

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 *AMICUS CURIAE*
FIRST FOCUS ON CHILDREN
IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICUS CURIAE*¹

Amicus curiae **First Focus on Children (First Focus)** is a bipartisan advocacy organization dedicated to making children and families the priority in federal policy and budget decisions. One of First Focus’s priority issues is universal access to early childhood education, which promotes the health, safety, well-being, and future success of young children. Excluding and expelling children based on characteristics they cannot change deeply shames, stigmatizes, and harms children in direct contravention of the commands of Colorado’s Universal Pre-Kindergarten (UPK) statute, and of the human rights of children.

First Focus on Children respectfully submits this brief to assist the Court in its review by explaining how the decision in this case should be based on whether the State’s requirements for payments for Universal Pre-Kindergarten are well designed to achieve the goal of benefiting all children aged four. We further explain why granting an exemption to those requirements would impose grave harms on some children while providing no benefit to the health or safety of any child.

SUMMARY OF ARGUMENT

As the record makes clear, the remedy sought here—maintenance of state funding to schools that exclude transgender or gender-diverse (TGD) children and

1. No counsel for a party authored this brief in whole or in part, and no person or entity other than amicus and its counsel made a monetary contribution to the preparation or submission of this brief.

children of LGBTQ families—would compel the State to fund schools that inflict substantial harm on small children. Given that the clear purpose of the Colorado Universal Pre-Kindergarten Program is to benefit *all* children, and their interests are therefore paramount, subsidizing programs that inflict such harms must not be constitutionally required. The children that would be harmed—including siblings of the immediately impacted children—are uniquely vulnerable to the traumatic harms inflicted by exclusion, rejection, and discrimination, the effects of which frequently linger into adulthood. Viewed from the appropriate standpoint of harm to children, the State’s design of its program makes good sense.

On the other side is the claim that Catholic schools have a right, pursuant to the Free Exercise Clause, to receive state funding for their programs despite exclusion and expulsion of TGD children and LGBTQ families because their religious beliefs demand these consequences. First, the claim fails because the UPK statute is a law of general applicability. But of greater concern to Amicus is the absence of evidence that admission—the mere presence—of these children causes harm to any *child* and concomitant lack of evidence that their exclusion and expulsion benefits any *child*. Further, granting Petitioners’ proposed exemption produces a rule without apparent limits that would allow religious organizations receiving public money to bar LGBTQ people of all ages from commonly provided services on the basis of free religious exercise. In the face of substantial evidence of the harm done by the continuing targeting and persecution of LGTBQ children and youth, such a rule is perverse at best.

The State created the UPK Program to benefit *all* four-year-old Coloradans. The focus in rolling out UPK must remain on the health, safety, and well-being of *children*. Amicus urges this Court to affirm that no funding recipient can place any child outside the protection of this universally applicable law by operation of putative religious free exercise rights, regardless of the child’s identity.

ARGUMENT

I. Four-year-old children are the legislatively intended primary beneficiaries of Colorado’s Universal Pre-Kindergarten Program (UPK) and the group most impacted; their interests are paramount.

A. The UPK was created to ensure equitable access to preschool for every four-year-old child in Colorado, without exception.

The statute creating Colorado’s Universal Pre-Kindergarten Program demonstrates the State’s interest in combating discrimination and eliminating stigma caused by unequal access. *See, e.g.*, C.R.S. 26.5-1-102(1)(a)-(b) (2024) (General Assembly’s intent is to “[p]rovide high-quality, voluntary, affordable early childhood opportunities for ***all children*** in Colorado; [and to] [c]oordinate the availability of early childhood programs ... in Colorado to meet the needs of ***all families***[.]”) (emphasis added). The statement of intent makes clear that children and their families, not preschools, are the intended beneficiaries of the UPK statute. The legislature also requires recipient agencies to “[p]rioritize the equitable delivery of resources ... for early childhood.” *Id.* at (f). The quality standards

enumerated in the statute include a “requirement that each preschool provider provide eligible children an equal opportunity to enroll and receive preschool services regardless of...sexual orientation [or] gender identity”. C.R.S. 26.5-4-205(2)(b) (2024).

As the district court repeatedly found, the UPK statute does not allow the State to deviate from the equal opportunity provision. It is a non-discretionary health and safety requirement. *See, e.g.*, Pet. App. 119a, 120a, 127a (“Plaintiffs miss the point that the regulations limit a school’s discretion to deny equal access to eligible children because doing so potentially threatens the health and safety of preschoolers.”; “I conclude that the UPK statute does not give the Department any discretion to grant exemptions from the equal-opportunity requirement”; “Here, no universal discretion has been authorized or exercised.”).

Petitioners object to Respondents’ requirement that they open their preschools to all four-year-old Coloradans as a condition of state funding because, they allege, providing services to transgender or gender-diverse (TGD) children and children of LGBTQ families will prevent free exercise of the preschools’ religious beliefs, curriculum, and identity. Petitioners characterize the children they want to exclude from school as being from “LGBTQ families,” meaning children with LGBTQ parents or siblings. Beyond excluding children who are themselves LGBTQ, Petitioners insist on classifying an entire family according to the LGBTQ identity of one family member—and then imposing their exclusionary preferences on a four-year-old child in a classified family.

This brief generally refers to the children harmed by this policy as “Excluded Children.” It will sometimes also refer to “LGBTQ families.” While the brief adopts this language in order to address Petitioners’ arguments, Amicus does not agree that LGBTQ identity is a characteristic that gets osmotically spread around a cohabiting household.

Prioritizing children’s health and safety by rejecting Petitioners’ requested exemption does not require weighing the health and safety of one group of children against another. Evidence presented at trial and relied on by the district court, bolstered by additional research evidence presented by Amicus, demonstrates that inclusion benefits TGD children and children of LGBTQ families and, at minimum, does no harm to the health and safety of other preschoolers. There is no evidence to the contrary in this case.

The UPK statute, including the equal opportunity quality standard, benefits all Colorado children. Segregating or excluding some children because of their or their family’s identity runs directly counter to the UPK’s legislative intent, particularly since inclusion benefits all children and exclusion would be harmful.

B. Children are constitutionally different and uniquely vulnerable; the equal protection and dignity principle applies to them with special force.

Regarding potential application of the Free Exercise Clause where the rights of the Excluded Children are concerned, the district court found that “[h]ere, there is a strong argument that children have the right not to face discriminatory barriers in using a government benefit and seeking a quality education.” Pet. App. 104a at n.22. As Respondents established at trial, the “right not to face discriminatory barriers” implicates the long-term health and safety of children. The constitutional right not to be discriminated against is particularly strong in the Excluded Children’s case because of their age and developmental stage. Further, because discrimination and stigmatization are adverse childhood experiences—potentially traumatic events experienced before the age of 18 that can cause lifelong harm—Colorado’s interest in protecting Excluded Children from exclusion and expulsion is especially compelling.

Almost fifteen years ago, this Court’s jurisprudence established that “children are constitutionally different.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012). *Miller* involved the application of the Eighth Amendment to the criminal sentencing of children. But more broadly, “it is the odd legal rule that does *not* have some form of exception for children.” *Id.* at 481. The Court has grounded related exceptions to criminal sentencing in the psychological and developmental malleability of children, observing that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult

minds.” *Graham v. Florida*, 560 U.S. 48, 68 (2010); *see also J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011) (“our history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults.”) (cleaned up).

In multiple cases, litigants have presented evidence related to the special vulnerability of children and young people to adversity in childhood, which can have lifelong impact. That evidence, developed by the fields of behavioral and medical science, documented the influence of adverse childhood experiences, or ACEs, which are “potentially traumatic events that occur in childhood (0-17 years).” Ctrs. Disease Control & Prevention, *About Adverse Childhood Experiences*, U.S. Dep’t of Health & Hum. Servs. (last updated Mar. 2, 2026), <https://www.cdc.gov/aces/about/index.html>; *see also* Pet. App. 92a (ACEs “can be child maltreatment” and “can also constitute other kinds of stressors.”). Due to their age and developmental stage, children are uniquely vulnerable to the toxic stress that can be caused by adverse childhood experiences (ACEs). Significant research now validates the population-level link between ACEs and a host of chronic mental and physical illnesses affecting life outcome. Chronic stress caused by adversities like poverty and discrimination is also likely to lead to toxic stress and its chronic illness sequelae.

ACEs became a clear factor in federal court jurisprudence in 2015, when a district court acknowledged a link between childhood adversity and neurobiological impacts like depression and learning difficulties. In that case, plaintiff students alleged that the Compton school district failed in its “responsibility to accommodate

students whose access to education is fundamentally impaired by reason of the trauma they have endured.” *P.P. v. Compton Unified Sch. Dist.*, 135 F.Supp.3d 1098, 1106 (C.D. Cal. 2015). The class action complaint enumerated experiences, including ACEs, that led to students’ complex trauma response and impeded their ability to attend school and learn. In denying school district defendants’ motion to dismiss, the court found that the student plaintiffs adequately alleged “that complex trauma can result in neurobiological effects constituting a physical impairment” for the purpose of sustaining Rehabilitation Act and Americans with Disabilities Act allegations and adequately alleged facts in support of “consequences of complex trauma with respect to ‘major life activities’[.]” 135 F.Supp.3d at 1110, 1111-1112.

ACEs are more commonly a factor in criminal cases, whether in mitigation of a potential capital sentence or as evidence of ineffective assistance of counsel on habeas. Defense counsel must present evidence of child abuse, where relevant, as a mitigating factor in capital sentencing, and this Court has reversed sentences based on failure of counsel to investigate their clients’ abusive childhoods. *See, e.g., Wiggins v. Smith*, 539 U.S. 510, 534 (2003) (state court ruling that defense counsel sufficiently investigated Wiggins’ background was objectively unreasonable where counsel’s decision to focus on factual defense and not to fully investigate and develop a case for mitigation was deficient and prejudicial in the face of Wiggins’ severe abuse during childhood). The use of childhood abuse as a mitigating factor reflects this Court’s judgment that such abuse can be relevant to the defendant’s moral culpability. *See* 539 U.S. at 535, quoting *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) (“Evidence about the defendant’s

background and character is relevant because of the belief...that defendants who commit criminal acts that are attributable to a disadvantaged background may be less culpable[.]” (cleaned up).

Beginning in 2016, evidence of defendants’ childhood adversity, characterized specifically as ACEs exposure, began to appear more frequently in federal criminal cases as substantive mitigating evidence, with mixed results. For example, Judge Myron H. Thompson of the Middle District of Alabama has made repeated use of a Supplemental Order requiring therapeutic treatment for ACEs for persons he sentences whose histories include significant exposure. *See, e.g., United States v. Williams*, No. 2:23cr310-MHT (M.D. Ala. May 24, 2024). This development demonstrates the law’s recognition that childhood adversity can be a powerful influence on health, well-being, and the life course, but also that the question whether such evidence is aggravating or mitigating is a difficult one; sentencing guidelines do not provide clear criteria, and judges must weigh such evidence based on their own experience and training. M.A. Thomaïdou and C.M. Berryessa, *Bio-behavioral scientific evidence alters judges’ sentencing decision-making: A quantitative analysis*, 95 INT’L J. L. PSYCHIATRY 1 (2024). Whether mitigating or not, though, the link between childhood adversity and later criminal conduct is uncontroversial and is in part mediated by neurobiological changes. *See, e.g., Thomaïdou and Berryessa* at 7 (noting evidence that “emerging behavioral science evidence suggests that individuals with a history of trauma have diminished control over their processing of and reactions towards an array of environmental stimuli, including reactions that could potentially result in criminal behavior.”); *see*

also C. Burke et al., *Adverse Childhood Experiences and Pathways to Violent Behavior for Women and Men*, 38(3-4) J. INTERPERSONAL VIOLENCE 4034 (2022).

Cases like *P.P. v. Compton USD* and *Wiggins v. Smith* show how evidence of childhood trauma and ACEs has been considered by courts retrospectively. But the prospective use of ACEs to make policy decisions on a population basis holds more hope for mitigating and preventing the demonstrated harm. This science and evidence is best used not as a way to understand dysfunctional reactivity to stress after the fact, but rather as a way to improve protection of health and safety in childhood to prevent future harm from childhood adversity. Here, the trial court recognized ACEs evidence as a compelling element of this case because it is reasonably predictable that allowing the requested exemption will harm children as they grow.

Protecting children from ACEs is also a compelling interest for Colorado because of the increased risk of lifespan health problems, justice system involvement, and lost productivity. About 27% of Colorado’s adult population has experienced four or more ACEs, indicating a significantly higher probability of negative impact across the lifespan. C. Peterson et al., *Economic Burden of Health Conditions Associated with Adverse Childhood Experiences Among U.S. Adults*, 6(12) JAMA NET. OPEN e2346323, e2346327 T. 1 (2023). The associated burden of “reduced quality and number of life-years in monetary terms” is estimated at “\$88,000 per year per adult and \$2.4 million over their lifetimes.” *Id.* at e2346331.

Colorado recognized the burden of ACEs in quality of life and economic terms over a decade ago and has

integrated prevention strategies into its public health infrastructure, investing significantly into improving resources for children in order to prevent and mitigate the impact of ACEs and toxic stress.² Early prevention, including in early childhood education contexts, is very important because the brains and bodies of young children are experiencing rapid development that makes them more vulnerable to toxic stress and adversity. Though sometimes thought to be less important because of the assumption that children will rebound from stress or not understand what they are experiencing, in reality, early childhood is an age that warrants extra protection; “[c]hildren’s brains form 1 million new neural connections every second in the first years of life,” and “[a]dversity—including poverty, discrimination, and related environmental stressors—can affect the formation of important brain circuits” because it can activate maladaptive stress responses. C. Novoa and T. Morrissey, *Adversity in Early Childhood: The Role of Policy in Creating and Addressing Adverse Childhood Experiences* 3 (August 2020). Early childhood education is a key prevention tool, especially for children living in poverty, and statistics show that Colorado’s LGBTQ parents are more likely to be low-income than straight cisgender parents. B.D.M. Wilson and L.J.A. Bouton, *LGBTQ Parenting in the U.S.* 4 (2024) (33% vs. 21%).

2. Colorado’s trauma-informed care mandates for early childhood education are codified within Title 26.5 of the Colorado Revised Statutes, the same Title that codifies the UPK Program. The Title requires state agencies to provide education and training on how to identify and respond to child trauma; to create and maintain a trauma-informed approach to early childhood; and to support primary and secondary prevention of child trauma. See C.R.S. 26.5-1-102, 1-109, 3-202, 3-704.

II. Petitioners' proposed exemption would significantly harm a vulnerable group of children and youth while failing to benefit the health and safety of any child.

Colorado's TGD and LGBTQ families are clearly among the intended beneficiaries of the UPK. Petitioner Preschools seek an exemption from the UPK's anti-discrimination requirement because they wish to take advantage of state tax dollars while excluding TGD children and LGBTQ families, whether by initially refusing admission or by later expulsion. These actions would cause serious direct harm to the health and safety of a significant number of children who would face exclusion or expulsion and an additional group of siblings who would suffer the secondary impact of that harm. The health and safety of all children served by the UPK would be negatively impacted by the segregation and exclusion of some.

At the same time, exclusion of TGD children and LGBTQ families does not benefit the health or safety of *any* child. Petitioners have not presented any evidence or arguments relevant to this point. Rather, arguments have focused on the schools', Archdiocese's, and parents' putative rights to exclude certain children from access to a public benefit based on religious objections to their and/or their family members' identities. The record that Petitioners have made does not yield any claims or evidence of benefit to the health and safety of children.

Petitioners fruitlessly object that Respondents have not offered evidence mapping precisely on the potential circumstances presented by this case. Such a

demonstration is unnecessary given the strong evidence pointing to likelihood of harm that Respondents presented at trial, which the district court subsequently credited and relied on. Further, as the district court found in its Conclusions of Law, “[a]lthough Plaintiffs may disagree with the science or may view any impact as minimal or hypothetical, they did not present any contrary evidence[.]” Pet. App. 114a. Indeed, Petitioners have not presented any evidence to disprove the harm of or prove any benefit to health or safety yielded by the proposed exemption because such evidence does not exist.

A. The exemption sought by Petitioners would cause significant harm to TGD children and their siblings because, as the district court found, the resulting discrimination, stigmatization, and exclusion can cause toxic stress with long-lasting negative effects on health and well-being.

The discrimination and exclusion sought by Petitioners constitute an ACE with strong potential for long-term harm to children; enforcement of the equal opportunity provision will prevent that harm. As Respondents clearly established at trial, the equal opportunity provision at issue here is properly categorized as a health and safety requirement by the UPK statute. The district court cited Colorado’s Early Childhood Act in finding that the legislature prioritized “[i]mprove[ment of] outcomes for children and families through...implementation of evidence- and practice-based best practices in education, family support, and child development[.]” Pet. App. 54a. The Early Childhood Act laid the foundation for the UPK Program. Its enacting statute required the Department

of Early Childhood “to support child and parent outcomes that improve overall family well-being[.]” Pet. App. 55a. The district court’s Conclusions of Law found that evidence of harm to children was significant to statutory review because the equal-opportunity requirement “is a quality standard that relates to health and safety[.]” and the legislature intended to safeguard from exemption “any standard that would have potentially caused physical or mental harm to preschool children.” Pet. App. 118a. The regulations implementing the statute do not allow schools to “deny equal access to eligible children because doing so potentially threatens the health and safety of preschoolers.” Pet. App. 119a; *see also* Pet. App. 120a (“The equal-opportunity requirement is a quality standard related to health and safety that cannot be waived under the UPK Statute.”). The appeals court left this finding undisturbed. Pet. App. 34a-35a.

In the course of finding that the equal opportunity provision is a health and safety requirement, the district court credited and relied on evidence presented by Defendants’ expert, Dr. Tishelman, on Adverse Childhood Experiences (ACEs). *See* Pet. App. 94a (“I find the expert testimony described here to be reliable and persuasive, and it guides my analysis of Plaintiffs’ claims.”). ACEs are “experiences that have the potential to cause trauma for a child, and they can be single incidents or...chronic extreme stress.” Pet. App. 92a. ACEs are strongly associated with negative health outcomes later in life, including depression, substance abuse, cancer, heart disease, chronic obstructive pulmonary disease (COPD), and other conditions. As Dr. Tishelman testified and the district court credited, “[e]xtreme stress and chronic stress can affect a child’s neurodevelopment and ability to

learn and interact with others.” Pet. App. 94a. Research establishes that ACEs can cause toxic stress when they occur in the absence of sufficient buffering. Toxic stress is a potential biological result of the root cause: ACEs. Toxic stress, especially when chronic, can damage the brains and bodies of infants and children. *See, e.g.,* J.P. Shonkoff et al., *The lifelong effects of early childhood adversity and toxic stress*, 129(1) PEDIATRICS e232 (2012).

As the district court noted, “[d]iscrimination is a form of an ACE, as is significant bullying, which can emanate from adults.” Pet. App. 92a. Research increasingly finds that discrimination and rejection for attributes of identity, including race, ethnicity, disability, religion, and LGBTQ identity, causes toxic stress harm to children. Rejection for attributes that a child cannot change, such as the TGD identity of the child and/or the LGBTQ identity of family members, can cause anxiety and low self-esteem especially because these characteristics are inherent and children cannot change them. Pet. App. 92a-93a. As Dr. Goldberg testified and the district court credited, “[i]f a child ‘is being implicitly or explicitly told that there is something wrong with them or their family, this can create negative self-views’...Likewise, ‘if a child is getting messages that their identity or presentation is non-normative, not accepted, [or] equated with negative qualities or attributes, they will internalize those qualities as applying to themselves.’” Pet. App. 91a-92a (quoting expert testimony).

Dr. Tishelman testified that people frequently rely on religion and religious communities as a source of strength and support; exclusion from religious communities “could be a terrible loss of community and faith that’s

important to them.” Pet. App. 93a (quoting testimony). TGD children and LGBTQ families are no different, and there are well over 50,000 Coloradans who identify as both LGBTQ and Catholic.³ Further, many non-Catholic parents seek out Catholic education for their children for a wide variety of reasons, including strong education, values, and community. Should a child or their family come out as LGBTQ post-enrollment, “[s]witching schools for the child could be ‘really stressful.’” Pet. App. 93a (quoting testimony). Being rejected and excluded for a characteristic inherent to a person’s identity can be permanently damaging for a child.

LGBTQ people are uniquely vulnerable to adverse childhood experiences (ACEs) in two distinct ways. First, sexual and gender minority individuals report more exposure to ACEs as children. P.W. Schnarrs et al., *Development and psychometric properties of the sexual and gender minority adverse childhood experiences (SGM-ACEs): Effect on sexual and gender minority adult mental health*, 127 CHILD ABUSE & NEGLECT 105570, 105572 (2022). TGD youth are especially at risk

3. The population of Colorado is about 6 million. U.S. Census Bureau, QuickFacts: Colorado (data extracted July 1, 2025), <https://www.census.gov/quickfacts/fact/table/CO/PST045225>. According to the Pew Research Center, about 14% of Coloradans identify as Catholic. Pew Research Center, 2023-2024 Religious Landscape Study Interactive Database (2025), <https://www.pewresearch.org/religious-landscape-study/state/colorado/>. According to the Colorado Health Institute, about 9% of Coloradans are LGBTQ. D. Geldens, Colo. Health Inst., 2023 Colorado Health Access Survey: LGBTQ+ Health (2024, updated 2026). Using these numbers to generate an estimate, there could be 75,000 LGBTQ Coloradans who identify as Catholic.

for internalized transphobia, a toxic stress factor that has been linked to depression. B.M. Conn et al., *High Internalized Transphobia and Low Gender Identity Pride Are Associated With Depression Symptoms Among Transgender and Gender-Diverse Youth*, 72 J. ADOLESCENT HEALTH 877 (2023). That elevated risk continues into adulthood, especially for TGD adults. “Sexual minority adults report more ACEs exposure than heterosexual adults, whereas gender minority individuals face greater exposure than sexual minorities and the general population.” P.W. Schnarrs et al., *The Sexual and Gender Minority Adverse Childhood Experiences Scale*, 65(6) AM. J. PREVENTIVE MED. 1050, 1051 (2023).

Second, as the science of ACEs and toxic stress has progressed, researchers have developed expanded concepts of ACEs that address stress and trauma experienced by specific groups of children at a community level, rather than in the home. *See, e.g.*, K. Kennedy et al., *Cisheterosexism as Childhood Adversity: Implications for Sexual and Gender Minority Health*, 68(4) AM. J. PREVENTIVE MED. 824, 825 (2025) (“[F]rameworks have emerged to capture exposure to adverse community environments—such as concentrated economic marginalization, community violence, and poor housing quality and affordability—and their role in producing conditions that increase risk of ACEs and directly inducing stress and trauma.”).⁴

4. The American Psychological Association defines heterosexism to “include attitudes, behaviors, and policies that favor heterosexual and cisgender identities above all other sexual and gender identities. These attitudes, behaviors, and policies shape dominant social contexts and have negative impacts on lesbian, gay, bisexual, transgender, queer, and other sexual and gender minority (LGBTQ+) individuals and experiences.”

Although research has validated the detrimental impact of discrimination and mistreatment due to sexual and gender minority (SGM) identity, LGBTQ people “have been largely left out of the research evidence, prevention programs, and policies focused on ACEs.” K. Kennedy (2025), *supra* at 824. Recently, researchers have developed and validated ACEs measures that are specific to SGM people. SGM ACEs help explain the potential impact of Petitioners’ requested exemption on impacted preschool children and their siblings. Further, characterization of additional specific ACEs provides important background for LGBTQ parents, who may be carrying the impact of their own childhood experiences of SGM ACEs. Exclusion or expulsion of impacted children can increase the economic and logistical stressors in a household by necessitating a continued search for appropriate early childhood education, especially in rural areas where many LGBTQ Coloradans live and where fewer options exist. 2023 CHAS, *supra* (LGBTQ Coloradans are as likely to live in rural as in urban areas).

Relevant research establishing the SGM ACEs scale emphasizes the harms to young children of targeting and exclusion. The scale recognizes heterosexism and heteronormativity as experiences that can be characterized as ACEs, with similar impact on lifelong health and well-being. P.W. Schnarrs (2022), *supra* at 3 (“The neurobiological implications of living in an

Am. Psych. Assn., *Resolution on Opposing Discriminatory Laws, Policies, and Practices Aimed at LGBTQ+ Persons* (Feb. 2020), <https://www.apa.org/about/policy/resolution-opposing-discriminatory-laws.pdf>.

environment that targets SGM with prejudice and stigma, cannot be overstated, and may mirror the effects of traumatic life experiences, providing further justification for the conceptualization of experiences of heterosexism in early life as an ACE.”); A. Dorri et al., *Sexual and gender minority adverse childhood experiences (SGM-ACEs), perceived social support, and adult mental health*, 143 CHILD ABUSE & NEGLECT (2023) 106277, 106277 (“[E]xposure to SGM-ACE is associated with poorer adult mental health.”). SGM ACEs cannot be constrained to only the original ACE exposures because of specific experiences SGM people have that are connected to their identity; these experiences predict anxiety, depression, and PTSD to a degree “above exposure to ACEs.” Schnarrs (2022), *supra* at 13. Research tends to confirm psychometric validation of SGM ACEs, a critical part of relying on their prediction capacity. See M.A. Solberg and J.A.M.J. Kurzer, *Evaluating the Psychometric Properties of the Sexual and Gender Minority Adverse Childhood Experiences Scale Among Sexual Minority Men and Women*, 30(6) J. AM. PSYCHIATR. NURSES ASS’N 966 (2024); Schnarrs (2023) *supra* at 1053, 1056-57 (“There was strong criterion validity showing that SGM-ACEs exposure is associated with worse depression, worse anxiety, and worse PTSD symptoms” for patients with identified exposures; “The SGM-ACEs measure is psychometrically sound[.]”).

Two items developed as part of the SGM framework are especially relevant to Petitioners’ requested exemption: bullied in school by other children or by adults because of sexuality or gender identity, 67.9%; and religious leaders, whether at their church or in the broader community, teaching that the Bible or other texts condemn

homosexual and TGD identity, 60.8%. Schnarrs (2022) at 9. In the reference study, two-thirds of respondents stated that they felt ashamed for being LGBTQ, 66.3%. Schnarrs (2022), *supra* at 9. These findings underline the risk of harm inherent in Petitioners' request to refuse educational services to the Excluded Children.

B. Exclusion of TGD children and LGBTQ families would cause similar ACEs and toxic stress harm to the siblings of Excluded Children.

Older siblings of Excluded Children are also in the zone of potential harm. While the district court did not make factual findings about siblings, it is readily apparent that many young children will have older brothers and sisters also impacted by the discrimination and rejection involved in their sibling's exclusion from the family's preschool of choice. As the district court found, the stigmatization, rejection, and judgement suffered by children and youth who "didn't have a way to be different" could be severe. Pet. App. 93a (testimony of Dr. Tishelman). Research tends to show that "the trauma material of friends and family may directly traumatize children." S. Howard, *A Causal Model of Children's Vicarious Traumatization*, 14 J. CHILD & ADOLESCENT TRAUMA 443, 443 (2021); see also B. Donagh et al., *Sibling Experiences of Adverse Childhood Experiences: A Scoping Review*, 24(5) TRAUMA, VIOLENCE, & ABUSE 3513, 3522 (2022) (evidence tends to support sibling vicarious trauma).

Exclusion and expulsion of children is likely to affect the whole family unit. Parents are at high risk of anxiety and stress for several reasons. They may need to go far

afield from home to find a preschool for their child. They may have a decided preference for the school from which they've been excluded due to religious affiliation, cost, community structure, safety, curriculum, or any number of other reasons; exclusion of their child from a favorable environment due to their own identity has the potential to be stressful and maddening. APA Resol. (citing research), *supra* at 3 (“Discriminatory legislation and initiatives lead to increased anxiety and worry among family members of LGBTQ+ people.”). And the higher the stress experienced by parents, the higher the risk of ACEs exposure faced by their children. *See, e.g.,* E. Crouch et al., *Exploring the association between Parenting Stress and a child's exposure to adverse childhood experiences (ACEs)*, 102 CHILD. YOUTH SERV.'S REV. 3551 (2019). While research shows that having LGBTQ parents “does not affect the development of children with sexual and/or gender minority parents, discrimination and stigmatization against their family does.” Carone, *supra* at 3. Exclusion of young children from equal access to critically important early education opportunities on the basis of family LGBTQ identity is doubtless discriminatory, stigmatizing, and damaging to the family unit.

C. Colorado has a compelling interest in promoting universal access to preschool and preventing discrimination against Excluded Children.

The district court found that the exclusion and expulsion sought by Petitioners is highly consequential to families' ability to access early childhood education: “Defendants here have shown that there is a substantial need for LGBTQ+ children and families in Colorado to have equal access to publicly funded, quality preschool

services.” Pet. App. 140a. As Amicus First Focus previously noted, access to these preschools could be attractive to LGBTQ families for a variety of reasons, and “[t]here is no reason to believe that same-sex parents of preschoolers would not likewise seek to enroll their children in Plaintiff Preschools.” Pet. App. 142a at n.38. Relevant reasons include the less-advantaged circumstances of many LGBTQ families, which makes access to more preschool options even more important. As the district court found, “[t]he testimony likewise established that LGBTQ+ families often have fewer options when looking for early childhood education... The fact that LGBTQ+ families are more likely to live in poverty and have fewer options for preschools ultimately puts them at risk for inadequate outcomes.” Pet. App. 142a-143a (citing testimony).

Given the UPK statute’s legislative history and the case presented by Colorado, the district court found that “the State’s interest in ensuring LGBTQ+ children and families do not experience discriminatory barriers to publicly funded preschool is compelling.” Pet. App. 143a. Colorado’s interest includes protecting children from discrimination and ensuring that all Colorado children “have access to the publicly funded, quality preschool programs of their choosing and that best fit their family’s needs.” Pet. App. 145a. Parents often prefer religious preschools because of their high quality, and “[i]f religious schools in fact provide the best academic experience, the State’s interest in removing discriminatory barriers for publicly funded preschool education is even more significant.” Pet. App. 146a. If anything, Colorado’s interest is even more compelling in rural areas, where children and families “will be impacted to an even greater

extent and could be denied access to preschool services altogether.” Pet. App. 148a at n.42.

D. Exclusion or expulsion of TGD children and LGBTQ families harms vulnerable children and does not protect or benefit the health or safety of any child.

The district court found that the equal opportunity provision is a health and safety requirement in the UPK statute. The evidence demonstrating that ACEs and toxic stress disproportionately affect children who are TGD and/or part of a LGBTQ family is important to the district court findings for this reason. Exclusion or expulsion of these children will harm them and may also harm the children in the excluding school, while not benefiting the health or safety of any child.

If Petitioners could demonstrate that the health or safety of preschool children who are not TGD or members of a LGBTQ family is harmed by the presence of children who are, this Court could compare the harms to health and safety on either side of this case. But no such evidence has been offered. Rather, research tends to demonstrate the benefits conferred, especially in terms of health and safety, on student populations by inclusion of TGD and LGBTQ children and families. *See, e.g.,* S.T. Russell et al., *Promoting School Safety for LGBTQ and All Students*, 8(2) POLICY INSIGHTS FROM BEHAVIORAL AND BRAIN SCIENCE 160 (2021) (research consistently demonstrates that policies specifically enumerating protected groups, including TGD children, “create supportive contexts for all youth” and are especially protective of TGD students); R.C. Klein et al., *The Development of LGBTQ Other*

Group Orientation and Its Relation to Psychological and Social Well-Being Among Cisgender Heterosexual Adolescents, 98 J. ADOLESCENCE 1210 (2026) (new research direction tends to show presence of LGBTQ youth promotes greater openness and development of social resources in straight and cisgender youth, which may be related to greater positive social well-being). A study relying on data from the Healthy Kids Colorado Survey established that presence of a Gay Straight Alliance in school benefits both SGM and non-SGM youth. L. Kroeker, *Suicidality, Depression, and a Positive School Climate for Sexual and Gender Minority (SGM) High School Students in Colorado* (May 20, 2019) (MPH thesis, The George Washington University) (ProQuest).

Petitioners argue that when the State refuses to grant its exemption request, it excludes Petitioners from the UPK, thereby harming children who can no longer access education at Catholic preschools due to family inability to pay. But this begs the question. Petitioners are choosing exclusion by refusing to admit TGD children or even the children of LGBTQ parents who are not themselves TGD. The equal opportunity provision does not require Petitioners to alter their curriculum, their forms of worship, or any other practice. Petitioners argue that compliance with the UPK statute will “severely restrict the ability of faith-based providers to participate in the program without compromising their sincerely held religious beliefs.” Pet. App. 283a. This claim not only ignores the many faith-based providers whose beliefs would not be compromised in any way by admitting the Excluded Children; it also fails to explain how the mere presence of a four-year-old TGD child or child of LGBTQ parents interferes with religious beliefs or practices. The

putative harm Petitioners cite here is harm of their own making.

Further, as Amicus noted previously, some of the Excluded Children and families will be Catholics who seek a Catholic preschool education. The claim that excluding these Catholics is necessary to the successful pursuit of Catholic education is a variant of the claim that the presence of these children and families will cripple Petitioners' ability to inculcate their faith because of potential lack of alignment on this singular point. It is entirely unclear what "religious practice" Petitioners must forgo in order to participate in UPK. Pet. Br. 34. Petitioners claim that public promotion or approval of any conduct that Petitioners view as counter to their religious beliefs "would impair the ability of the school to form its students in the faith", but do not explain how simply existing as an LGBTQ family is disruptive to religious inculcation. Pet. Br. 13. The speculative harm to Petitioners weighs but little in the balance compared to the future harm to Excluded Children. This is so especially because beliefs and practices related to LGBTQ people are not consistent within the Church. *See, e.g.,* N. Winfield, *Vatican sending new signals of openness but limitations in outreach to LGBTQ+ Catholics*, NAT'L CATHOLIC REP. (May 11, 2026) (Pope Leo has clarified that teachings on social justice, equality, and freedom take precedence over teachings on sexual morality).

Petitioners have not proposed, let alone substantiated, any benefit to the health or safety of any child of the exemption they seek. The only harm to children they claim is deprivation of the opportunity to attend Catholic preschool because they have been putatively "excluded"

by Respondents, though this claim lacks logical or factual support. Petitioners have not explained how the presence of TGD children or children of LGBTQ families at a Catholic preschool could harm the health or safety of any child. Petitioners claim without any evidence or explanation that excluding and expelling these children would not harm Excluded Children. In response, Respondents offer the plentiful evidence of harm as credited by the district court. Petitioners' sought-after exemption would not benefit the health or safety of any child but would harm many.

III. Petitioners' proposed exemption, if granted, would lead to a significantly larger future impact because the resulting rule could allow exclusion and expulsion of LGBTQ people, an insular minority, from public benefits.

This case concerns Catholic preschools in Colorado. But there is no limiting principle apparent in Petitioners' arguments that would constrain the reach of their proposed exemption. Put simply, Petitioners ask this Court to bless religious organizations' use of public money to exclude or expel individuals whose identity they find religiously objectionable, and to extend that exclusion to family members of these individuals. The children and families directly impacted would be most immediately affected, but the damaging message could reach a far broader audience of children and youth.

A. The immediate impact of the exemption would open TGD and LGBTQ children and youth, and LGBTQ families, to exclusion and expulsion by religious schools receiving public funds.

Colorado's UPK Program operates by placing conditions on its funding of preschool services. Preschools, whether public, secular private, or religious private, need not enroll in the Program. But if they do, they must comply with an extensive list of requirements, as is standard for government subsidies. One of those generally applicable requirements is equal opportunity and nondiscrimination—again, so common in government grantmaking as to be a truism. The pretzels into which Petitioners twist their arguments regarding the putative discretionary exemptions available in the Program demonstrate the futility in the attempt.

Petitioners ask this Court to order Respondents to allow religious schools receiving public funds to target and exclude some of the very children the legislature established the Program to benefit because of their identity or some other family member's identity. Such a rule would enable religious schools to exclude a significant number of children and families, harming both the children excluded and those left behind. At present, about 25% of high school students identify as LGBTQ and 5 million children live in households with at least one LGBTQ parent. A significant but unknown number of K-12 students live in a household with an LGBTQ sibling. It is by no means true that all religiously affiliated schools take Petitioners' position; many will not. Nevertheless, in a context where 75% of private schools are religiously affiliated, and millions of potential students are ineligible for admission to some

due to their own or their family's identity, the scope of the immediate problem is clearly significant.

Amicus has highlighted the significant findings of harm to children laid out by the district court, bolstered by strong findings in years of clinical and observational research. Even if this Court acceded to Petitioners' request by creating a rule tailored to the preschool context, the resulting damage—from the fundamental violation of constitutional rights to loss of access and community, shame, stress, and more—would be widespread and devastating. But given that there is no apparent way to rationally tailor this rule to preschools alone, the eventual damage would reach much further.

B. At a broader level of generality, the exemption would enable religious organizations that receive public money to bar LGBTQ people of all ages from commonly provided services like disaster relief, food distribution, emergency shelter, affordable housing, healthcare facilities, childcare centers, and senior residences.

Religiously affiliated organizations commonly receive government funding for the secular services they provide. Federal civil rights protections prohibit recipient agencies from discriminating against LGBTQ people in the provision of funded services. However, when state funding is at issue, protections vary. Some states permit religiously affiliated organizations to discriminate against LGBTQ people by granting categorical free exercise exemptions to equal access requirements; some states prohibit such exemptions. The resulting state-to-state variances in

distribution of services are unequal and unjust; a person's ability to access publicly funded services purportedly available to all should never depend on geography.

But in a situation in which this Court grants the exemption requested here, religiously affiliated organizations could then seek a federal constitutional rule that *requires* both federal and state governments to allow this exemption. Such a rule would enable and worsen egregious harm to vulnerable children, youth, and adults. Safe and affirming foster placements for LGBTQ youth are a prime example. Since injunction and rescission of the Biden-era Designated Placement Rule, there is no federal rule to ensure affirming and safe placements for LGBTQ foster youth; it has been left to a patchwork of state and federal regulations.⁵ A federal constitutional rule requiring states to allow publicly funded religiously affiliated organizations to discriminate against and exclude LGBTQ children and youth would force dangerous foster youth placements nationwide, on the public dime.

Up to one in five young Coloradans identifies as LGBTQ. 2023 CHAS, *supra*. The number holds steady throughout the United States. A rule requiring states to allow private religious schools to exclude and expel them isn't just unconstitutional and damaging; it would impact a large group of young people and their families.

5. It is worth noting that the Designated Placement Rule itself included an exemption for religiously affiliated agencies. See M.K. Persyn and V. Palusci, *LGBTQ Foster Youth Threatened by Texas Lawsuit Challenging Designated Placement Rule*, APSAC ALERT (March 2026) at 7.

C. Continued law and policy interventions that enable the targeting and persecution of LGBTQ youth impact LGBTQ children and youth severely, threatening their long-term health and safety.

The object and purpose of the United Nations Convention on the Rights of the Child is to recognize children as rights holders, regardless of individual status. Its Preamble recalls that “childhood is entitled to special care and assistance” as set out in the Universal Declaration of Human Rights, meaning that children’s rights entitle them to special protection during crucial years of their development. *Convention on the Rights of the Child* pmbl., Nov. 20, 1989, 1577 U.N.T.S. 3. While the United States remains the sole United Nations member state to sign, but not ratify the Convention, its signature obligates avoidance of actions that contravene the treaty’s object and purpose. At this stage there can be no doubt that repeated actions taken by state and federal governments in the United States attack, rather than protecting, LGBTQ youth, who make up one of the most vulnerable groups in our nation. These attacks contravene our nation’s core treaty obligation to avoid actions that deny the human rights of children. Petitioners’ requested exemption in this case, which would force Colorado to subsidize attacks on TGD children, children and youth in LGBTQ families, and LGBTQ youth more broadly, while simultaneously failing to protect or benefit the health and safety of any child, is a key example of an action that would contravene the spirit and purpose of the Convention and the best interests of children in general.

The damage done to LGBTQ youth by political and legislative attacks in the last decade is well understood.

Medical and behavioral health care associations have called out the risks to LGBTQ youth health and safety. Research demonstrates that the thousands of bills and laws flooding legislatures in the last few years have “resulted in heightened levels of anxiety, depression, and suicide risk among LGBTQ+ youth.” A. Novotney, *‘The young people feel it’: A look at the mental health impact of transgender legislation*, Am. Psych. Ass’n (June 3, 2024). By 2020, the American Psychological Association recognized the danger of government-sanctioned and -originated discrimination in a report and resolution, noting that granting exemptions from anti-discrimination provisions in laws “create[s] uncertainty among LGBTQ people about their rights as well as social and psychological impacts that are similar to the effects of other forms of discrimination...[such exemptions] may cause damage to LGBTQ+ people and may promote prejudice against them[.]” Resol., *supra* at 2, 5. Exemptions that legalize discrimination and “strip rights” cause LGBTQ people of all ages to question their safety, but among them, children and adolescents are the most targeted and the most endangered. See T. Levensgood et al., *Hostile Laws and Hospitalization: Why Anti-LGBTQ+ Legislation Threatens Adolescent Lives*, 18(5) J. HOSP. MED. 449, 451 (2023) (author manuscript); see also *id.* at 450 (“Amid this coordinated and highly politicized movement to limit clinical care and education for young people, already-vulnerable LGBT+ adolescents will experience mental and emotional harm.”).

Trial testimony relied on by the district court, supplemented by additional evidence in this brief, lays out years of research documenting and validating the child toxic stress impact of anti-LGBTQ discrimination,

exclusion, and stigma. We know, as fact, that such attacks are likely to cause immediate and lifelong health and wellness damage to LGBTQ people who are children today. Attacks on children likely to cause lifelong harm that originate in the official law and policy of their own governments are especially damaging and unconscionable.

The UPK statute's equal opportunity provision does not disturb Petitioners' religious curriculum, practices, or worship in any way. In contrast, Petitioners' sought-after exemption targets some of the most vulnerable children and families in the United States. This Court should affirm the district court by recognizing that this targeting and the resulting harm to the health and safety of children is impermissible under a generally applicable statutory regime and deeply wrong in any nation that claims to honor children.

CONCLUSION

The decision below should be affirmed.

Respectfully submitted,

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