universal Preschool (UPK), a taxpayer funded program designed to make high-quality preschool available to every eligible child. Petitioners do not contend that religious providers cannot participate in the UPK program. Petitioners instead argue that certain Catholic schools are being forced out of the program because of their unwillingness to enroll children with LGBTQ+ parents, a practice they claim is incompatible with their ability to form

2. Statement from Joseph Wright to COLAGE, Family Equality, & Rocky Mountain Equality (July 28, 2026); Video Interview by Family Equality with Joseph Wright (Aug. 11, 2026). All statements cited in this brief are on file with *Amici* and the undersigned counsel.

students in the Catholic faith. This Court must determine whether Colorado is required to subsidize discriminatory admissions practices when UPK schools seek to exclude otherwise eligible children because they have LGBTQ+ parents. For the excluded children and families, the answer determines whether Colorado's promise of universal preschool is genuinely universal.

SUMMARY OF ARGUMENT

Colorado's Universal Preschool program reflects the State's determination that high-quality early childhood education is a public good worthy of substantial public investment. To maximize educational opportunity and parental choice, Colorado adopted a mixed-delivery system that welcomes public and private providers, including faith-based providers. Families with LGBTQ+ parents may value and choose religious education for the same reasons many other families do — faith formation, moral development, community, and continuity with their own religious traditions.

Religious schools are fully eligible to participate in Colorado's UPK program, and many do. Participation, however, is voluntary, and providers choosing to receive taxpayer funding must comply with the same equal-opportunity requirements as every other participating provider. These requirements do not regulate religious doctrine or dictate religious instruction. They simply condition the voluntary receipt of public funds on providing eligible children an equal opportunity to enroll in the publicly funded benefit. When participating providers exclude eligible children from enrollment simply because they have LGBTQ+ parents, these children are denied

publicly funded educational opportunities available to their peers, resulting in dignitary and practical harm.

Amici COLAGE, Family Equality, and Rocky Mountain Equality offer the perspectives of adult children with LGBTQ+ parents, LGBTQ+ adults, and Catholic parishioners — those who live every day within the family structure at the heart of this lawsuit but whose voices are too often missing from debates like this one.³ On behalf of these individuals, *Amici* urge the Court not to undermine the very promise of universal preschool by permitting participating providers to deny some eligible children access to publicly funded educational opportunities based solely on the protected characteristics of their parents.

ARGUMENT

I. Colorado designed its Universal Preschool program to give all eligible children equal opportunity to enroll in high-quality education while preserving family choice among participating providers, which include faith-based schools.

Colorado’s Universal Preschool program reflects a legislative judgment shared by educators, developmental psychologists, and policymakers nationwide: high-quality preschool produces lasting educational and developmental benefits for young children. Colo. Rev. Stat. (C.R.S.) § 26.5-4-202; *see also* C.R.S. §§ 26.5-1-113(1)(a), 26.5-1-109(1)(a). When Colorado voters approved the taxpayer-funded

3. Some of the statements included in this brief originated in published literature. Others are drawn from the personal knowledge of the *Amici* and their constituents.

program, the General Assembly accordingly directed the Colorado Department of Early Childhood (CDEC) to establish quality standards that reflect nationally recognized best practices. C.R.S. § 26.5-4-205(1)(a). High-quality preschool is associated with improved cognitive development, stronger language acquisition, better social-emotional skills, increased readiness for kindergarten, and improved educational outcomes that extend well beyond the preschool years.⁴ These positive academic and social outcomes have been demonstrated across demographic groups, suggesting that universal preschool benefits all who enroll.⁵ For these reasons, Colorado chose to create a UPK program that provided all Colorado families equal opportunity to enroll in quality early childhood education. C.R.S. § 26.5-4-205(2)(b). Universal access was not incidental to the UPK program, but central to its design.

Annastasia Martineau’s first experience with school began at three years old. As a child from a low-income family, having access to a publicly funded, structured setting where she could learn and explore meant everything to her. It was in preschool that Annastasia learned how to read, build problem-solving skills, and make lifelong relationships with peers and adults. Annastasia describes her opportunity to attend a publicly funded preschool as

4. Nat’l Inst. for Early Educ. Rsch. National Institute for Early Education Research, Positive Effects of Universal High-Quality Preschool Persist Through 10th Grade (2021), <https://nieer.org/research-library/positive-effects-universal-high-quality-preschool-persist-through-10th-grade>.

5. Guthrie Gray-Lobe, Parag A .Pathak, and Christopher Walters, *The Long-Term Effects of Universal Preschool in Boston*, 138 Q.J. Econ., 363-411 (2023).

giving her “access to the same educational leg-up that the wealthy families in my neighborhood had.”

Annastasia understands both the benefits of universal preschool and the harms that can come from exclusion based on who her parents are. She explains:

Having queer parents with already limited resources, if a publicly funded preschool near me had decided my family wasn’t allowed, there wouldn’t have been a Plan B. I grew up in a rural area that had two options: a [publicly funded] preschool system and a very expensive Montessori school. For my family, this meant there was really only one option. If I had been denied the equal educational opportunity of my peers from such a young age, I don’t think I would have grown up to be the educator I am today.

Currently, Annastasia is a school psychologist who has had the “immense privilege” of working in a Universal Preschool (UPK) program for several years. She remains in contact with many of her students’ families from those years and has witnessed firsthand how access to high-quality education from an early age resulted in positive academic outcomes and social-emotional intelligence for those students, just as it did for her.⁶

Understanding the lasting benefits of accessible early childhood education, Colorado’s UPK program was

6. Statement from Annastasia Martineau to COLAGE (Aug. 6, 2026); Telephone Interview with Annastasia Martineau by COLAGE (Aug. 12, 2026).

expressly designed to enable families to select from a broad range of providers in their communities. C.R.S. § 26.5-4-204(1)-(2). Pet.App.60a. Mixed delivery, meaning the inclusion of school- and community-based providers, including faith-based providers, is a foundational aspect of the UPK program. *See* C.R.S. §§ 26.5-4-202(1)(b); 26.5-4-203(12). Colorado’s welcoming of religious providers is not merely theoretical: six Catholic Charities providers belonging to the Archdiocese of Denver participate in UPK, as do 40 other faith-based providers. Pet.App.303a; Resp.Supp.App.92a–95a.

II. LGBTQ+ families, like other families, may value the choice of religious education, even when a faith community or school does not fully embrace them.

Colorado’s solicitation of faith-based providers reflects in part the importance many families place on religious early childhood education. Pet.App.21a. The desire for religious education does not disappear because a child has LGBTQ+ parents. Pet.App.93a; JA439. Some families may value a faith-based education even while understanding that their family may not be fully welcomed by the institution providing it.

Take Helen Smith, for example. Helen’s Norwegian-American family has been part of a faith community for hundreds of years. “Church has always been very connected with our heritage,” Helen explains. Smiling, she continues, “We make the foods; we do the dances; we have the folk costumes; and we go to church.” When Helen became a parent, it was not even a question — she knew she wanted to raise her child in faith. Today, Helen is touring preschools in her area for her now four-year-old

son. Her preference would be to enroll him in a faith-based program. “It’s important for [my son]. It helps him stay connected to his heritage and provides a common language for him to connect with his family.”

Helen’s dual identity as the child of a gay father and an LGBTQ+ woman did not diminish her connection to her faith; it strengthened it. She describes her church community as “chosen family,” and although Helen has moved many times, she prioritizes finding a local church no matter where she lives. “It’s felt really lonely when we haven’t had that,” Helen explains. Helen’s commitment and church attendance has remained steadfast, even when her local church has been less than supportive of LGBTQ+ families. When questioned about why this continues to be a priority for her, Helen’s answer is simple: “It’s my community. It’s my faith. It’s important.”⁷

Stasia Bakhit is a faithful Catholic parishioner who grew up attending the Catholic school across the street from her house. “Actually,” Stasia shares, “my dad went there and my brothers all did as well. I grew up very, very Catholic.” In addition to being Catholic, Stasia is a lesbian. While Stasia has always been considerably involved in her parish, she acknowledges that her experience with the Church and school has not always been easy. “But in my opinion,” she shares, “the pros outweigh the cons.” When Stasia became a parent, she knew she wanted to send her kids to the same Catholic school generations of her family had attended. This was important to her for a

7. Statement from Helen Smith to COLAGE (Aug. 3, 2026); Telephone Interview by COLAGE with Helen Smith (Aug. 18, 2026).

variety of reasons, including the smaller class sizes, the quality of the education, and the people. “Community is truly everything,” Stasia explains, “and with this school I have found that.” Stasia shares that in determining where to send her children, she toured several different schools, but she kept coming back to the place “near and dear to [her] heart.” Ultimately, “Catholic [school] felt like home.”⁸

Jeff Babich, a gay Catholic, always had a strong desire to be a dad. Over the course of his life, Jeff has had some painful experiences but has taken solace in his Jesuit parish, the Spiritual Exercises of St. Ignatius, and supportive friends and family. Today, Jeff and his husband of over a decade have two children. Jeff explains his continued commitment to the Catholic faith: “Like me, the church isn’t perfect, but I put my faith in the Spirit that is.”⁹

Brian Rink is a gay man, a father, and a grandfather. He is also a devout person of faith who attended Catholic school and chose the same for his daughters. Born in New England to Irish and Italian parents, Brian is a self-professed “cradle Catholic.” He chuckles as he shares, “My mother told me, and this is a true story, that she wasn’t allowed to bring me out of the house until I was baptized. That kind of Catholic. Formed and raised in the church.”

Brian attended Catholic school and was an altar boy from second through eighth grade. “I remember Father

8. Statement from Stasia Bakhit to COLAGE (Aug. 19, 2026).

9. Michael J. O’Loughlin, *LGBTQ Catholics Recall Moments of Faith, Joy and Pride*, Outreach (June 25, 2024), <https://outreach.faith/2024/06/lgbtq-catholics-recall-moments-of-faith-joy-and-pride/>.

Lahey talking about what it was like to be a priest, and I always wanted to be a priest. You know, from an early, early age. They used to call me ‘Father.’ That was my nickname in the family because I always wanted to be a priest.”

In Catholic school, Brian valued what he learned about mercy, justice, and the love of Jesus and other people. For Brian, morality “played a really, really important part” in his life, and he dedicated himself to living by the catechism. As an adolescent, Brian knew his gay identity complicated his relationship with the Church. Yet, he remained unwavering in his faith and commitment to Catholicism. “They all still called me Father, and I would, I still served and stuff.”

After high school, Brian married his best friend and together, they had children — two little girls. Like many Catholic parents, Brian and his then-wife prioritized their children’s education and moral foundation, which ultimately meant choosing Catholic school:

We purchased our home in a specifically Presidential Blue Ribbon school district. You know, top of the state numbers. There were people literally roaming the streets to find houses that went up for sale, and they would be sold instantaneously. Getting into the district was a really big deal. So, when we bought this house, we were so thrilled to send our kids to [the local public] elementary because, you know, the principal there and the teachers were just phenomenal. And they really were. But there was just something missing. We believe

[part of being Catholic is] you've got to live out your faith. We decided the kids were missing that moral fabric. We decided to send them to Catholic school.

Today, Brian is a licensed social worker and therapist. Supported by his husband Ben, Brian recently joined the board of Dignity USA, a Catholic organization, where he continues to engage in acts of service to the Church. "I'm still a very faithful follower of Jesus, and I believe that, you know, doing good works is important. And I strive to do that."

Reflecting on his time as a young father, Brian shares that being a gay parent with a child in Catholic school is not always easy. He knew that he could not expect to be embraced by the school. "But I was willing, you know, to tolerate that, and to be the president of the PTA and Classroom Dad and all those things because I really, truly believe that learning, you know, having a firm moral foundation was critical. And that's why we chose [Catholic school]." Despite the unevenness of his experience, Brian still believes that Catholic schools often do a good job in supporting families in the transmission of faith and associated values that are important to them. Brian adds, "I love the Church. I love the people. All families should have the option of enrolling their children in these programs, no matter the identity of the parent(s)."¹⁰

Like Brian, Miranda Wise knew there were limitations to the church's acceptance of her gay fathers. Still, for Miranda, religious schooling was important, both to her

10. Statement from Brian Rink, provided to COLAGE (July 17, 2026); Telephone Interview by COLAGE with Brian Rink (Aug. 8, 2026).

and her parents. Growing up in West Texas in the 1990s, Miranda attended an Episcopal school from pre-K through ninth grade. She explains:

Church was . . . a big part of my childhood. My mom had attended our Episcopal church for years, and eventually my dad and his partner became active there too. My dad served on the vestry, and his partner joined the floral guild. We weren't just visitors there. We were active in the church, and it was a normal part of our lives.

Despite her consistent presence in both church and school, Miranda shares that she “experienced both acceptance and exclusion in the same places. My family was welcomed into these communities, but not always fully.” Even so, Miranda is grateful for her religious schooling and her family’s connection to their faith, including the opportunity she and her dads were given to “keep contributing to the communities [we] loved.”¹¹

III. Colorado’s UPK program preserves faith-based schools’ curricular autonomy but does not permit participating providers to turn away eligible children based on their parents’ protected-class status.

Nothing in Colorado’s UPK program conditions participation on a provider’s surrender of its religious nature or requires a provider to alter its religious instruction or abandon its faith. Pet.App.163a; Resp.Supp.App.74a–75a. Quite the opposite. Providers remain free to

11. Statement from Miranda Wise to COLAGE (June 2, 2026).

teach religion, integrate faith throughout the school day, and fulfill their religious missions while participating in the public program. JA306-07; Pet.App.64a. Colorado's equal opportunity requirement does not mandate that schools teach anything that contradicts a faith-based provider's religion. It simply ensures that no eligible child in its publicly funded educational program is refused enrollment by a participating provider because of protected characteristics belonging to the child's family. C.R.S. § 26.5-4-205(2)(b).

For Michelle Theall of Colorado, the distinction is clear. "We're not telling you what to teach," she explains. "We're not telling you what to believe. We're just trying to [choose] a [Catholic] education."

Michelle and her wife adopted their son from the Boulder County foster system when he was 14-months old. Michelle was raised devoutly Catholic, so when it came time to enroll their son in preschool, she and her wife chose a Catholic one. Although their son's preschool years concluded before Colorado's UPK program began, Michelle feels strongly that children like hers should have an equal opportunity to enroll in faith-based schools that opt to participate in the program and receive public funding. "If the State of Colorado said, 'Here's this benefit that's supposed to be for all people, but your kiddo can't go to Sacred Heart of Jesus and is not allowed here . . . because of who you are,' that's absolutely discriminatory."¹²

12. Statement from Michelle Theall to COLAGE, Family Equality, & Rocky Mountain Equality (July 22, 2026); Video Interview by Family Equality with Michelle Theall (Aug. 11, 2026).

To be sure, a religious provider may choose whom it serves on its own terms as a private institution; however, it may not do so while receiving public UPK funds. C.R.S. § 26.5-4-205(1)(b). For schools, participation in the taxpayer-funded UPK program is voluntary. A religious preschool that wishes to maintain admissions policies inconsistent with Colorado’s program requirements remains free to operate independently, without public funding. But when a provider voluntarily elects to participate and receive taxpayer funding, it does so on the same terms as other participating providers, including the requirement that the publicly funded opportunity be available to all eligible children without regard to the sexual orientation of their parents. C.R.S. § 26.5-4-205(1)(b); Pet.App.289a. To conclude otherwise would require the State to aid discrimination by private entities, a constitutionally impermissible result. *Norwood v. Harrison*, 413 U.S. 455, 465–66 (1973); accord *Gilmore v. City of Montgomery*, 417 U.S. 556, 568–69 (1974) (“any tangible state assistance . . . is constitutionally prohibited if it has ‘a significant tendency to facilitate, reinforce, and support private discrimination’” (quoting *Norwood*, 413 U.S. at 466)).

For Joseph McGuire, a Catholic parishioner, the terms are clear. “[W]hen the church claims state funds for its preschools, it necessarily opens itself to at least some element of state regulation, here Colorado’s non-discrimination law.” Joseph’s concern is not about religious administration of a public benefit, but what comes next if children are denied access to that public benefit based on who their parents are.

The church preschools, in effect, assert a two-part right: A right to accept public funds

for kids’ education and the right to be free to discriminate and exclude kids . . . of gay or trans parents. If they prevail, who else might be excluded in the future . . . ?¹³

IV. Petitioners’ requested exemption would deny children in LGBTQ+ families equal opportunity to access the universal public benefit Colorado chose to provide, with both dignitary and practical consequences.

The injury in this case arises at the threshold of Colorado’s UPK program. The exemption Petitioners seek would authorize participating preschool providers to receive public funds while excluding otherwise eligible children because of the identities or relationships of their parents. Dist.Ct.Dkt.20 at 35-36. As a result, children with LGBTQ+ parents would confront a publicly funded system in which some participating schools are available to others, but categorically unavailable to them. JA 141-43; see Pet.App.77a-78a, 272a-75a.

“I see every day how kids don’t get to pick their parents,” Olivia Becker, a Colorado educator, shares. “But every child deserves a high-quality education!”¹⁴

13. Joseph McGuire, Comment to Kate Scanlon, Supreme Court to Hear Clash Between Catholic Preschools, Colorado over ‘Universal’ Program, *America* (Apr. 20, 2024), <https://www.americamagazine.org/news/2026/04/20/supreme-court-catholic-preschools-colorado/>.

14. Statement from Olivia Becker to COLAGE, Family Equality, and Rocky Mountain Equality (June 25, 2026).

When a child is denied a publicly funded educational opportunity because of the child’s family, that child is denied equal access to a preschool program that Colorado chose to make universal. In the context of education, “[s]uch an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954); *see also Plyler v. Doe*, 457 U.S. 202, 221–22 (1982) (“[D]enial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit”). Colorado must not be forced to render some children ineligible for publicly funded educational opportunities simply because of who their parents are.

A. State-sponsored exclusion inflicts a dignitary harm that does not depend on a child’s immediate awareness.

Public funding should never subsidize discrimination. If educational and religious spaces are permitted to lock out LGBTQ+ families, they reinforce a harmful narrative that we do not belong in the foundational spaces of early childhood and community life.

Eric Anthony Devezin, gay father.¹⁵

Denying children equal access to a public educational opportunity is a painful form of discrimination that

15. Statement from Eric Anthony Devezin to COLAGE, Family Equality, and Rocky Mountain Equality (June 27, 2026).

Petitioners ask this Court to inflict on some of Colorado's youngest citizens simply because of who their parents are. Dist.Ct.Dkt.20 at 35-36. The immediate consequences may be felt most acutely by parents, who must navigate the loss of an educational opportunity for their child while confronting the disparity between the choices available to their families and the full range of choices available to others, but it is also a message that children carry with them. As recognized by this Court, discrimination "generates a feeling of inferiority as to [individuals'] status in the community that may affect their hearts and minds in a way unlikely to ever be undone." *Brown*, 237 U.S. at 494. For this reason, the State must be allowed to take action to prevent discrimination and assure its children have "equal access to publicly available goods and services." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 624 (1984).

Allie P. is a Coloradan who was raised by two lesbian mothers. When she learned that certain Catholic preschools were seeking the State's permission to exclude children with LGBTQ+ parents while participating in the Universal Preschool program, Allie was appalled. "It never occurred to me that the government would sanction this type of exclusion," Allie states. Then she adds, "I never want another child to experience this type of discrimination coming from their own government."

Having grown up before marriage equality, Allie understands how government-sanctioned discrimination feels to a child. "Denying a child equal access to a publicly funded educational opportunity would not only be confusing, but also deeply painful and humiliating."

For Allie, one of the problems is the mark of inferiority that these types of unequal state policies impose:

Exclusion [tells a child] that, because of their family, they are less deserving of the same publicly funded education opportunities as other children. That harm is not erased simply because another preschool may be available. Being redirected elsewhere does not undo the humiliation of being told that a publicly funded preschool is open to other children, but not to children from families like theirs.¹⁶

While it may be tempting to assume that a four-year-old will never know that they were barred from attending certain preschools or why they were excluded, Jamie Spiers, who has a lesbian mom, finds such an argument disingenuous. “Children ask one another questions about these things, so it seems very likely that the exclusion would come up.” Jamie provides some examples:

During Confirmation preparation, other children may look through preschool photos and realize that their friend was not there, despite having been part of the parish all along. If they ask the [excluded child] about it, the child may then turn to their parents, once again placing them in the difficult position of deciding whether and how to explain the discrimination their family experienced.

16. Statement from Allie P. to COLAGE (Aug. 19, 2026). Allie requested to be identified by her first name and last initial only. Identifying information can be made available to the Court upon request.

Alternatively, another child may ask their own parent, who knows about the school's policy, and then share that explanation with the [excluded child]. The [excluded child] might also discover the policy years later when considering whether to enroll their own child in the preschool. They could learn about it sooner if a younger sibling were also excluded, particularly if they were old enough to understand what was happening.

Jamie notes that there are many realistic ways that a child could eventually learn that they were excluded, but the bigger problem is a fundamental one — the suggestion that state-sponsored discrimination is acceptable as long as the person subjected to it remains unaware that it occurred.¹⁷

B. Exclusion would deny children with LGBTQ+ parents access to some participating providers, removing options Colorado made part of the public benefit.

A child that is categorically barred from a subset of participating providers has been denied the same publicly funded choices available to other children. Equal access to a public program cannot be measured by whether some alternative benefit remains available. Colorado did not create a program guaranteeing every child a preschool seat somewhere. It created a program that affords meaningful choice among participating providers. That choice is part of the benefit the State elected to fund. *See* Pet.App.140a-48a. Families routinely compare

17. Statement from Jamie Spiers to COLAGE (Aug. 19, 2026).

programs based on educational philosophy, language immersion, transportation, schedules, religious affiliation, and countless other considerations before deciding where to enroll their children. Pet.App.91a; JA356, 389-90. Location is also incredibly important, with parents often preferring schools located close to their home, work, or public transportation. SJA 11-12, 26-27; JA 1045.

When L.C., her brother, and her lesbian moms moved to a new neighborhood, the first thing they did was seek out a preschool. Not only did L.C.'s parents both place a high value on education, both of L.C.'s moms worked — one as a second-grade teacher and the other as a physical therapist — and they needed accessible childcare. When they discovered that one of the teachers at a nearby Christian preschool was a former neighbor of the family, L.C.'s moms breathed a sigh of relief. But that relief was short-lived. When the school found out that L.C. had two moms, her parents had to rush to recover her spot in her former preschool instead — one that was nowhere near where the family currently lived. “I think that definitely for my parents, it was really, umm, it caused a lot of stress for them.”

For L.C.'s parents to continue to work, they relied heavily on L.C.'s grandmother to get her to school and back.

Spending time with my grandmother was not a bad thing. You know, I loved my grandmother when she was alive. But just, like, the reality is, it makes you think, you know, like, what would I do? Like, what would someone do in that situation who didn't have that additional

support option or who maybe didn't have any living grandparents or who had grandparents who, you know, weren't able to drive anymore or just for whatever reason these [further away] options for preschool were just like, not really an option?

L.C. is starting out on her own career journey as a genetic counseling assistant. Eventually, she wants to get her master's degree and work as a genetic counselor. L.C. thinks about her parents, now retired, and the fear they felt knowing that they were always one misstep away from losing their jobs based on being in a same-sex relationship — a fear that compounded every time they needed to take additional time off of work to pick up L.C. because her preschool was so far away.

For my entire life, my grandmother was undergoing treatment for breast cancer . . . So when she had days for, you know, whatever reason - for, like, when she was undergoing treatment or she just didn't feel well enough to transport me to get my preschool education, my parents would have to find out, like, who was going to step out of work to fill in that day. . . . I know that was a core stress of my parents.

Imagine a situation like L.C.'s occurring within a state-sponsored program that is expressly intended to be for all kids — but is forced to exclude some. Like Michelle and Allie, L.C. describes the harm as extending beyond lacking an accessible preschool option. It's about whether certain taxpayer-funded preschools are only for other children, not kids like her. "If the government were to say

that kids who have same-sex parents don't get access to the public programs that other kids do. . . I mean, it just to me really seems like it's state-funded discrimination.”¹⁸

L.C. feels fortunate to have been able to rely on her grandmother to transport her to preschool. She also expressed gratitude that neither of her parents lost their jobs, and that her family had access to reliable transportation. But for many children and families, these challenges are insurmountable. Nationally, LGBTQ+ families are more likely to live in poverty than their non-LGBTQ+ peers,¹⁹ though LGBTQ+ poverty is less prevalent in Colorado.²⁰ Significantly, roughly ten percent of adults in rural counties in Colorado identify as LGBTQ+.²¹ Universal preschool can serve as an equalizer for these children, and a key element for their future success. Pet.App.173a. However, when children in LGBTQ+ families are excluded from a nearby preschool based on who their parents are, the practical effect may be an inability to attend preschool at all. Pet.App.91a.

18. Statement from L.C. to COLAGE (Aug. 3, 2026); Follow-up Interview with L.C. COLAGE (Aug. 8, 2026). L.C. requested to be identified by initials only. Identifying information can be made available to the Court upon request.

19. Children's Bureau, U.S. Dep't of Health & Human Servs., *Child Welfare Outcomes 2016: Report to Congress* (2019), https://www.acf.hhs.gov/sites/default/files/cb/cwo2016_exesum.pdf.

20. Colo. Health Inst., *2023 CHAS: LGBTQ+ Health* (2024), <https://www.coloradohealthinstitute.org/research/2023-chas-lgbtq-health>.

21. *Id.*

Helen Smith echoes these concerns:

Daycares, preschools, they're so hard to find. We've lived all over, and it's really hard to find them at all, and it's even harder to find good places. And having the government then say, 'You can't go to this one. We are taking this off the table for you,' and limiting your choices in an already limited market, that's really difficult. That's really difficult for a kid; it's really difficult for parents. That's excluding the kids for something that they don't have control over — for something that shouldn't be on their shoulders.

Helen understands that a provider's decision not to participate may reduce the number of available UPK providers in some communities. But that possibility does not justify requiring the State to fund discriminatory exclusion.

We used to live in New Mexico. When the state went to UPK, some places opted in and others opted out. People still chose the ones that opted out. But for the places that opted in, everyone had an equal opportunity to go to them. I can't imagine what it would be like if some of the [schools] were taken off the table for just some people and not everyone. It would be hard. It would be really hard.²²

22. Statement from Helen Smith, *supra* n. 7.

CONCLUSION

Petitioners ask this Court to require Colorado to subsidize the exclusion of children from a taxpayer-funded preschool program because they have LGBTQ+ parents. *Amici's* perspectives vividly illustrate why Colorado must be allowed to ensure that the public benefit it chose to make universal is available to every eligible child on equal terms. Religious schools that choose to participate in Colorado's UPK program are free to teach their faith. But just as Colorado must not be required to underwrite the exclusion of a child based on the child's parents' race, Colorado must not be required to underwrite the exclusion of a four-year-old from a participating preschool based solely on the fact that the child has LGBTQ+ parents. The Court should affirm the Tenth Circuit's decision.

Respectfully submitted,

NIKHIL VASHEE
FAMILY EQUALITY
475 Park Avenue South,
Suite 2100
New York, NY 10016

MARGARET YORK
Counsel of Record
COLAGE
P.O. Box 29295
Providence, RI 02909
(917) 979-3404
meg@colage.org

Counsel for Amici Curiae