

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 MEMBERS OF CONGRESS AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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**SUMMARY OF THE ARGUMENT AND
STATEMENT OF INTEREST OF
*AMICI CURIAE*¹**

Amici are 13 United States Senators and 166 Members of the United States House of Representatives (together, “Members of Congress” or “*Amici*”). A complete list of *Amici* appears in the appendix of this brief.

Colorado law requires, as a condition of participating in Colorado’s Universal Pre-K program, that each preschool must “provide eligible children with 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). Petitioners ask this Court to hold that such a nondiscrimination clause violates their Free Exercise of religion and, presumably, that they should be allowed to discriminate.

Of course, legislatures should take care that their enactments avoid intentional discrimination against religion. But the Court must be equally careful not to permit religious exemptions to swallow neutrally-applicable laws whole. This Court has traditionally let Congress toe this line, including in establishing non-discrimination provisions. While it has intervened to ensure that laws do not directly discriminate against

¹ No counsel for any party authored this brief in whole or in part, and no person other than *Amici*, their counsel, and their members made a financial contribution to its preparation or submission.

religious belief or practice, it has long avoided over-corrections that would permit any “citizen to become a law unto himself” in the name of a “professed doctrine[] of religious belief.” *Reynolds v. United States*, 98 U.S. 145, 167 (1878).

Congress has long legislated against discrimination. It has even crafted exemptions to these nondiscrimination requirements when it has deemed them necessary and appropriate, as is its prerogative. Petitioners’ theory, at its core, threatens to replace the considered judgment of legislatures with ad hoc exemptions. That would permit litigants to become laws unto themselves in the exact manner that this Court, nearly 150 years ago, rejected. *Reynolds*, 98 U.S. at 167.

As legislators themselves, the undersigned Members of Congress have a clear interest in ensuring that the nondiscrimination laws enacted by Congress are not swallowed whole by exemptions. They here offer their perspective on the unique constitutional and historical capacity of legislatures (both federal and state) to enact nondiscrimination policies and exemptions thereto. Courts have important roles, including to interpret nondiscrimination laws in light of new or unanticipated circumstances as well as to ensure that laws comply with nondiscrimination requirements of the Constitution. But when a legislature enacts a valid and neutral nondiscrimination law of general applicability, “the appropriate occasions for [the] creation” of “religious-practice exemption[s]” are best left “to the political process.” *Employment Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 890 (1990). *Amici* urge the Court, in responding to litigation and within the confines of a party dispute, to be

wary of creating ad hoc exemptions to these balanced enactments lest it drown nondiscrimination laws in exemptions—a result *Amici* as legislators clearly have an interest in preventing.

ARGUMENT

I. This Court defers to legislatures and the political process when assessing exemptions from neutral, generally-applicable laws

Three decades ago, in *Smith*, the Court explained that religious exemptions to neutral, generally-applicable laws were a matter for the political process. *Employment Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 890 (1990). The question there was whether Oregon’s prohibition on possessing a “controlled substance” without a medical prescription could survive a First Amendment challenge by persons fired for ingesting “peyote for sacramental purposes.” *Id.* 874. The challengers there argued it could not: that their “religious motivation for using peyote” exempted them from compliance with the law. *Id.* 878. This Court disagreed, holding Oregon’s prohibition did not violate the Constitution.

There, the Court commented:

The rule [challengers] favor would open the prospect of constitutionally required religious exemptions from civil obligations of almost every conceivable kind—ranging from compulsory military service, *** to the payment of taxes, *** to health and safety regulation such as manslaughter and child neglect laws, *** compulsory vaccination laws, *** drug laws, *** and traffic laws, *** to social welfare legislation such as minimum

wage laws, *** child labor laws, *** animal cruelty laws, *** environmental protection laws, *** and laws providing for equality of opportunity for the races ***. The First Amendment’s protection of religious liberty does not require this.

Id. 888–89 (citations omitted).

The Court’s concern in that case proved prescient. Petitioners here have set their sights on generally-applicable nondiscrimination laws in a way that this Court warned would be threatened by the argument it rejected in *Smith*. As the Court recognized then, just because a religious-practice exemption is not “constitutionally required” does not mean it is “banished from the political process.” *Smith*, 494 U.S. at 890. No. Legislatures “can be expected to be solicitous of that value [religious-practice exemptions] in its legislation as well”—and indeed many states *had* made exceptions for peyote. *Ibid.*

But for neutral, generally-applicable laws, this Court left religious “accommodation to the political process.” *Smith*, 494 U.S. at 890. And for good reason: the process of “democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs.” *Ibid.*

In doing so, the Court merely continued the course it had set more than a hundred years prior in *Reynolds*. There, Congress had passed a law prohibiting bigamy and polygamy, and Mr. Reynolds was prosecuted under that law. He argued a religious exemption from criminal prosecution because he believed

that it was his duty “to practise polygamy.” *Reynolds v. United States*, 98 U.S. 145, 161 (1878). This Court rejected that argument:

So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

Id. 166–67.

While those were different cases involving different (criminal) laws and different religious practices, the throughline is clear: the legislative process has unique acumen in determining both the scope of non-discrimination laws and balancing whether religious exemptions are appropriate. Courts should be hesitant to find ad hoc religious exemptions in such neutral, generally-applicable laws to avoid undermining the stability of that legislative process and legislatures’ compelling interest in eradicating discrimination.

II. Petitioners’ rule would endanger myriad federal nondiscrimination laws that Congress has carefully crafted over decades

Congress has regularly passed and amended neutral, generally-applicable nondiscrimination statutes,

demonstrating that the political process is the appropriate avenue for updating these statutes.

Congress adjusts the scope of its nondiscrimination statutes over time as necessary. For example, the Americans with Disabilities Act (“ADA”) has been amended multiple times since its enactment in 1990. Congress has amended the ADA, including to include certain overseas employees within its scope (Civil Rights Act of 1991, Pub. L. No. 102-166, § 109, 105 Stat. 1071, 1077), to add protections enforceable against Congress itself (Congressional Accountability Act of 1995, Pub. L. No. 104-1, Title II, §§ 201(c)(3), 210(g), 109 Stat. 3, 8, 16), and to expand the definition of disability (ADA Amendments Act of 2008, Pub. L. No. 110-325, § 4(a), 122 Stat. 3553, 3555). Congress reacted to the problem of discrimination at universities, in government, and within Congress itself by expanding protections under the Civil Rights Act to those areas. General Accounting Office Personnel Act of 1980, Pub. L. No. 96-191, § 8(g), 94 Stat. 27, 34; Congressional Accountability Act of 1995, Pub. L. No. 104-1, Title II, § 201(c)(1), 109 Stat. 3, 8; Workforce Investment Act of 1998, Pub. L. 105-220, Title III, § 341(a), 112 Stat. 936, 1092; see also *Legislative Path to Title IX*, LIBR. OF CONG., <https://guides.loc.gov/titleIX-law-library-resources/legislative-path>. And Congress has expanded protections against discrimination in the financial industry (originally limited to sex or marital status) by expanding the Consumer Credit Protection Act, including to prohibit discrimination on the basis of race, color, religion, national origin, and age. Equal Credit Opportunity Act, Pub. L. No. 93-495, Title V, § 503, 88 Stat. 1500, 1521

(1974); Equal Credit Opportunity Act Amendments of 1976, Pub. L. No. 94-239, § 2, 90 Stat. 251, 251.

Congress sometimes acts to correct this Court’s interpretations of its nondiscrimination statutes. It enacted the Pregnancy Discrimination Act (“PDA”) “to override the Supreme Court’s refusal in a 1976 case to see pregnancy discrimination as a form of sex discrimination under Title VII.” Deborah L. Brake & Joanna L. Grossman, *Unprotected Sex: The Pregnancy Discrimination Act at 35*, 21 DUKE J. OF GENDER L. & POL’Y 67, 67 (2014). The Civil Rights Restoration Act of 1987 was intended to further expand protections against discrimination in light of this Court’s rulings, as were portions of the Civil Rights Act of 1991. See Michael Haas, *Civil Rights Restoration Act*, EBSCO (2022), <https://www.ebsco.com/research-starters/history/civil-rights-restoration-act>; Donald O. Johnson, *The Civil Rights Act of 1991 and Disparate Impact: The Response to Factionalism*, 47 UNIV. OF MIAMI L. REV. 469, 493 (1992).

In the legislative process that produces these enactments, Congress also carefully weighs and sometimes adjusts exemptions from its nondiscrimination laws. Drawing on evidence and data regarding discrimination in employment, Congress crafted Title VII to prevent employment discrimination on the basis of race, color, religion, sex, or national origin. The Civil Rights Act of 1964, Pub. L. No. 88-352, Title VII, § 703(a), 78 Stat. 241, 255; see *The Civil Rights Act of 1964: An Overview*, CONG. RSCH. SERVS., 62 (Sept. 21, 2020). “[I]ntend[ing] to reinforce Title VII,” Congress amended the act in 1972 through the Equal Employment Opportunity Act (“EEOA”). Indu Vohra, *U.S. Congress Mandates Equal Employment Opportunity*,

EBSCO (2023), <https://www.ebsco.com/research-starters/law/us-congress-mandates-equal-employment-opportunity>. Congress carefully considered, at that time, various exemptions for the Civil Rights Act and adjusted them, including “expand[ing] exemptions for religious organizations.” *Ibid.* During consideration of the EEOA specifically, Congress expanded the original religious exemption (codified in § 702) but rejected an amendment that would have exempted religious institutions entirely from Title VII. See 118 Cong. Rec. 1977-82, 4503 (1972) (rejecting amendment to grant religious institutions total exemption from Title VII requirements); Melissa Rogers, *Federal Funding and Religion-Based Employment Decisions*, in SANCTIONING RELIGION? POLITICS, LAW, AND FAITH-BASED PUBLIC SERVICES 105, 109 (David K. Ryden & Jeffrey Polet eds., 2005) (“While Senators Ervin and Allen were unsuccessful in their attempts to amend the bill to exempt educational and religious institutions from Title VII entirely, their amendment to broaden the 702 exemption to cover all employment positions of religious corporations, associations, educational institutions, and societies was successful.”).

Conversely, the original narrow religious exemption in the Fair Housing Act of 1968 (42 U.S.C. § 3607(a)) has not been expanded despite later expansions of the FHA’s scope (see Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 808(b)(1), 88 Stat. 633, 729; Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, §§ 5(b), 6(a)-(b), 102 Stat. 1619, 1619–20). And, particularly pertinent here, in the Head Start Act, Congress did not include a religious exemption to the nondiscrimination provision even though the education-related program

includes participation by religious providers. See 42 U.S.C. § 9849.

The point here is that Congress, as an elected, deliberate body operating through an iterative process, has particular acumen in crafting both the scope of nondiscrimination protections as well as the scope of any necessary exemptions to those neutral, generally-applicable requirements. The freedom to do so permits Congress to ensure important, universal nondiscrimination protections while balancing other interests.

This freedom is critical. Congress, like other legislative bodies, has a compelling interest in preventing invidious discrimination against members of the public. Over the past nearly 70 years, including with the landmark Civil Rights Act of 1964, Congress has worked to eliminate all forms of discrimination and ensure that all members of society receive equal treatment. These laws protect the dignity of historically marginalized groups and help bring our nation closer to the promise of the Declaration of Independence that “all men are created equal.” As elected officials, legislators have passed numerous nondiscrimination laws to ensure that their constituents can fully participate in American society without discrimination. These nondiscrimination provisions, in the context of federally funded programs, also ensure that these programs will effectively address the public policy concern they were designed to solve by ensuring all eligible individuals are able to participate.

While there may be disagreements among individual legislators on when exemptions from these nondis-

crimination provisions are appropriate, such exemptions, when added, should be the result of a deliberative process by the body working to enact nondiscrimination protections. In fact, this Court has recognized the importance of permitting Congress to balance the breadth of any exemptions. In *Amos*, for instance, this Court addressed a challenge to the expansion of Title VII of the Civil Rights Act’s religious exemption. *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 339 (1987). The challenger there argued that Congress’ accommodations amounted to a violation of the Establishment Clause. This Court rejected that argument, starting from the premise that Congress can (and sometimes should) accommodate religious practice with “benevolent neutrality.” *Id.* 334 (quotation omitted).² Reviewing the record there, the Court confirmed that “Congress acted with a legitimate purpose in expanding the § 702 exemption to cover all activities of religious employers.” *Id.* 339. While not required, Congress’ balance of scope and exemptions deserves significant respect and weight, and “it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions.” *Id.* 335.

² Of course, the Court also recognized that “[a]t some point, accommodation may devolve into ‘an unlawful fostering of religion’ *** but these are not such cases, in [its] view.” *Amos*, 483 U.S. at 334–35 (citation omitted).

III. The Court should be mindful not to destabilize or undermine that legislative role by effectively legislating ad hoc exemptions to nondiscrimination laws

As discussed in Section II, the legislative process described in *Smith* is not just theoretical but has for decades shaped the substantive scope and exemptions to the Nation’s nondiscrimination laws. Petitioners’ theory here—just as in *Smith*—threatens to upend that careful balance well beyond Colorado. *Amici* do not think the Court should permit citizens to become laws unto themselves when deciding whether to comply with the Nation’s nondiscrimination laws. Any given law or program that includes a generic, neutral nondiscrimination prohibition could suddenly invite challenges, carveouts upon carveouts, and endless litigation. Litigants might wish to expand the FHA’s religious exemption (despite Congress’s decision not to do so) or expand exemptions to the Civil Rights Act beyond what was carefully considered and enacted by Congress. Protections against sex discrimination by Congress itself, or in our financial industry, or myriad others weighed and decided by Congress would be subject to ad hoc exemptions by aggressive litigants.

Instead, *Amici* respectfully submit that the Court should be wary of requests for the judiciary to roll up its sleeves and essentially legislate ad hoc exemptions to these carefully-crafted laws. That request invites “judges [to] weigh the social importance of all laws against the centrality of all religious beliefs” in a way that this Court expressly rejected three decades ago. *Employment Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 890 (1990). This is a perilous direction to move the law, ultimately undermining 70

years of nondiscrimination laws covering a vast swath of public life, including education, healthcare, child-care, job training and placement, food and nutrition programs, victim assistance, legal services, reentry programs, and much, much more.

For valid, neutral, generally-applicable laws—such as nondiscrimination laws discussed above and, on *Amici*’s view, the Colorado law at issue here—“leaving accommodation to the political process” (*Smith*, 494 U.S. at 890.) is an important bulwark of democratic governance. It is the work of Congress to expand or narrow exemptions, determine substantive rights, respond to judicial interpretations, and refine necessary exemptions. Congress is better situated to balance these issues in the context of its nondiscrimination statutes, including Title VII, Title IX, the ADA, the ECOA, the FHA, and related civil-rights laws, without courts creating bespoke exemptions for the peculiarly litigious.

This Court has long resisted finding ad hoc exemptions for “each conscience” that seeks to be a “law unto itself” when balancing matters of religious doctrine and compliance with neutral, generally-applicable laws. *Smith*, 494 U.S. at 890; *Reynolds v. United States*, 98 U.S. 145, 167 (1878). And it has long held that “to the extent that it is feasible,” the “task” of “reconcile[ing] competing demands on government” in the face of competing religious interests “is for the legislatures and other institutions.” *Lyng v. Northwest Indian Cemetery Protective Ass’n*, 485 U.S. 439, 452 (1988) (citing *Federalist* No. 10). It should hold to that wisdom here.

CONCLUSION

Respectfully, *Amici* request that the Court affirm.

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AUGUST 2026

APPENDIX

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APPENDIX A**COMPLETE LIST OF *AMICI CURIAE*****United States Senators (13)**

Tammy Baldwin	Edward J. Markey
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Richard Blumenthal	Patty Murray
Richard J. Durbin	Jeanne Shaheen
John Hickenlooper	Chris Van Hollen
Mazie Hirono	Ron Wyden
Tim Kaine	

**Members of the
United States House of Representatives (166)**

Pete Aguilar	Janelle S. Bynum
Gabe Amo	Salud Carbajal
Yassamin Ansari	André Carson
Becca Balint	Troy A. Carter, Sr.
Nanette Barragán	Greg Casar
Joyce Beatty	Sean Casten
Wesley Bell	Kathy Castor
Ami Bera, M.D.	Judy Chu
Donald S. Beyer Jr.	Gilbert Ray Cisneros, Jr.
Suzanne Bonamici	Katherine M. Clark
Shontel M. Brown	Yvette D. Clarke
Julia Brownley	Emanuel Cleaver, II
Nikki Budzinski	

James E. Clyburn	Maxwell Alejandro Frost
Steve Cohen	Jesús G. “Chuy” García
J. Luis Correa	Robert Garcia
Joe Courtney	Sylvia R. Garcia
Angie Craig	Dan Goldman
Jasmine Crockett	Jimmy Gomez
Jason Crow	Josh Gottheimer
Sharice L. Davids	Al Green
Danny K. Davis	Adelita S. Grijalva
Madeleine Dean	Jahana Hayes
Diana DeGette	Chrissy Houlahan
Rosa DeLauro	Steny Hoyer
Suzan K. DelBene	Jared Huffman
Mark DeSaulnier	Glenn F. Ivey
Maxine Dexter, M.D.	Jonathan L. Jackson
Lloyd Doggett	Sara Jacobs
Sarah Elfreth	Pramila Jayapal
Veronica Escobar	Hakeem Jeffries
Adriano Espaillat	Henry C. “Hank” Johnson, Jr.
Dwight Evans	Julie Johnson
Lizzie Fletcher	Sydney Kamlager-Dove
Bill Foster	William Keating
Valerie P. Foushee	Robin L. Kelly
Lois Frankel	
Laura Friedman	

Timothy M. Kennedy	Christian Menefee
Ro Khanna	Robert J. Menendez
Raja Krishnamoorthi	Grace Meng
Greg Landsman	Kweisi Mfume
Rick Larsen	Dave Min
John B. Larson	Gwen S. Moore
Summer L. Lee	Joseph D. Morelle
Teresa Leger	Kelly Morrison
Fernández	Seth Moulton
Mike Levin	Kevin Mullin
Sam T. Liccardo	Jerrold Nadler
Ted W. Lieu	Richard E. Neal
Zoe Lofgren	Joe Neguse
Stephen F. Lynch	Eleanor Holmes
Doris Matsui	Norton
Lucy McBath	Alexandria Ocasio-
Sarah McBride	Cortez
April McClain Delaney	Ilhan Omar
Jennifer L. McClellan	Frank Pallone, Jr.
Betty McCollum	Chris Pappas
Morgan McGarvey	Nancy Pelosi
James P. McGovern	Scott H. Peters
LaMonica McIver	Brittany Pettersen
Gregory W. Meeks	Chellie Pingree
Analilia Mejia	Mark Pocan

Ayanna Pressley	Suhas Subramanyam
Mike Quigley	Mark Takano
Delia C. Ramirez	Shri Thanedar
Emily Randall	Bennie G. Thompson
Jamie Raskin	Mike Thompson
Luz M. Rivas	Dina Titus
Deborah K. Ross	Rashida Tlaib
Raul Ruiz, M.D.	Jill Tokuda
Patrick Ryan	Paul Tonko
Andrea Salinas	Norma J. Torres
Linda T. Sánchez	Ritchie Torres
Mary Gay Scanlon	Lori Trahan
Jan Schakowsky	Lauren Underwood
Bradley Scott Schneider	Juan Vargas
Robert C. “Bobby” Scott	Gabe Vasquez
Brad Sherman	Marc Veasey
Lateefah Simon	Nydia M. Velázquez
Adam Smith	James R. Walkinshaw
Eric Sorensen	Debbie Wasserman Schultz
Melanie Stansbury	Maxine Waters
Greg Stanton	Bonnie Watson Coleman
Haley Stevens	Nikema Williams
Marilyn Strickland	Frederica S. Wilson