

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 *AMICUS CURIAE* OF THE FREEDOM
FROM RELIGION FOUNDATION IN SUPPORT
OF RESPONDENTS**

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INTEREST OF AMICUS¹

Amicus curiae Freedom From Religion Foundation (FFRF) is the largest national association of freethinkers, representing atheists, agnostics, and others who form their opinions about religion based on reason, rather than faith, tradition, or authority. More than 11 percent of FFRF's nearly 41,000 current members nationwide are LGBTQ+ individuals, according to a recent and definitive membership survey. FFRF's two primary purposes are to educate the public about nontheism and to defend the constitutional separation between state and church.

Arguably the greatest current threat to individual freedom of conscience is a nationwide effort to radically redefine "religious freedom" as the right to impose one's religious beliefs on others. FFRF and its members are concerned that religious exemptions within government funded programs would allow believers to discriminate, and inflict harm on others in violation of fundamental civil rights protections. FFRF supports civil rights protections for LGBTQ+ Americans and opposes misinterpreting the First Amendment to mean that the right to religious freedom includes the right to discriminate within taxpayer funded programs.

1. No party's counsel in this case authored this brief in whole or in part. No party or party's counsel contributed any money intended to fund preparing or submitting this brief. No person, other than amicus, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

SUMMARY OF ARGUMENT

In 2020, the people of Colorado voted overwhelmingly to create a fund for a statewide, voluntary, universal preschool program. Colo. Rev. Stat. § 26.5-4-202(1)(a) (V). To facilitate the program, the Colorado General Assembly passed the “Early Childhood Act.” The Act required a minimum number of instructional hours, a maximum educator-to-child ratio, qualifications standards for teachers, continued education development for teachers, and many more best practices, including the nondiscrimination requirement at issue in this litigation. Colo. Rev. Stat. § 26.5-4-205(2). Both in statute, and in the rules later promulgated for the program, the nondiscrimination requirement mandates that preschool providers give 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); 8 Colo. Code Regs. 1401-1 § 4.110(B).

Petitioners argue that the nondiscrimination requirement “excludes” them from the program because it forbids them from discriminating against LGBTQ+ four-year-olds or four-year-olds with LGBTQ+ parents. Pet’rs’ Opening Br. 11–15. They argue that the nondiscrimination requirement is not a neutral and generally applicable law because preschools are allowed to prioritize seats for children with disabilities and low-income children. Pet’rs’ Opening Br. 35–43. This, say Petitioners, is an exemption to the requirement that undermines the state’s nondiscrimination interests in a comparable way to their desire to discriminate against LGBTQ+ children. *Id.*

Effective legislation requires exemptions. Legislation usually has multiple competing purposes, which legislators must balance. To effectively balance these, exemptions are often necessary. If any secular “exemption” means religious exemptions must be allowed, the door is open to religious exemption claims to most laws. A decision that calls equality for those with disabilities or who are low-income an “exemption” and compares that to discrimination against LGBTQ+ people is not aligned with anti-discrimination in those areas and would effectively defang most nondiscrimination laws.

Petitioners’ argument fundamentally and deliberately misconstrues disability and income nondiscrimination. For both disability and income, nondiscrimination law reflects the reality that to treat people with disabilities and those who are low-income exactly the same as others often perpetuates inequality, rather than resolves it. A school building with stairs is ostensibly open to all students, but students needing wheelchair access cannot actually enter. Ensuring actual equality for people with disabilities and those who are low-income is not an “exemption” from nondiscrimination requirements, but instead is fully aligned with the legal landscape. Further, to argue that ensuring equality for preschool students with disabilities or students whose families are low-income is comparable to LGBTQ+ discrimination is like comparing apples and durians. One is a popular air freshener scent while the other would quickly empty a room.

Finally, nondiscrimination rules within government funding programs are not new. Nondiscrimination requirements have a long history and tradition in government funding programs. At least seventeen states have school voucher programs with nondiscrimination

requirements for participating private schools. Striking down generally applicable anti-discrimination laws may encourage “patently frivolous” religious liberty claims.

Petitioners’ arguments should be rejected and this Court should affirm the 10th Circuit’s decision.

ARGUMENT

I. Laws often have statutory exemptions, which must be constitutionally permitted for legislative bodies to do their jobs.

Legislation is often a balancing act. This Court has recognized this fact in the past: “Legislation is frequently multipurposed: the removal of even a ‘subordinate’ purpose may shift altogether the consensus of legislative judgment supporting the statute.” *McGinnis v. Royster*, 410 U.S. 263, 276–77 (1973). “Rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the ‘dominant’ or ‘primary’ one.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). Because of this required balancing by legislators, “courts refrain from reviewing the merits of their decisions, absent a showing of arbitrariness or irrationality.” *Id.*

Various important laws include some secular exemptions. Private clubs are exempt from federal public accommodations law. 42 U.S.C. § 2000a(e). “Romeo and Juliet” provisions are exemptions to statutory rape laws for violators who are under or around the age of consent themselves. Jana L. Kern, *Trends in Teen Sex Are Changing, But Are Minnesota’s Romeo and Juliet*

Laws?, 39 Wm. Mitchell L. Rev. 1607, 1611–14 (2013). Most animal cruelty laws include exemptions for wildlife or farm animals. Pamela D. Frasch et al., *State Animal Anti-cruelty Statutes: An Overview*, 5 Animal L. 69, 75 (1999). Executive, administrative, and professional employees are exempt from the Fair Labor Standards Act’s minimum wage and overtime provisions. 29 U.S.C. § 213(a)(1). Even laws against speeding sometimes have exemptions for ambulances. *E.g.*, 625 Ill. Comp. Stat. 5/11-205(c)(3) (2025).²

Legislative balancing is often recognized by Congress itself in the “Findings and Purposes” sections of congressional acts. There are often multiple, very different purposes cited in enacted legislation. *See, e.g.*, 7 U.S.C. § 2131 (stating the intent for the Animal Welfare Act Amendments as both to ensure humane treatment and to protect owners of animals from theft); Prevent All Cigarette Trafficking Act of 2009, Pub. L. No. 111-154, § 1(c), 124 Stat 1087, 1088 (2010) (declaring the purposes of the PACT Act to include discouraging tobacco trafficking, increase excise taxes on tobacco, and prevent youth access to tobacco); ADA Amendments Act of 2008, Pub. L. No. 110-325, § 2(b), 122 Stat 3553, 3554 (2008) (stating its purposes as carrying out the ADA, conveying Congressional intent about standards, and to reject Supreme Court interpretations of the statute).

To take into account all of these competing reasons for legislation, exemptions have to be made so that laws

2. For further discussion of secular exemptions in the law, see *Pandora’s Box of Religious Exemptions*, 136 Harv. L. Rev. 1178, 1191 (2023); Andrew Koppelman, *The Increasingly Dangerous Variants of the “Most-Favored-Nation” Theory of Religious Liberty*, 108 Iowa L. Rev. 2237, 2248 (2023).

are not overinclusive. Citing an ambulance rushing to a hospital to save a life for speeding does not further the goals of a speeding statute that is designed to save lives by preventing accidents. Mandating complete religious exemptions every time any secular exemption is allowed would create a chaotic system and would require legislation to minutia that legislatures are not prepared to handle.

The question of what counts as an exemption is dependent on language. When there is not language specific enough to get at some topic, exemptions might be used. Exemptions occur because of the “often fortuitous circumstance that the language available to circumscribe a legal rule or principle is broader than the regulatory goals the rule or principle is designed to further.” Frederick Schauer, *Exceptions*, 58 U. Chi. L. Rev. 871, 872 (1991). For example, there is no single word for “health-promoting vaccinations” such that those who cannot get vaccinated for medical reasons would simply never be considered within the law, rather than requiring some “exemption.” Andrew Koppelman, *The Increasingly Dangerous Variants of the “Most-Favored-Nation” Theory of Religious Liberty*, 108 Iowa L. Rev. 2237, 2267 (2023). “Where the language in which the rule is written contains a word . . . that itself excludes what the drafters wish to exclude from the scope of the rule, no exception is necessary But where language does not provide any word . . . terms . . . are likely to be overinclusive.” Schauer, *supra*, at 874–75.

Legislators are confined to the language that exists. Thus, they are going to have to include exemptions to get at the goals they have for legislation. If any secular exemption in the law means that religious exemptions

must also be allowed, the door is open to novel, sham, and unlimited claims for religious exemptions.

II. Colorado’s Universal Preschool Program’s nondiscrimination requirement is generally applicable.

The Free Exercise Clause does not give an individual the ability to avoid compliance with a “valid and neutral law of general applicability.” *Emp. Div., Dept. of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 879 (1990) (quoting *United States v. Lee*, 455 U.S. 252, 263 (1982) (Stevens, J., concurring in judgment)). However, “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,’” *Fulton v. City of Phila., Pa.*, 593 U.S. 522, 533 (2021), or if the law prohibits religious conduct while permitting secular conduct that “undermines the government’s asserted interests in a similar way.” *Id.* at 534.

The nondiscrimination requirement at issue in this case is neutral on its face. It applies to all preschools that wish to be part of the program. The Act does not single out religion for disfavored treatment. In fact, the only mention of religion in the Act is a prohibition on religious discrimination. Colo. Rev. Stat. §§ 26.5-4-201–210. Even considering the deeper analysis of hostility in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 584 U.S. 617, 634–38 (2018), there is no evidence that plaintiffs can point to in this case that shows “official expressions of hostility to religion.” *Id.* at 639. In fact, the Department of Early Childhood convened working groups with religious preschools as the program was being developed. Pet’rs’ App. 302a.

There is no mechanism for individualized exemptions to the nondiscrimination requirement either. In *Fulton*, it was the “inclusion of a formal system of entirely discretionary exceptions *in*” the contractual nondiscrimination requirement itself that “render[ed] *the contractual non-discrimination requirement* not generally applicable.” *Fulton*, 593 U.S. at 536 (emphasis added). The alleged “catchall exemption” here directly states that when used, “eligible preschool providers must still comply with” the nondiscrimination requirement, thus expressly disallowing its use to provide an exemption to the nondiscrimination requirement. 8 Colo. Code Regs. 1404-1 § 4.109(B).

Finally, the fact that Colorado allows preschools to prioritize serving low-income preschoolers and preschoolers with disabilities does not undermine Colorado’s interests in nondiscrimination.

A. Disability and income nondiscrimination laws are based on different fundamental understandings of providing equal access.

Petitioners argue that allowing some preschools to prefer enrolling children with disabilities or children who qualify for the Head Start program are exemptions to the nondiscrimination requirement. Pet’rs’ Opening Br. 35–43. Petitioners fundamentally misconstrue anti-discrimination law for these groups. To combat discrimination based on disability and income, the law has to take into account the differences, lest treating those with disabilities or who are low-income exactly the same becomes a new form of unequal access. *See* Pamela S. Karlan & George Rutherglen, *Disabilities*,

Discrimination, and Reasonable Accommodation, 46 Duke L.J. 1, 10 (1996). Thus, there is no “exemption” here being given for preschools that specifically serve children who are disabled or low-income. Rather, targeted services for children with disabilities and low-income families fit perfectly within the legal landscape of nondiscrimination.

1. Disability anti-discrimination law is fundamentally different from other types of anti-discrimination law.

Addressing disability discrimination requires a unique approach because it is fundamentally different from other forms of discrimination. To address disability discrimination in the same manner as other forms of discrimination would be ineffective at best and, at worst, lead to further disparity. The findings of the Americans with Disabilities Act (ADA) identify many forms of discrimination that people with disabilities face, including “the discriminatory effects of architectural, transportation, and communication barriers” and a “failure to make modifications to existing facilities and practices.” 42 U.S.C. § 12101(a)(5). The ADA further defines discrimination to include “*not making* reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability.” 42 U.S.C. § 12112(b)(5)(A) (emphasis added). In cases interpreting the statute, this Court has said that the objectives of the ADA “will sometimes require affirmative conduct.” *US Airways, Inc. v. Barnett*, 535 U.S. 391, 401 (2002).

Colorado’s efforts to ensure that children with disabilities have access to pre-k programming is consistent

with other areas of disability anti-discrimination law. The argument that Petitioners advance about a supposed “categorical exemption” for children with disabilities, Pet’rs’ Br. 38, represents a fundamental misunderstanding of anti-discrimination law for people with disabilities. At its core, a different approach is required to address anti-discrimination and nondiscrimination based on disability when compared to most other types of anti-discrimination law.

Scholars have advocated that in order to achieve legal protection for certain groups, sometimes action is required to level the playing field. See Michael Ashley Stein, *Same Struggle, Different Difference: ADA Accommodations as Antidiscrimination*, 153 Univ. Pa. L. Rev. 579 (2004). Disability anti-discrimination is one of the few areas where this has been recognized legally, as reflected by the congressional findings within the Americans with Disabilities Act. 42 U.S.C. § 12101(a)(5). Other sections of the ADA require “reasonable accommodations” in employment or require public accommodations to remove architectural barriers. 42 U.S.C. §§ 12112(b)(5)(A), 12182(2)(A)(iv). This is because it is understood that to say that people with disabilities “have the right to live in the world,” it must also be ensured that they “have the right to make their way in it and therefore must be entitled to use the indispensable means of access, and to use them on terms that will make the original right effective.” Jacobus tenBroek, *The Right to Live in the World: The Disabled in the Law of Torts*, 54 Cal. L. Rev. 841, 848 (1966). Simply saying that people with disabilities have a right to use public transit does not help those in wheelchairs get into the bus or those who are blind identify which stop they are at. A right that cannot be exercised is meaningless.

This Court has recognized this difference implicitly, saying that reasonable accommodations are “needed for those with disabilities to obtain the *same* workplace opportunities that those without disabilities automatically enjoy.” *US Airways, Inc. v. Barnett*, 535 U.S. at 397; *see also, Tenn. v. Lane*, 541 U.S. 509, 532 (1978) (“Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove architectural and other barriers to accessibility.”).

Thus, Petitioners fail to identify an exemption, much less one similar to what they seek, when they point to accommodations made for students with disabilities. Colorado’s nondiscrimination requirement requires preschools to “provide eligible children an equal opportunity to enroll and receive preschool services regardless of . . . disability.” Colo. Rev. Stat. § 26.5-4-205(2)(b). Colorado is letting preschools that are designed to facilitate preschool for children with disabilities do so by allowing them to cater to children with disabilities for enrollment. J.A. 293–294. This preference was put in place because not every preschool setting can accommodate children with disabilities and so that children are placed in locations that can fulfill their needs according to their Individualized Education Plan (IEP). J.A. 251. IEPs can include many forms of specialized services.³

3. Specialized services can include “speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services..., counseling services, including rehabilitation counseling, orientation and mobility services, and medical services.” 20 U.S.C. § 1401(26)(a).

It is farcical to equate Petitioners' request to discriminate on the basis of LGBTQ+ status with accommodations that ensure preschoolers with disabilities have access to vital services. For example, Petitioners' position would impinge schools that reserve priority for deaf children when they have ASL interpreters on staff. Instead, this argument would say, both the preschool and a deaf child must simply hope the child lucks into placement at one of the few seats that ensure access to that vital service rather than the seat going to a child who has no need for interpreters. Petitioner's interpretation is completely at odds with accepted understandings of disability anti-discrimination, lacks common sense, and cannot be viewed as an "exemption" from anti-discrimination rules. Even if disability preference could be viewed as an "exemption," it is not one that "undermines" the interests of nondiscrimination in the same way that barring LGBTQ+ preschoolers or parents from enrolling at a preschool does.

2. Legislation regularly takes income into account for the benefit of those who are low-income.

Laws administering social programs often make classifications based on income. These administrative decisions and classifications are largely left to state legislatures, not the courts. *See Dandridge v. Williams*, 397 U.S. 471, 487 (1970) ("But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court."). It is a basic fact of policymaking that legislation can differentiate based on income. For example, progressive taxation and means-testing for benefit

programs both differentiate based on income. 26 U.S.C. § 1; 42 U.S.C. § 1382.

Benefits statutes have income ceilings to determine eligibility for various programs. Most states and the federal government have some kind of an Earned Income Tax Credit program, which explicitly reduces the amount of taxes owed for those eligible based on maximum earnings requirements. *Earned Income Tax Credit Overview*, National Conference of State Legislatures (June 9, 2026) <https://tinyurl.com/48j2c2pd>. Meanwhile, there are no laws that have explicit eligibility income floors for benefit programs. *See* Alex Raskolnikov, *Law for the Rich*, 109 Minn. L. Rev. 1399 (2025). Laws that do have income floors instead impose greater burdens on those whose income exceeds the floors. The estate tax, for example, is imposed only on those who have over \$15,000,000 at their death. 26 U.S.C. § 2010(c)(3).

Like laws related to disability, income-based classifications are tailored to provide benefits to those who are in need of assistance. This is not illegally “discriminatory” towards high-income earners. In reality, it is understood that income must be taken into account in some situations to aid those who need additional assistance. For example, in the context of education, research has demonstrated that there is an achievement gap between children from high-income and low-income households. Eric A. Hanushek et al., *Long-run Trends in the U.S. SES-Achievement Gap*, 17 Educ. Fin. & Pol’y 608 (2022).

Nondiscrimination statutes that include income make this even clearer. The unfortunate reality is

that low-income families and children receiving public assistance are faced with societal discrimination because of their economic status. Higher earners who do not need to participate in assistance programs, such as vouchers or subsidy programs, do not face income-based discrimination. A plethora of state laws reflects this reality by prohibiting discrimination on the basis of receiving assistance from these kinds of programs. *E.g.*, Cal. Code Regs. tit. 2, § 12140; Conn. Gen. Stat. § 46a-63(3); Del. Code Ann. tit. 6, § 4602(29); 775 Ill. Comp. Stat. 5/1-103(O-5); Md. Code Ann., State Gov't § 20-701(j); Minn. Stat. § 363A.03(47); N.Y. Exec. Law § 292(36); N.D. Cent. Code § 14-02.4-02(19); 34 R.I. Gen. Laws § 34-37-3(18); Utah Code Ann. § 57-21-2(25); Vt. Stat. Ann. tit. 9, § 4501(6). For instance, in North Dakota's public accommodations nondiscrimination statute, "status with regard to public assistance" is defined as "the condition *of being a recipient* of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements." N.D. Cent. Code § 14-02.4-02(19) (emphasis added). Both the term itself and the definition make clear that the concern is that someone would discriminate against those who are recipients of assistance or subsidies.

In fact, this Court's precedent also makes clear that concerns about disparate treatment are one-way. In *Griffin v. Illinois*, 351 U.S. 12 (1956), this Court required states to provide an adequate transcript substitute to indigent defendants appealing their criminal cases. In *Douglas v. California*, 372 U.S. 353 (1963), this Court found that indigent defendants had a right to counsel on direct appeal. Other cases have struck down incarceration as a criminal penalty for the inability to pay a fine, *see*

Williams v. Ill., 399 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971), and filing-fee requirements for candidates for office. *Bullock v. Carter*, 405 U.S. 134 (1972). This Court has even said that “Sentencing judges may, and often do, consider the defendant’s ability to pay, but in such circumstances they are guided by sound judicial discretion rather than by constitutional mandate.” *San Antonio Ind. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 22 (1973).

Criminal law is not the only place where inability to pay must legally be taken into consideration. Poll taxes are unconstitutional. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663 (1966). In *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), this Court held that the dismissal of a mother’s appeal of the termination of her parental rights based on her inability to pay the record preparation fees violated due process and equal protection. The Court has also held that denying access to divorce proceedings because of an inability to pay court fees and costs violates due process. *Boddie v. Conn.*, 401 U.S. 371 (1971). Likewise, a law that required child support payments before being able to enter into a new marriage was also struck down. *Zablocki v. Redhail*, 434 U.S. 374 (1978).

These cases explicitly require income to be taken into account to prevent differential treatment. *Griffin*, 351 U.S. at 19 (“Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts.”); *Douglas*, 372 U.S. at 358 (“There is lacking that equality demanded by the Fourteenth Amendment where the rich man, who appeals as of right, enjoys the benefit of counsel’s examination . . . while the poor man . . . is forced to shift for himself.”); *Boddie*, 401 U.S. at 380 (“a cost requirement, valid on

its face, may offend due process because it operates to foreclose a particular party's opportunity to be heard.) Fundamentally, with income as with disability, it is understood that to treat everyone at all income levels equally actually means treating them differently. To not consider income would effectively deny rights to those with low-incomes that higher-income earners can vindicate.

Head Start programs enroll students whose families meet certain low-income requirements, such as income at or below the federal poverty line. *Head Start Approach*, HeadStart.gov, (last visited August 18, 2026) <https://headstart.gov/programs/article/head-start-approach>. Research shows that Head Start programs put children who might otherwise not have had access to early childhood education at a more even starting line with children whose families can pay for early childhood education. *See Head Start's Impact*, National Head Start Association, (last visited August 18, 2026) <https://nhsa.org/about-nhsa/our-impact/>. The combination of the universal preschool program and Head Start program allows eligible low-income preschoolers to attend full-day preschool without out-of-pocket costs. *Universal Pre-K (UPK) FAQs*, Joint Initiative for Youth and Families, at 2, 4 (Feb. 15, 2023) <https://tinyurl.com/2k4vbbjf>.

Like Petitioners' argument that providing appropriate services to children with disabilities is "discrimination," their argument that coordinating multiple funding sources so preschoolers may attend full-time preschool is antithetical to the principle that the government should work for the people — *all* of them, not just a lucky few. Under Petitioners' argument, it would be up to chance whether Head Start programs were paired with low-income children from the universal preschool program.

This would doom the program to fail. Because Head Start programs must fill a minimum percentage of their seats with low-income children to get their funding, they would likely either have to withdraw from the universal preschool program altogether or provide many fewer slots for the universal preschool program in order to still reach the required percentages for Head Start. Thus, families who cannot pay for preschool would have more limited options and could not layer both types of funding to get their children the same access to preschool services as those who can pay for a full-day out-of-pocket.

By coordinating placement of low-income children at Head Start programs so that the children can access both funding sources and thus full days of preschool, Colorado is ensuring those children get the same access to preschool as those whose parents can pay out-of-pocket. To view it otherwise, as Petitioners do, is fundamentally unequal and lacks any appreciation for the function and purpose of the legislation. Preference for low-income students in Head Start programs is not properly characterized as an “exemption” from the nondiscrimination requirement. It also does not undermine the government’s interest in ensuring an equal opportunity to “enroll and receive preschool services” in a similar way to how allowing preschools to bar access to LGBTQ+ four-year-olds and their parents would.

III. Anti-discrimination laws are widespread and should not be readily undermined based on religious claims.

Americans with disabilities have fought long and hard to be able to participate as full members of society. Comm’n on Disability Rights, *History of Disability Rights*

Milestones and Laws, Am. Bar Ass’n (last visited Aug. 18, 2026) <https://tinyurl.com/mr37xka8>. Petitioners’ argument threatens to callously use those efforts towards inclusion to instead nullify anti-discrimination laws across the country. For instance, an overwhelming majority of states include disability alongside race and other identity groups in their fair housing nondiscrimination requirements. Ala. Code §§ 24-8-4; Alaska Stat. § 18.80.240; Ark. Code Ann. § 16-123-107; Cal. Gov’t Code § 12955; Colo. Rev. Stat. § 24-34-502; Del. Code Ann. tit. 6 § 4603; Fla. Stat. § 760.23; Ga. Code. Ann. § 8-3-202; Haw. Rev. Stat. § 515-3; Idaho Code § 67-5909; 775 Ill. Comp. Stat. 5/3-102; Ind. Code § 22-9-1-2; Iowa Code § 216.8; Kan. Stat. Ann. § 44-1016; Ky. Rev. Stat. Ann. § 344.360; La. Stat. Ann. § 51:2606; Me. Stat. tit. 5, § 4581; Md. Code Ann., State Gov’t § 20-705; Mass. Gen. Laws ch. 151B, § 4(6); Minn. Stat. § 363A.09; Miss. Code Ann. § 43-33-723; Mo. Rev. Stat. § 213.040; Mont. Code Ann. § 49-2-305; Neb. Rev. Stat. § 20-318; Nev. Rev. Stat. § 118.100; N.H. Rev. Stat. Ann. § 354-A:10; N.J. Stat. Ann. § 10:5-9.1; N.M. Stat. Ann. § 28-1-7(G); N.Y. Exec. Law § 296(2-a); N.C. Gen. Stat. § 41A-4; N.D. Cent. Code § 14-02.5-02; Ohio Rev. Code Ann. § 4112.02(H); Okla. Stat. tit. 25, § 1452; 43 Pa. Cons. Stat. § 955(h); 34 R.I. Gen. Laws § 34-37-4; S.C. Code Ann. § 31-21-40; S.D. Codified Laws § 20-13-20; Tenn. Code Ann. § 4-21-601; Utah Code Ann. § 57-21-5; Vt. Stat. Ann. tit. 9, § 4503; Wash. Rev. Code § 49.60.030(1)(c); W. Va. Code § 16B-18-5; Wis. Stat. § 106.50; Wyo. Stat. Ann. § 40-26-103.

Thirty-six states have public accommodations nondiscrimination laws that list disability alongside race and other identity groups. Alaska Stat. § 18.80.230; Ark. Code Ann. § 16-123-107; Cal. Civ. Code § 51; Colo. Rev.

Stat. § 24-34-601; Conn. Gen. Stat. § 46a-64; Del. Code Ann. tit. 6, § 4504; Fla. Stat. § 760.08; Haw. Rev. Stat. § 489-3; 775 Ill. Comp. Stat. 5/5-102; Ind. Code § 22-9-1-2; Iowa Code § 216.7; Kan. Stat. Ann. § 44-1009(c); Ky. Rev. Stat. Ann. § 344.120; La. Stat. Ann. § 51:2247; Me. Stat. tit. 5, § 4591; Md. Code Ann., State Gov't § 20-304; Mass. Gen. Laws ch. 272 § 98; Minn. Stat. § 363A.11; Mo. Rev. Stat. § 213.065; Mont. Code Ann. § 49-2-304; Neb. Rev. Stat. § 20-134; Nev. Rev. Stat. § 651.070; N.H. Rev. Stat. Ann. § 354-A:17; N.J. Stat. Ann. § 10:5-12(f); N.M. Stat. Ann. § 28-1-7(F); N.Y. Civ. Rights Law § 40-c; N.D. Cent. Code § 14-02.4-14; Ohio Rev. Code Ann. § 4112.02(G); Okla. Stat. tit. 25, § 1402; 43 Pa. Cons. Stat. § 955(i); 11 R.I. Gen. Laws § 11-24-2; S.D. Codified Laws § 20-13-23; Va. Code Ann. § 2.2-3904; Wash. Rev. Code § 49.60.030(1)(b); W. Va. Code § 16B-17-2; Wis. Stat. § 106.52.

These states generally also provide that discrimination in the case of disability includes the failure to make reasonable accommodations in housing or businesses for those with disabilities. *E.g.*, Ark. Code Ann. § 16-123-314; Fla. Stat. § 553.503 (adopting the federal Americans with Disabilities Act Standards for Accessible Design).

A ruling by the Court that accommodations for students with disabilities within Colorado's program invalidates the nondiscrimination rules could have a significant national impact. Others might argue that ensuring access to housing via reasonable accommodations undermines the government's interests of equal access to housing or that requiring access to buildings via wheelchair ramps undermines the government's interests in equal access to public accommodations. This would make religious claims about discrimination based on race, ethnicity, or national

origin by landlords or business owners significantly harder to prevent.

A. States have historically required nondiscrimination by private organizations when they participate in public funding programs.

Petitioners and amici complain that the nondiscrimination requirement at issue in this legislation was “targeted” to burden their religion. Pet’rs’ Br. 29–31. In reality, most public funding programs have strings attached to ensure that the programs actually achieve their goals. Even school voucher programs typically include a variety of requirements for participating schools, including requirements for teacher education, calendar/curriculum requirements, financial requirements, and nondiscrimination requirements. *School Requirements*, EdChoice (last visited August 18, 2026) <https://tinyurl.com/ycx7hu3f>. The first publicly funded school voucher program, the Milwaukee Parental Choice Program, enacted in 1990, included these types of requirements for participating schools. *See* Wis. 1989 Acts 336, § 228. In 1995, the program’s statute was amended to include requirements that participating private schools adhere to federal nondiscrimination laws. Wis. 1995 Acts 27, § 4010.

The Milwaukee program is not the only one with these requirements. School voucher laws in Arizona, Georgia, Louisiana, Montana, and Oklahoma prohibit discrimination on the basis of disability. Ariz. Rev. Stat. Ann. § 43-1601; Ga. Code Ann. § 160-5-1-.34(4)(a)(6); La. Stat. Ann. § 17:3996(C); Mont. Code Ann. § 20-7-1703(6)(c); Okla. Stat. tit. 68 § 2357.206(H)(5). New Hampshire

and Pennsylvania require voucher programs to comply with all state and federal anti-discrimination laws; both states prohibit sex discrimination and New Hampshire prohibits discrimination based on gender identity in public accommodations law. N.H. Rev. Stat. Ann. § 194-F:6; N.H. Rev. Stat. Ann. § 354-A:17; 24 Pa. Cons. Stat. § 20-2011-B(e); 43 Pa. Cons. Stat. § 955(i). Montana and Arizona also prohibit discrimination in their programs based on familial/marital status. Ariz. Rev. Stat. Ann. § 43-1601; Mont. Code Ann. § 20-7-1703. Montana additionally includes sex, creed, and age. Mont. Code Ann. § 20-7-1703. Maryland explicitly forbids discrimination based on sexual orientation and gender identity. 2024 Md. Laws ch. 101, Md. House Bill 200 § R00A03.05. Other school voucher laws enacted between 2007 and 2025 include requirements that schools comply with federal nondiscrimination laws. Ala. Code § 16-6j-5; Ariz. Rev. Stat. Ann. § 15-2401; Ark. Code Ann. § 6-35-107(D); Ga. Code Ann. § 160-5-1-.34(4); Ind. Code § 20-51-4-3; La. Stat. Ann. § 17:4031(D)(1)(b); La. Stat. Ann. § 17:3996(C); 2024 Md. Laws ch. 101, Md. House Bill 200 § R00A03.05.; Miss. Code Ann. § 37-181-15; Mo. Rev. Stat. § 166.700; Mont. Code Ann. § 20-7-1703; N.C. Gen. Stat. § 115C-562.5(c1); Okla. Stat. tit. 68 § 2357.206(H)(5); S.C. Code Ann. § 12-6-3790; Tenn. Code Ann. § 49-6-2607; Utah Code Ann. § 53E-7-403(2); W. Va. Code § 18-31-11; Wis. Stat. § 119.23(2)(a)(4); Wis. Stat. § 118.60(2)(a)(4).

Federal programs also regularly have nondiscrimination requirements for private entities that participate. The Maternal and Child Health Services Block Grant, enacted as part of the Social Security Act in 1935 and amended in 1981, requires all programs or activities that receive funding to comply with the Age Discrimination Act, the

Rehabilitation Act, the Americans with Disabilities Act, and the Civil Rights Act's nondiscrimination requirements. 42 U.S.C. § 608(d). Department of Veterans Affairs assistance programs were prohibited from discriminating as early as 1964. 38 C.F.R. § 18. Federal regulations for the Department of Housing and Urban Development require nondiscrimination in all HUD programs. 24 C.F.R. § 5.105.

These strings have been attached for decades and updated as nondiscrimination standards changed. Including nondiscrimination requirements for private entities that receive funding from the government is not a new phenomenon that is somehow targeting religious organizations.

B. Striking down generally applicable anti-discrimination laws may encourage “patently frivolous” religious liberty claims.

In *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, n.5 (1968), this Court called claims of religious exercise requiring racial discrimination “patently frivolous.” However, the question of determining whether something is a sincere religious claim is much more difficult. This Court has held that judicial inquiry into the truth of one’s religious beliefs is a violation of the free exercise clause. *U.S. v. Ballard*, 322 U.S. 78, 87 (1944). The Court has reaffirmed this idea: “The determination of what is a ‘religious’ belief or practice is more often than not a difficult and delicate task.” *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 714 (1981).

This makes sense functionally. Any attempt by the Court to define religion would necessarily plunge the Court

into inter- and intra- religion controversy, destroying the goals of the First Amendment. Daniel J.H. Greenwood & Nicholas E. Trampusch, *After Smith Falls: Corporate Free Exercise Lochnerism*, 76 S.C.L. Rev. 287, 324 (2024). For example, the Illinois Supreme Court interpreted the church law of the Holy Synod of the Serbian Orthodox Church to require different proceedings to remove a bishop for canonical misconduct than the Church had used. On review, the Court said that Illinois’s interpretation of church law was “unconstitutionally undertaken” because “the resolution of quintessentially religious controversies” is committed by the First Amendment “exclusively to the highest ecclesiastical tribunals of this hierarchical church.” *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 719–20 (1976). To do otherwise would require courts to become experts on ecclesiastical laws of different religions and would likely require determining a highest authority that even those in a given religious sect may not agree on. Thus, the Court relies on a more “good faith” analysis about whether a belief is sincere and functions in the adherent’s life in a parallel way to more generally accepted religious beliefs. Greenwood, *supra*, at 325; *U.S. v. Seeger*, 380 U.S. 163, 165–66 (1965).

However, the problem is that people acting in bad faith may use religion as a cloak to get exemptions for personal, and potentially immoral or self-serving, reasons. In *Smith*, the Court listed rebuffed attempts to gain religious exemptions to manslaughter and child neglect laws, minimum wage laws, child labor laws, animal cruelty laws, and laws “providing for equality of opportunity for the races.” *Smith*, 494 U.S. at 889.

Though it may seem farfetched that these kinds of claims continue, questionable religious exemption claims are still asserted against laws across the country. In 2019, a religious preschool argued that the ministerial exception should apply to its teachers in response to an action filed by California to require the preschool to provide its teachers with rest breaks, meal breaks, and overtime pay. *Su v. Stephen S. Wise Temple*, 32 Cal. App. 5th 1159 (2nd App. Dist. 2019). Religious exemption claims have been made in the last 20 years against minimum wage laws, workplace harassment laws, laws prohibiting discrimination against pregnant women, laws providing for evolution-based science education, and even the crimes of kidnapping, sexual assault, and corporal punishment, among others. *Parading the Horribles: The Risks of Expanding Religious Exemptions*, Law, Rights, and Religion Project (2022) <https://tinyurl.com/2epkd7rf>. Whether these claims for exemptions are sincerely held or shams for the benefit of avoiding the law, they still continue to be invoked. A ruling in favor of the petitioners in this case would give those who would assert them a new basis to argue for problematic exemptions.

CONCLUSION

For the foregoing reasons, the decision below should be affirmed.

Respectfully submitted,

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