

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 ILAN MEYER AND
HENNY BOS AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

Tor Tarantola
ORRICK, HERRINGTON &
SUTCLIFFE LLP
2100 Pennsylvania
Avenue NW
Washington, DC 20037

Elana Redfield
THE WILLIAMS INSTITUTE
UCLA School of Law
385 Charles E. Young Dr.
East
Los Angeles, CA 90095

Daniel A. Rubens
Counsel of Record
ORRICK, HERRINGTON &
SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
drubens@orrick.com

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*¹

Dr. Ilan Meyer is Distinguished Senior Scholar for Public Policy at the Williams Institute at UCLA School of Law and Professor Emeritus of Sociomedical Sciences at Columbia University. He studies public-health issues related to sexual and gender minorities, including the relationships among minority status, identity, prejudice, discrimination, and health. He is the developer of the minority-stress model, which describes how prejudice-related stressors contribute to health disparities between LGBT² and non-LGBT people. He has served as the principal investigator for several national studies of LGBT populations and is the recipient of the American Psychological Association's Presidential Citation and the National Institutes of Health's Sexual and Gender Minority Distinguished Investigator Award.

Dr. Henny Bos is Professor of Sexual and Gender Diversity in Families and Youth at the University of Amsterdam's Research Institute of Child Development and Education. Her research and teaching focus on children of same-sex parents as well as LGBT adolescents and young adults. She has led or co-led several international studies of LGBT parents and their

¹ No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than *amici curiae* and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

² The term "LGBT" refers to lesbian, gay, bisexual, and transgender people. Throughout this brief, "LGBT" is used to refer broadly to sexual and gender minorities who are the subjects of discrimination in this case.

children, including the U.S. National Longitudinal Lesbian Family Study and an international study of gay fathers in the Netherlands, France, and the United Kingdom. She has been recognized by the American Psychological Association's Society for the Psychology of Sexual Orientation and Gender Diversity and by the Dutch Society of Sexuality for distinguished scientific contributions.

Together, *amici* offer expertise on the effects of discrimination on the health and well-being of LGBT parents and their children. Those topics are critical to assessing Colorado's interests in requiring schools participating in its publicly funded universal pre-kindergarten program to ensure that children have an equal opportunity to enroll regardless of, among other things, their or their parents' sexual orientation or gender identity.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case concerns the equal-opportunity requirements in Colorado's universal pre-kindergarten (pre-K) program. Those requirements prohibit schools from denying equal opportunity based on, *inter alia*, children's or their parents' sexual orientation or gender identity. Petitioners contend that, by applying these requirements, Colorado excluded Petitioners from the program because of their religious exercise. Pet. Br. 27-35. Petitioners further insist that Colorado's interest in ensuring that children of LGBT parents have equal access to pre-K is not compelling, asserting that Colorado cannot identify any "actual problem" or "actual harm" that would result from

relaxing its equal-opportunity requirements. Pet. Br. 49-50.

Amici submit this brief to provide the Court with public-health research about how discrimination in the form of state-sanctioned exclusionary conduct directed toward LGBT people affects the health and well-being of children and their families. Petitioners and their *amici* have almost nothing to say about LGBT people or their experiences, except to assert that including children of LGBT parents in their programs would intolerably burden their religious exercise. But the harms that discrimination inflicts on children of LGBT parents and their families—many of whom themselves are religious—are real and consequential. That fact is critical to assessing the purpose and effects of Colorado’s equal-opportunity requirements, as well as the impact of constitutionalizing religion-based exemptions.

This brief explains that, in light of the well-established harms that discrimination and exclusion cause LGBT people and their children, the equal-opportunity requirements are well warranted as a public-health measure. Colorado had compelling reasons to include the requirements in order to avert these harms. The requirements do not, by design or operation, target or exclude Catholic pre-K programs based on their religious exercise. They instead further a compelling interest in protecting children and parents from the foreseeable, tangible, and harmful consequences of state-sanctioned exclusion of LGBT families.

This Court made clear in *Obergefell v. Hodges* that these negative consequences, when flowing from a policy carrying “the imprimatur of the State,” are of constitutional significance. 576 U.S. 644, 672 (2015). Recognizing the right of same-sex couples to marry, the Court held, “allows children ‘to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.’” *Id.* at 668 (quoting *United States v. Windsor*, 570 U.S. 744, 772 (2013)). When the state prevents their parents from marrying, “children suffer the stigma of knowing their families are somehow lesser.” *Id.* It is this state-sanctioned stigma—which, as discussed below, has tangible and measurable consequences—that Colorado’s equal-opportunity requirement works to prevent.

This brief proceeds in two parts. Part I begins by summarizing the population affected by the exclusion of LGBT families from publicly funded pre-K. It then describes the harms that limiting school choice imposes on children and parents in such families—including for LGBT parents who want a religious education for their children. This Part explains how excluding children of LGBT parents imposes stigma on those children, threatens parental participation in school, and increases the stress of finding a pre-K program, all of which may harm the health and well-being of both children and parents. Part II explains why preventing participants in state-funded programs from excluding LGBT people and their children is a compelling public-health interest more generally: Discrimination is a form of minority stress inflicted through both tangible and symbolic mechanisms; LGBT people have endured a long and well-

documented history of discrimination; and research shows that discriminatory and exclusionary conduct, as a minority stressor, adversely affects health and well-being—harms that states have a compelling interest in preventing.

For these reasons, the courts below were correct to recognize that Colorado’s equal-opportunity requirements “are not a targeted burden on religious use,” Pet. App. 22a, but instead reflect a compelling interest “in ensuring LGBTQ+ children and families do not experience discriminatory barriers,” Pet. App. 143a. This Court should affirm.

ARGUMENT

I. Colorado’s Interest In Ensuring Equal Opportunities In Its Universal Pre-K Program Is Empirically Grounded And Compelling As A Matter Of Public Health.

A. This Court’s decision could affect tens of thousands of families in Colorado and millions of families across the United States.

Approximately 5 million children under age 18 in the United States live with an LGBT parent.³ They

³ Bianca D.M. Wilson & Lauren J.A. Bouton, *LGBTQ Parenting in the U.S.* 2 (2024), <https://perma.cc/WK8G-G8PK>. This is approximately 6.8% of all children under age 18 in the United States (73.1 million children are under 18 according to the 2020 Decennial Census). See Laura Blakeslee et al., U.S. Census Bureau, *Age and Sex Composition: 2020* at 2 tbl. 1 (May 2023), <https://perma.cc/92MB-T4TD>.

live in every state, including Colorado. The Court’s decision in this case will likely determine whether these children can access the same set of state-funded schools as children of non-LGBT parents in Colorado, or whether their access to state resources will be limited because their parents happen to be LGBT.

Importantly, a significant portion of LGBT people consider themselves to be religious, and many religious LGBT people are parents. Research suggests that many LGBT parents, like many non-LGBT parents, use religion and spirituality to teach values to their children and to provide a sense of community.⁴

Colorado’s pre-K program facilitates the interests of LGBT and non-LGBT parents alike by removing affordability as an obstacle and, consequently, by increasing demand and allowing new parochial schools to open. Funding schools that exclude children of LGBT parents prevents those children from attending what otherwise tend to be high-quality schools.⁵

The remainder of this section provides additional demographic details of the LGBT population, nationally and in Colorado, as well as the children of LGBT parents.

⁴ Sharon S. Rostosky et al., *A Qualitative Study of Parenting and Religiosity/Spirituality in LGBTQ Families*, 9 Psych. Religion & Spirituality 437, 437-39 (2017), <https://perma.cc/G423-NKR7>.

⁵ Cf. U.S. Conference of Catholic Bishops *Amicus* Br. 21 (July 2, 2026) (describing the excellent outcomes achieved by Catholic schools).

The U.S. LGBT Population. There are an estimated 18 million LGBT adults (aged 18 and older) and 4.1 million LGBT youth (aged 13 to 17) in the United States.⁶ This includes an estimated 2.1 million adults and 724,000 youth who are transgender.⁷ In Colorado, there are an estimated 375,000 LGBT adults and 71,000 LGBT youth, including 43,000 adults and 13,000 youth who are transgender.⁸

The Population of U.S. LGBT Parents. There are an estimated 2.6 million LGBT parents of children under age 18 in the United States, including 1.6 million who are married or partnered and 1 million who are single parents.⁹ In Colorado, there are an estimated 67,000 LGBT parents.¹⁰

Nationwide, cisgender women make up 75% of LGBT parents (1.9 million) and cisgender men make

⁶ Jody L. Herman & Andrew R. Flores, Williams Inst., *How Many Adults and Youth Identify as LGBT in the United States?* (forthcoming 2026).

⁷ Jody L. Herman & Andrew R. Flores, Williams Inst., *How Many Adults and Youth Identify as Transgender in the United States?* at 2 (2025), <https://perma.cc/EH7Y-T6R4>.

⁸ See *id.* at 10 tbl. 4, 13 tbl. 5; Herman & Flores, *How Many Adults and Youth Identify as LGBT in the United States?*, *supra* note 6.

⁹ Wilson & Bouton, *supra* note 3, at 10. Estimates are calculated using 2020 U.S. Decennial Census population counts. See *id.* at 30.

¹⁰ Estimated by applying the proportion of LGBT people parenting nationally (18%; *id.* at 38 tbl. A3) to the Colorado adult LGBT population. See Herman & Flores, *How Many Adults and Youth Identify as LGBT in the United States?*, *supra* note 6.

up 16% (407,000).¹¹ Transgender people of all gender identities make up 9% of LGBT parents (227,000).¹² People of color represent 45% of LGBT parents.¹³ One third (33%) of LGBT parents (compared with 21% of non-LGBT parents) have a household income that is at or below the federal poverty line.¹⁴

Children of LGBT Parents. Of the estimated 5 million children in the United States who live with an LGBT parent, the majority (3.2 million) live in a two-parent household,¹⁵ and 2 million live with a single LGBT parent;¹⁶ 1.3 million are aged 4 or younger.¹⁷ In addition to parenting their biological children, same-sex parents foster children at 9 times the rate of different-sex parents and adopt children at 7 times the rate of different-sex parents.¹⁸

¹¹ Wilson & Bouton, *supra* note 3, at 38-39 tbl. A4.

¹² *Id.*

¹³ *Id.* at 47 tbl. A16.

¹⁴ *Id.*

¹⁵ Wilson & Bouton, *supra* note 3, at 41 tbl. A7.

¹⁶ *Id.*

¹⁷ Estimated by multiplying the proportion of children under age 5 in the United States (26%) by 5 million. See Annie E. Casey Found., Kids Count Data Ctr., *Child Population by Age Group in United States* (rev. July 2026), <https://tinyurl.com/46kj4cmw>. This proportion is based on U.S. Census Bureau Annual Estimates of the Resident Population (Vintage Series), see *id.*, since it is the most accurate count of children under age 5, a group that is known to be undercounted in each census.

¹⁸ *Id.* at 42 tbl. A9.

Religiosity Among LGBT People. Almost half (47%) of LGBT adults in the United States report that they are moderately or highly religious.¹⁹ In Colorado, 39% of LGBT adults are moderately or highly religious.²⁰ Almost half (46%) of moderately religious and 58% of highly religious LGBT people are parents.²¹ Most LGBT parents live in the South (31%) and Midwest (26%),²² the regions with the highest proportion of Christian adults²³ and where the highest proportion of private religious schools are located, including those that offer pre-K.²⁴

But even outside of these regions, private education is predominately religious. The majority of private schools in the United States (and in Colorado)

¹⁹ Kerith J. Conron, Shoshana K. Goldberg, & Katherine O'Neill, Williams Inst., *Religiosity Among LGBT Adults in the U.S.* 5 (2020), <https://perma.cc/BJ2M-HSV4>.

²⁰ *Id.* at 8 fig. 4.

²¹ *Id.* at 21 tbl. B.5.

²² Wilson & Bouton, *supra* note 3, at 40 tbl. A5.

²³ Gregory A. Smith et al., *Decline of Christianity in the U.S. Has Slowed, May Have Leveled Off* 22, Pew Rsch. Ctr. (2025), <https://perma.cc/NUY3-5QPE>.

²⁴ Among schools that have a religious orientation and offer pre-K, 39% are in the South and 30% in the Midwest. U.S. Dep't of Educ., Nat'l Ctr. for Educ. Statistics, *Private School Universe Survey (2021-22): Census Region by Q13a Does School Have Religious Orientation. Filtered by Q4b1 Nursery/Prekindergarten Offered (Yes)*, <https://perma.cc/TA7F-Y7YF> (last visited Aug. 19, 2026) (select "View the live page;" log-in required).

are religiously affiliated.²⁵ In Colorado, the majority of private schools that offer pre-K are religious, with Catholic being the most common denomination.²⁶

B. Exclusion from publicly funded pre-K would harm children.

Meta-analyses²⁷ have shown that children of lesbian and gay parents on average exhibit equal or better psychological adjustment than children of different-sex parents.²⁸ Children of lesbian and gay

²⁵ Learning Policy Inst., *Distribution of Public and Private Schools: Colorado* 3 tbl. 4 (Mar. 2025), <https://perma.cc/7DVD-64BL>.

²⁶ Among the 161 private schools in Colorado that offer pre-K, 37 are Catholic and 61 have other religious affiliations (including 23 Christian (no specific denomination), 19 Lutheran, 5 Baptist, 4 Jewish, 3 Seventh Day Adventist, 3 Methodist, 1 Presbyterian, 1 Episcopal, and 1 Islamic). U.S. Dep't of Educ., Nat'l Ctr. for Educ. Statistics, *Search for Private Schools*, <https://perma.cc/NY8F-AM88> (last visited Aug. 19, 2026) (search parameters: State = Colorado, Includes Grade = PK, Religious Affiliation = Roman Catholic...).

²⁷ A meta-analysis is an analysis that statistically combines results from multiple studies on the same topic. Meta-analytic studies have some important advantages in that they increase statistical power and narrow confidence intervals by pooling sample sizes, which compensates for the limited power of individual studies. Such studies can also reveal a consistent effect across varied populations and settings, which is more convincing than one study in one context. Meta-analyses produce new estimates on the question under study based on the aggregate of findings in the field.

²⁸ See Nicola Carone et al., *Child Psychological Adjustment in Planned Gay Father Families: A Meta-Analysis*, 22 Sexuality Rsch. & Soc. Pol'y 1022, 1036 (2025); Alicia Crowl, Soyeon Ahn & Jean Baker, *A Meta-Analysis of Developmental Outcomes for*

parents grow up to be healthy, well-functioning adults. Research has shown, however, that children who are stigmatized because of the sexual orientation of their parents report lower self-esteem and more behavioral problems than non-stigmatized peers in same-sex-parent families.²⁹

Additionally, parent-school collaboration is a key pathway through which early education promotes children's academic success and psychosocial

Children of Same-Sex and Heterosexual Parents, 4 J. GLBT Fam. Stud. 385, 398 (2008); Yun Zhang et al., *Family Outcome Disparities Between Sexual Minority and Heterosexual Families: A Systematic Review and Meta-Analysis*, 8 BMJ Glob. Health 1, 13 (2023).

²⁹ Henny M.W. Bos & Frank Van Balen, *Children in Planned Lesbian Families: Stigmatisation, Psychological Adjustment and Protective Factors*, 10 Culture, Health & Sexuality 221, 232 (2008); Nanette Gartrell et al., *The National Lesbian Family Study: 4. Interviews with the 10-Year-Old Children*, 75 Am. J. of Orthopsychiatry 518, 523 (2005); Henny Bos & Nanette Gartrell, *Adolescents of the USA National Longitudinal Lesbian Family Study: Can Family Characteristics Counteract the Negative Effects of Stigmatization?*, 49 Family Process 559, 568 (2010); see also Audrey S. Koh et al., *Predictors of Mental Health in Emerging Adult Offspring of Lesbian-Parent Families*, 23 J. Lesbian Stud. 257, 269 (2019) (finding stigmatization related to their lesbian parents was associated with behavioral or emotional problems in young adults); Rachel H. Farr et al., *School Experiences of Young Children and Their Lesbian and Gay Adoptive Parents*, 3 Psych. Sexual Orientation & Gender Diversity 442, 445 (2016) (finding children of lesbian and gay parents exhibited more problem behaviors in school if bullied); Nanette Gartrell et al., *The National Lesbian Family Study: 3. Interviews with Mothers of Five-Year-Olds*, 70 Am. J. Orthopsychiatry 542, 546 (2000) (discussing young children's experience of homophobia from teachers and peers).

adjustment. Meta-analyses have shown that children in elementary and middle school perform better academically when parents and schools engage in substantive, coordinated forms of involvement, such as discussing school goals, conveying high expectations, and aligning home and school efforts.³⁰ When parents and teachers function as genuine partners, communicate directly, and work together to support the child, children exhibit better academic performance and stronger socio-emotional outcomes. LGBT parents tend to have as high or higher involvement with their children's schools.³¹ For example, in one national study, 94% of LGBT parents reported attending a parent-teacher conference or back-to-school evening, and two-thirds had volunteered at their child's school.³²

³⁰ See Nancy E. Hill & Diana F. Tyson, *Parental Involvement in Middle School: A Meta-Analytic Assessment of the Strategies That Promote Achievement*, 45 *Developmental Psych.* 740, 758 (2009); William H. Jeynes, *A Meta-Analysis of the Relation of Parental Involvement to Urban Elementary School Student Academic Achievement*, 40 *Urb. Educ.* 237, 246 (2005).

³¹ See Abbie E. Goldberg & JuliAnna Z. Smith, *Predictors of School Engagement Among Same-Sex and Heterosexual Adoptive Parents of Kindergarteners*, 52 *J. Sch. Psych.* 463, 467 tbl. 1 (2014) (finding no statistically significant difference in parental involvement among lesbian and gay parents); Joseph G. Kosciw & Elizabeth M. Diaz, GLSEN, *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual and Transgender Parents and Their Children in Our Nation's K-12 Schools* 25-27 (2008), <https://perma.cc/GUW5-SZZE> (finding that LGBT parents report higher school participation compared to a national sample of all parents).

³² Kosciw & Diaz, *supra* note 31, at 26 tbl. 8.

Parents may feel reluctant to participate in these ways if they feel the need to conceal their LGBT identity to protect their children or avoid threatening their child’s enrollment.³³ The need to conceal may also prevent children of LGBT parents from participating in otherwise beneficial programs and services and can threaten the child’s well-being.

C. Exclusion from publicly funded pre-K would harm parents.

Parents’ educational decisions regarding their children, including navigating selection and allocation processes in primary and secondary education, are sources of stress. Researchers in one qualitative study of Black parents’ educational decision-making concluded that parents experience their search for a “good” school as emotionally demanding.³⁴ Research on LGBT parents shows that they weigh concerns that are specifically related to their family situation when selecting a school: They report that they explicitly consider the risk of homophobic bullying and discrimination.³⁵ School choice is already stressful for all

³³ See Abbie E. Goldberg & Eliza Byard, *LGBTQ-Parent Families and Schools*, in *LGBTQ-Parent Families* 287, 294, 295 (Abbie E. Goldberg & Katherine R. Allen eds., 2d ed. 2020).

³⁴ Linn Posey-Maddox et al., *No Choice Is the “Right” Choice: Black Parents’ Educational Decision-Making in Their Search for a “Good” School*, 91 Harv. Educ. Rev. 38, 58 (2021) (referring to “the multiple choices parents make over their child(ren)’s educational trajectory and the cumulative toll that ongoing racial risk assessments, monitoring, and trade-offs have on Black families”).

³⁵ Kosciw & Diaz, *supra* note 31, at 43; see also Abbie E. Goldberg et al., *“There Is No Perfect School”: The Complexity of*

parents, and LGBT parents face additional concerns unique to their family situation. Allowing publicly funded schools to exclude LGBT families, as Petitioners advocate, would add yet another burden: LGBT parents would have to navigate their search knowing their children may be denied access to otherwise preferred schools simply because of their parents' sexual orientation or gender identity. This stress has adverse consequences for children of LGBT parents and is associated with increased emotional and behavioral problems in children.³⁶

School Decision-Making Among Lesbian and Gay Adoptive Parents, 80 J. Marriage & Fam. 684, 694-95 (2018) (describing lesbian and gay parents' considerations of inclusiveness in choosing a school); Abbie E. Goldberg & JuliAnna Z. Smith, *Preschool Selection Considerations and Experiences of School Mistreatment Among Lesbian, Gay, and Heterosexual Adoptive Parents*, 29 Early Childhood Rsch. Q. 64, 72 (2014) (finding that "gay-friendliness" was an important school selection criterion for lesbian and gay parents).

³⁶ See generally April S. Masarik & Rand D. Conger, *Stress and Child Development: A Review of the Family Stress Model*, 13 Current Op. Psych. 85 (2017) (discussing the negative effects of family stress on children); Abbie E. Goldberg & Brad Sears, Williams Inst., *Current Challenges for Transgender Parents in an Increasingly Anti-Transgender Sociopolitical Climate* 27-28 (2026), <https://perma.cc/4YR8-Z4A6> (describing experiences of heightened anxiety and fear among children of transgender parents).

II. Protecting LGBT People And Their Children From Experiencing Discrimination In State-Funded Programs Is A Compelling Public-Health Interest.

There is scientific consensus that discrimination poses a substantial public-health risk. LGBT people continue to experience well-documented discrimination across a wide range of public and private domains. Research has shown that this discrimination can result in measurable negative health effects among LGBT people. Colorado's nondiscrimination policy should be viewed in that context. *See* Resp. Br. at 51-55.

A. LGBT people experience minority stress stemming from anti-LGBT stigma.

Stigma refers to the social process of attributing low regard to a member of a group, such as LGBT people, racial and ethnic minorities, religious minorities, and people with disabilities, among others. Through stigma processes, the identity of members of such groups is “devalued.”³⁷ Stigma is considered a *fundamental* cause of disparities in health because it is resistant to change across historical periods.³⁸ This is because, over time, stigma produces new mechanisms

³⁷ Jennifer Crocker et al., *Social Stigma*, in 2 *Handbook of Social Psychology* 504, 505 (Daniel T. Gilbert et al. eds., 4th ed. 1998).

³⁸ Mark L. Hatzenbuehler, Jo C. Phelan & Bruce G. Link, *Stigma as a Fundamental Cause of Population Health Inequalities*, 103 *Am. J. Pub. Health* 813, 813 (2013).

for exclusion and discrimination and, thus, increases stress in members of the target minority group.³⁹

LGBT people are exposed to stressors that stem from anti-LGBT stigma, which researchers refer to as *minority stress*.⁴⁰ Stress is ubiquitous to all people, but minority stress refers to *excess* stress experienced by LGBT people as compared with non-LGBT people. In contrast to other forms of stress, minority stress stems from one's stigmatized LGBT identity, so by definition it is a form of stress that non-LGBT people do not experience. In turn, stress can cause mental and physical disorders, so the excess exposure to minority stress among LGBT people confers on them an excess risk of disease.⁴¹

Minority stress is defined by specific stress processes, including, among others, prejudice events and conditions and expectations of rejection and discrimination.⁴² *Prejudice events and conditions* refer to large and small events and conditions that stem from societal anti-LGBT stigma. Minority stress has both structural and interpersonal manifestations. Structural stigma refers to exclusion from resources and advantages available to cisgender heterosexuals, such as the historical exclusion of same-sex couples from marriage and the exclusion of LGBT people from

³⁹ *See id.* at 819.

⁴⁰ Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations*, 129 Psych. Bulletin 674, 674 (2003).

⁴¹ *Id.* at 679.

⁴² *Id.* at 680-82.

employment non-discrimination protections. Legally sanctioned exclusion from admission to state-funded educational programs, as advocated by Petitioners here, would be a form of structural stigma. Structural stigma can also lead to stressful events through the experience of interpersonal interactions that are perpetrated by individuals, such as anti-LGBT violence, discriminatory employment and housing practices, and other forms of exclusion and discrimination.

Because of the social significance of stigma, a discriminatory event may be perpetrated by one institution or even one person, but it carries a symbolic message of social disapprobation and devaluation of the LGBT person. This added symbolic value makes prejudice events more damaging to the victim's health than a similar event not motivated by stigma.⁴³ This exemplifies an important quality of minority stress: Prejudice events and conditions have a powerful impact because they convey deep cultural meaning.⁴⁴ Minority stress events can be characterized as either major (e.g., being fired from a job) or seemingly minor, "everyday" events (e.g., being refused service at a restaurant). But even "[a] seemingly minor event, such as a slur directed at a gay man, may evoke deep feelings of rejection and fears of violence [seemingly] disproportionate to the event that precipitated them."⁴⁵

⁴³ See, e.g., David M. Frost, Keren Lehavot & Ilan H. Meyer, *Minority Stress and Physical Health Among Sexual Minority Individuals*, 38 J. Behav. Med. 1, 1 (2015).

⁴⁴ Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. Health & Soc. Behav. 38, 41-42 (1995).

⁴⁵ *Id.* at 42.

Accordingly, assessment of stressors related to stigma and prejudice must consider not only the tangible impact of stress, but also the symbolic meaning of the experience within the social context. The exclusion of LGBT parents' children from state-funded pre-K programs is, in addition to its direct and tangible harms, a powerful symbol of disapprobation.

B. LGBT people have experienced a long history of public and private discrimination in the United States.

In *Obergefell v. Hodges*, this Court recognized that gay and lesbian people have been “prohibited from most government employment, barred from military service, excluded under immigration laws, targeted by police, and burdened in their rights to associate.” 576 U.S. at 661; *see also Windsor v. United States*, 699 F.3d 169, 182 (2d Cir. 2012) (“It is easy to conclude that homosexuals have suffered a history of discrimination.”), *aff'd*, 570 U.S. 744 (2013). This Court has repeatedly intervened to address forms of discrimination directed at LGBT people under color of law.⁴⁶

⁴⁶ *See, e.g., Obergefell*, 576 U.S. at 681 (Due Process and Equal Protection clauses guarantee right of same-sex couples to marry); *Windsor*, 570 U.S. at 769-70 (Defense of Marriage Act violates due process and equal protection); *Romer v. Evans*, 517 U.S. 620, 631-32 (1996) (Equal Protection Clause bars state constitutional amendment prohibiting the extension of antidiscrimination protections to cover sexual orientation); *Bostock v. Clayton Cty.*, 590 U.S. 644, 649-52 (2020) (Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of sexual orientation or transgender status).

Yet discrimination persists. Research shows that violence, mistreatment, and discrimination against LGBT people remain pervasive. For example, an analysis of 2022-2023 data from a nationally representative U.S. Department of Justice survey found that LGBT people were five times more likely than non-LGBT people to have experienced violent victimization.⁴⁷ Although LGBT people experienced increasing public acceptance from the 1990s through 2022, such acceptance is now in decline.⁴⁸ A recent rise in anti-gay rhetoric may contribute to this trend as well as a

⁴⁷ According to National Crime Victimization Survey data from 2022 and 2023, gay, lesbian, and bisexual people experienced 106.4 violent victimizations per 1,000 persons, and transgender people experienced victimization at a rate of 93.7 per 1,000, compared with 21.1 per 1,000 among non-LGBT persons. Ilan H. Meyer & Andrew R. Flores, Williams Inst., *Anti-LGBT Victimization in the United States* 3 (2025), <https://perma.cc/DL7P-U3ND>. LGBT people also experienced a higher rate of serious violence, defined as rape or sexual assault, robbery, or aggravated assault, than non-LGBT people (53.7 per 1,000 vs. 8.5 per 1,000). *Id.* at 4; *see also* Andrew R. Flores et al., *Victimization Rates and Traits of Sexual and Gender Minorities in the United States*, 6 *Sci. Advances* 1 (2020) (finding greater rates of violent and non-violent criminal victimization among sexual and gender minorities).

⁴⁸ Public opinion polling from Gallup shows that between 1996 and 2022, the percentage of U.S. adults in favor of legalizing same-sex marriage increased by 44 points, from 27% to 71%. In 2024, the figure dipped to 69%, and it has shown a marginal decline each year since. Jeffrey M. Jones, Gallup, *U.S. Support for LGBTQ+ Issues Remains Down from Peak* (June 3, 2026), <https://perma.cc/TZ4T-6DWB>; Wendy D. Manning & Kristen E. Gustafson, *Attitudes Toward Same-Sex Couple Parents: A Decade of Change*, 87 *J. Marriage & Fam.* 1321, 1325 (2025) (reporting that roughly 40% of survey respondents did not endorse same-sex parenting).

corresponding increase in violence.⁴⁹ There is evidence of an increase in anti-LGBT incidents nationwide in 2025 compared to previous years.⁵⁰ In California, hate crimes against transgender individuals increased threefold between 2013 and 2024.⁵¹

⁴⁹ Research has shown a statistically significant association between increased negative coverage of the transgender community on Fox News and an increase in anti-LGBT hate crimes reported to the police between 2012 and 2021. See Jack G.R. Wippell, *The Hate Industry: Mass Media, Moral Panic, and the Mobilization of Anti-Transgender Prejudice*, 73 Soc. Probs. 1099, 1099 (2026).

⁵⁰ GLAAD, *GLAAD ALERT Desk Documents More Than 1,000 Anti-LGBTQ Incidents Nationwide in 2025* (Jan. 27, 2026), <https://perma.cc/WWA8-LYZQ>.

⁵¹ Jordan Grasso, Nathan Cisneros & Ilan H. Meyer, Williams Inst., *Gender Identity Hate Crimes in California* 11 (2025), <https://perma.cc/HKH5-BPKX>.

Research has documented pervasive harassment and discrimination experienced by LGBT people in almost all aspects of life, including employment,⁵² housing,⁵³ education,⁵⁴ health care,⁵⁵ the judicial system,⁵⁶ and public accommodations.⁵⁷

⁵² 47% of LGBT workers have experienced discrimination or harassment in employment at some point in their lives. Brad Sears et al., Williams Inst., *LGBTQ People’s Experiences of Workplace Discrimination and Harassment 2023* at 10 fig. 6 (2024), <https://perma.cc/KR9R-2XCB>. Additionally, a meta-analysis of more than 100 studies, including 71 studies conducted in the United States, shows that LGBT people experience pervasive employment discrimination, including formal discrimination through hiring biases, promotion delays, wage gaps, and interpersonal discrimination that includes microaggression, harassment, and workplace bullying. Sucharita Maji, Nidhi Yadav & Pranjal Gupta, *LGBTQ+ in Workplace: A Systematic Review and Reconsideration*, 43 Equal., Diversity, & Inclusion: Int’l J. 313, 313 (2024).

⁵³ See generally Adam P. Romero, Shoshana K. Goldberg & Luis A. Vasquez, Williams Inst., *LGBT People and Housing Affordability, Discrimination, and Homelessness* (2020), <https://perma.cc/RNL9-Q284> (noting evidence of “widespread harassment and discrimination by housing providers” against LGBT people).

⁵⁴ In a CDC survey of U.S. high school students, LGB students had greater odds of violent victimization than heterosexual students on all measured violence indicators (e.g., bullying, sexual violence, and being threatened or injured with a weapon at school). Michelle M. Johns et al., *Trends in Violence Victimization and Suicide Risk by Sexual Identity Among High School Students — Youth Risk Behavior Survey, United States, 2015–2019*, 69 MMWR Suppl. 19, 22 (Aug. 21, 2020). Similarly, transgender students were more likely than cisgender students to be exposed to violence at school. See Nicholas A. Suarez et al., *Disparities in School Connectedness, Unstable Housing, Experiences of Violence, Mental Health, and Suicidal Thoughts and*

Specifically relevant here, research has shown that LGBT people experience discrimination and mistreatment by public-accommodations providers when they seek goods and services in the marketplace. In a study using a nationally representative sample of LGBT people, nearly half reported that they had

Behaviors Among Transgender and Cisgender High School Students — Youth Risk Behavior Survey, United States, 2023, 73 MMWR Suppl. 50, 54 (Oct. 10, 2024). Discrimination has also been documented in higher education. See, e.g., Kathryn K. O’Neill et al., Williams Inst., *Experiences of LGBTQ People in Four-Year Colleges and Graduate Programs* (2022), <https://perma.cc/GF53-KU5J>.

⁵⁵ LGBT adults were more likely than non-LGBT adults to have had a negative health care experience that worsened their health (24% versus 9%), deterred them from seeking out care (39% versus 15%), or caused them to change providers (36% versus 16%). Alex Montero et al., Kaiser Fam. Found., *LGBT Adults’ Experiences with Discrimination and Health Care Disparities: Findings from the KFF Survey of Racism, Discrimination, and Health* (Apr. 2, 2024), <https://perma.cc/T9ZL-KSUN>.

⁵⁶ See, e.g., Letter from Todd Brower, Jud. Educ. Dir., Williams Inst., to Members of the S. Comm. on the Judiciary 1 (Mar. 17, 2021), <https://perma.cc/T825-87GL> (describing “a widespread pattern of disparate and unequal treatment and experiences faced by LGBT court users, witnesses, and parties in courtrooms, jury rooms and other segments of the judicial system”).

⁵⁷ See, e.g., Christy Mallory & Brad Sears, Williams Inst., *Evidence of Discrimination in Public Accommodations Based on Sexual Orientation and Gender Identity* 1 (Feb. 2016), <https://perma.cc/626M-9Z56>; Caleb Smith & Haley Norris, *The LGBTQI+ Community Reported High Rates of Discrimination in 2024*, Ctr. for Am. Progress (Mar. 12, 2025), <https://tinyurl.com/a2exaztv>; Rachel Minkin et al., *The Experiences of LGBTQ Americans Today: 2. Personal Experiences with Acceptance and Discrimination*, Pew Rsch. Ctr. (May 29, 2025), <https://perma.cc/L68V-VTRE>.

generally been treated with less courtesy (45%) and less respect (44%) than other people, and 24% reported receiving poorer service in restaurants or stores.⁵⁸ Analysis by Williams Institute scholars of complaints filed with state enforcement agencies between 2008 and 2014 showed that LGBT people reported discrimination in public accommodations at rates similar to those of women and people of color (between about 1 and 4 complaints filed per 100,000 people in the relevant class).⁵⁹ Data from Colorado analyzed in that study were similar.⁶⁰

A 2025 national survey by Pew Research Center demonstrates that many of these patterns likely persist to the present day. For example, the survey found that 24% of LGBT adults “[r]eceived poor service at restaurants, hotels or other places of business” because they are (or were perceived to be) LGBT, 21% were “treated poorly by doctors, nurses or other health care professionals,” and 19% were “treated unfairly by an employer in hiring, pay or promotion.”⁶¹ The study also found that 73% of gay or lesbian adults and 68% of transgender adults reported being subject to slurs or jokes because of their sexual orientation or gender identity, and 70% of transgender adults and

⁵⁸ Ilan H. Meyer, Bianca D.M. Wilson & Kathryn O’Neill, Williams Inst., *LGBTQ People in the U.S.* 21 tbl. 9 (June 2021), <https://perma.cc/AX6C-ZCLY>.

⁵⁹ Mallory & Sears, *supra* note 57, at 2.

⁶⁰ *Id.* at 10.

⁶¹ Minkin et al., *supra* note 57.

52% of gay or lesbian adults had feared for their personal safety at some point.⁶²

Colorado’s government has a long history of recognizing these harms. A 1992 state legislative report noted that LGB people “have been found to experience discrimination in access to employment, housing, military service, commercial space, public accommodations, health care, and educational facilities on college campuses.”⁶³ Today, the state’s commitment to combatting discrimination and ensuring inclusion is evident through all aspects of government administration, including its universal pre-K program. *See* Resp. Br. at 52.

Removing protections from discrimination that Petitioners seek in this case will have both tangible and symbolic impacts on LGBT parents and their children. LGBT parents will face the threat of discrimination and exclusion in the already stressful task of securing education for their children and will further suffer from the symbolic force of the state’s sanctioning this conduct: the reinforcement of anti-LGBT sentiments, rejection, and dehumanization of their families, including their children.

C. Minority stress adversely affects the health and well-being of LGBT people.

Stigma “influences multiple disease outcomes through multiple risk factors among a substantial

⁶² *Id.*

⁶³ Legis. Council of the Colo. Gen. Assembly, *An Analysis of 1992 Ballot Proposals* 9 (1992), <https://perma.cc/88FR-NNCG>.

number of people.”⁶⁴ This makes stigma “a central driver of morbidity and mortality at a population level.”⁶⁵ Stigma leads to poor health outcomes by blocking “resources of money, knowledge, power, prestige, and beneficial social connections,”⁶⁶ increasing social isolation, limiting social support, and increasing stress.⁶⁷

Decades of research has demonstrated the negative effects of minority stress on the health and well-being of LGBT people, concluding that stigma-related minority stress processes are related to an array of health problems. Compared to their non-LGBT peers, LGBT youth and adults are more susceptible to depression,⁶⁸ anxiety,⁶⁹ self-harm,⁷⁰

⁶⁴ Hatzenbuehler et al., *supra* note 38, at 813.

⁶⁵ *Id.*

⁶⁶ *Id.* at 814.

⁶⁷ *Id.* at 815-16.

⁶⁸ See, e.g., Martin Plöderl & Pierre Tremblay, *Mental Health of Sexual Minorities. A Systematic Review*, 27 Int'l Rev. of Psychiatry 367, 368-70, 378 (2015).

⁶⁹ See, e.g., Abbeygail Jones et al., *Anxiety Disorders, Gender Nonconformity, Bullying and Self-Esteem in Sexual Minority Adolescents: Prospective Birth Cohort Study*, 58 J. Child Psych. & Psychiatry 1201, 1204 (2017).

⁷⁰ See, e.g., K.B. Jackman et al., *Prevalence and Correlates of Nonsuicidal Self-Injury Among Transgender People: Results from a U.S. Probability Sample*, Psych. of Sexual Orientation & Gender Diversity 5 (2025) (victimization and discrimination predicted higher rates of nonsuicidal self-injury among transgender people).

post-traumatic stress disorder,⁷¹ substance use,⁷² and suicide attempts⁷³ because of the minority stressors they face throughout their lives. One recent review consolidated findings from 20 separate meta-analytic studies, which all together surveyed over 5 million LGBT respondents, and assessed disparities between LGBT and non-LGBT individuals in major depressive disorder, eating disorders, anxiety disorders, substance use disorder, alcohol use disorder, post-traumatic stress disorder, and suicidality.⁷⁴ All of these mental health outcomes were more prevalent in LGBT individuals compared with the general population.⁷⁵ The authors concluded that “[e]xperiences of minority stress, including discrimination, social rejection, and identity

⁷¹ See, e.g., Mattia Marchi et al., *Post-Traumatic Stress Disorder Among LGBTQ People: A Systematic Review and Meta-Analysis*, 32 *Epidemiology & Psychiatric Sciences* e44 (2023), <https://perma.cc/TG6B-M6FU>.

⁷² See, e.g., Ryan J. Watson et al., *Substance Use Among Sexual Minorities: Has It Actually Gotten Better?*, 53 *Substance Use & Misuse* 1221, 1224 tbl. 3 (2018).

⁷³ See, e.g., Ilan H. Meyer et al., *Suicidal Behavior and Coming Out Milestones in Three Cohorts of Sexual Minority Adults*, 8 *LGBT Health* 340, 345 (2021); Jennifer de Lange et al., *Minority Stress and Suicidal Ideation and Suicide Attempts Among LGBT Adolescents and Young Adults: A Meta-Analysis*, 9 *LGBT Health* 222, 233 (2022).

⁷⁴ Mattia Marchi et al., *Mental Health in Sexual and Gender Minority Populations: A Systematic Review of Systematic Reviews with Narrative Synthesis and a Network Meta-Analysis of Suicide Attempts*, 72 *Int’l J. Soc. Psychiatry* 205, 205 (2026).

⁷⁵ *Id.*

concealment,” were the most commonly reported predictors.⁷⁶

Several studies have also demonstrated links between forms of minority stress, including discrimination, and some physical health problems.⁷⁷ One study found that LGBT people who had experienced a prejudice-related stressful life event were about three times more likely than those who did not experience such an event to have suffered a physical health problem such as flu and hypertension within the same one-year period.⁷⁸ This effect remained statistically significant even after controlling for the experience of other non-prejudicial stress events and other factors known to affect physical health. In other words, stigma-related stressful life events were more damaging to the physical health of LGBT people than similar stressful life events that did not involve prejudice.

* * *

As the above research demonstrates, discrimination and exclusion directed at LGBT people inflicts real and measurable harm on their health and well-being. Those adverse outcomes, in turn, give rise to a compelling state interest in preventing participants in publicly funded programs from engaging in harmful discrimination and exclusion. Colorado’s equal-

⁷⁶ *Id.* at 214.

⁷⁷ See generally David J. Lick, Laura E. Durso & Kerri L. Johnson, *Minority Stress and Physical Health Among Sexual Minorities*, 8 *Persps. on Psych. Sci.* 521 (2013).

⁷⁸ Frost et al., *supra* note 43, at 5, 6 tbl. 3.

opportunity requirements are an important public-health measure necessary to guarantee that its universal pre-K program is open to all Colorado families and to ensure that the program does not become a vehicle for state-sanctioned exclusion and its attendant harms.

CONCLUSION

For the foregoing reasons, this Court should affirm the Tenth Circuit's judgment.

Respectfully submitted,

Tor Tarantola
ORRICK, HERRINGTON &
SUTCLIFFE LLP
2100 Pennsylvania
Avenue NW
Washington, DC 20037

Elana Redfield
THE WILLIAMS INSTITUTE
UCLA School of Law
385 Charles E. Young Dr.
East
Los Angeles, CA 90095

Daniel A. Rubens
Counsel of Record
ORRICK, HERRINGTON
& SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
drubens@orrick.com

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