

No. 25-581

IN THE
Supreme Court of the United States

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

Petitioners,

v.

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

Respondents.

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

**BRIEF OF *AMICI CURIAE* 27+ LAY ROMAN
CATHOLICS IN SUPPORT OF RESPONDENTS**

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INTERESTS OF THE AMICI CURIAE¹

The amici are more than twenty-seven lay Roman Catholic men and women, all practicing members of the Roman Catholic Church. A complete listing of amici is provided as an appendix to this brief. Amici support the Respondent, State of Colorado, and urge this Court to affirm the decision below which upheld the constitutionality of Colorado’s public funding requirement that providers of pre-kindergarten services agree not to discriminate on the basis of sex or gender identity. Although Petitioners refuse to execute and deliver such a pledge, they nevertheless insist on receiving funds from the State. Amici, or amici substantially similarly constituted, have previously submitted briefs to this Court in support of the interests of LGBTQ+ persons in *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), 303 Creative LLC v. Elenis, 600 U.S. 570 (2023), and *Chiles v. Salazar*, 607 U.S. ____ (2026).

An article in the *Journal of Law and Religion* identified certain positions which Amici have consistently espoused to this Court:

The fourth and perhaps most interesting one [brief], filed on behalf of “27 [Roman Catholic] lay men and women,” by contrast, expresses support for the City of Philadelphia and particularly for LGBTQIA foster parents,

1. Rule 37.6 Statement—Pursuant to Supreme Court Rule 37.6, amici state that no counsel for a party authored this brief in whole or in part, and no person or entity other than amici and their counsel made a monetary contribution to its preparation or submission.

highlighting both the so-called big tent and the concomitant internal tensions of Roman Catholic discourses even within the legal realm.
<https://perma.cc/QNE5-7NJ8>

SUMMARY OF THE ARGUMENT

The Amici respectfully advise this Court that substantial and material changes have emerged—described as “paradigm in nature” (pg 8-10; 1 & 1.1)—by way of the Report of Synodal Study Group No. 9 <https://perma.cc/2RNG-NSGR> issued by the Vatican on May 5, 2026 (hereafter at times “SG9”); it identifies, or recommends, the manner in which the pastoral care of LGBTQ+ persons should occur within the Church. SG9 combines discernment of doctrine with pastoral care based upon lived human experiences including those of individuals with same-sex attractions.

Over the last few years, amici have submitted three prior briefs to this Court advocating for pastoral support and welcoming, never rejection, of gay individuals. SG9 represents a remarkably positive “sea change” which has occurred at the highest hierarchical levels of the Church; further, it fully supports the positions consistently espoused by 27+ Lay Roman Catholics in each of their various briefs submitted to this Court.

SG9’s teaching directly criticizes the types of conduct Petitioners have engaged in here. Under this teaching, the rejecting and unwelcoming actions of Petitioners fall under SG9’s descriptions of unacceptable exclusion. This Court must not disregard or ignore the existence of SG9 which is the result of the worldwide Synodal process—to do so

would be to render a religious determination contrary to the teachings of Pope Leo, and before him Pope Francis, and in disregard of the Vatican’s mission to promulgate the inclusive message of Jesus Christ as most recently set forth in SG9 and the 2019 Vatican work, *What is Man? A Journey Through Biblical Anthropology*.

Applying the “patently frivolous” standard identified in *Newman v. Piggie Park*, 390 U.S. 400, 402 n.5 (1968), the era of this Court recognizing claimed “sincerely held religious beliefs”, at the very minimum as to Roman Catholics, to license or sanction the marginalization of LGBTQ+ persons should now end.²

Colorado’s non-discrimination requirement, which prohibits state-funded pre-kindergarten providers from discriminating against LGBTQ+ persons, including same-sex couples and their children who wish to attend religiously affiliated pre-kindergarten programs, is constitutional. The religious arguments advanced by Petitioners are perfunctory and disconnected from inclusive Christian theology and pastoral ministry of the Church. They are unsupportable, on their own terms, to the same extent as the arguments advanced by the restaurant owners who improperly invoked religious arguments in an attempt to justify racial discrimination. *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968). In the same manner as in *Newman*, it is now time

2. See Synod Study Group No. 9 Report, III, 2.2. On the assertion of “patently frivolous” under the *Newman v. Piggie Park* standard, Synodal Report No. 9 describes certain instances of rejecting and unwelcoming conduct and “many misunderstandings directed at LGBTQ+ persons within the Christian community” as “rooted in attitudes of homophobia . . .” .

for this Court to apply the “patently frivolous” standard to end discrimination against LGBTQ+ persons on the grounds of purported religious doctrine, “faith” or “truth”.

Petitioners’ rejection and condemnation of LGBTQ+ individuals including pre-kindergarten-age children as well as their failure to approach those families with the closeness, compassion, and tenderness that the teachings of Jesus Christ and the Church warrant—can never be in accord with the welcoming, “big tent” approach to pastoral accompaniment articulated by Pope Francis, as continued by Pope Leo and now as specifically addressed in SG9.

This Court does itself no favors by accepting, at face value, the summary and truncated account of Catholic religious doctrine, isolated from pastoral care for all persons, that Petitioners now proffer. To do so would depart from the concerns Justice Antonin Scalia expressed, both in *Employment Division v. Smith* and in his extrajudicial writings issued both before and after *Smith* was decided, that courts should not weigh in on, or attempt to parse and adjudicate, religious matters. The vehicle, or benchmark, that Justice Scalia established in *Smith* may present difficulties as to implementation; however, it remains without question the fact that his premise or goal was a correct and most beneficial one—that Courts under our constitution should never be deciding questions of religion or applying court selected religious principles in its jurisprudence.

ARGUMENT

I. Petitioners’ Premise—That Roman Catholic Beliefs Compel Rejection of LGBTQ+ Persons Including The Very Youngest of Children—Misrepresents Hierarchical Roman Catholic Teachings

Amici challenge Petitioners’ premise that the religious beliefs of the Roman Catholic Church compel universal condemnation or exclusion of LGBTQ+ persons from Christian communities. Amici also challenge the suggestion that rejecting a pre-kindergarten child who may possibly grow up to be gay or rejecting the child’s parents because the parents are gay or live as a same-sex couple, aligns with the doctrinal, moral and pastoral teachings of the Roman Catholic Church.

If this Court rules for Petitioners, its holding would constitute an “establishment” of the kind the Founders consistently sought to prevent. The Court’s action would approximate that of a religiously based tribunal—perhaps a traditional rabbinical court or a sharia court. The Court would be, in substance, wrongly choosing between two conflicting religious approaches, held by leaders at separate levels of hierarchical authority in the same faith community.

The exclusionary, unwelcoming approach toward gay individuals and same-sex couples as maintained by the Archdiocese of Denver, and as also supported in the brief to this Court by the United States Conference of Catholic Bishops, does not represent the highest level of the Church’s governing hierarchy. In the polity of the Roman Catholic Church, that hierarchy culminates in the Pope and the Vatican. A decision favoring Petitioners’

approach of rejection and condemnation would contravene the welcoming and inclusive pastoral and theological approaches now clearly identified as proper at the highest hierarchical and authoritative levels of the Roman Catholic Church.

To disregard that hierarchical structure disregards controlling American case law governing how courts must recognize the internal governance of hierarchical religious bodies with intra-faith disputes. *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), and *Serbian E. Orthodox Diocese v. Milivojeovich*, 426 U.S. 696 (1976) direct civil courts to defer to the decisions of the highest ecclesiastical tribunal within a hierarchical church on questions of church doctrine and governance—in Roman Catholicism that remains the Pope and the Vatican.

A. Religious Doctrine Evolves Over Time and Is Not “Embedded in Amber.”

Religious belief and the Church’s teachings evolve and develop over time; they are not frozen in place. Pope Francis, as the Church’s ultimate hierarchical leader, described Catholicism and Christianity as a “big tent” welcoming “all,” including LGBTQ+ persons. Asked about gay persons, he responded;

“Who am I to judge?” If someone is gay and is searching for the Lord and has good will, then who am I to judge him? The Catechism of the Catholic Church explains this in a beautiful way, saying . . . wait a moment, how does it say it . . . it says: “no one should marginalize these people for this, they must be integrated into society”.

The problem is not having this tendency, no, we must be brothers and sisters to one another, and there is this one and there is that one.” <https://perma.cc/N6QP-YLG4>

Pope Francis further taught that the Church should welcome all: “Todos, todos, todos.”

Pope Leo has emphasized the importance of pastoral outreach to all people, including LGBTQ+ persons. On May 5, 2026, the Vatican under his guidance issued the report of Synod Study Group No. 9 <https://perma.cc/2RNG-NSGR> which explicitly supports pastoral approaches grounded in acceptance—never rejection—of LGBTQ+ persons. This would include welcoming a gay child, or a child with same-sex or non-binary parents, into a Roman Catholic pre-K school or allowing that child to be Baptized which one must assume the Archdiocese would allow. Rejection runs counter to the combination of doctrine, never rigid, but instead under discernment combined with pastoral caring and commitment to all which SG9 fosters.

With regard to the Synod Study Group No. 9 Report, theologian Elizabeth A. Johnson, C.S.J., has emphasized:

“The invitation and challenge to the whole Church—individuals, communities, institutions—is to recognize the presence and actions of the Holy Spirit on the issues of LGBTQ persons and to affirm them as equal cherished members of the community.” <https://perma.cc/X4W3-DEX8>

B. This Court Must Acknowledge The Hierarchical Structure of Church Teachings and Governance in the Roman Catholic Church—Those Who Seek This Court’s Sanction of Rejection of LGBTQ+ Persons Should Rely Upon a Different Religion Than Roman Catholicism

Justice Scalia warned against this Court wading into matters of religion, given their myriad complexities. When the Court applies a “most-favored-nation” framework—a concept with roots in economic and trade relations—to the far more individualized domain of religion, the exercise becomes untenable and perhaps outright foolish. It is one thing to apply most-favored-nation analysis to a municipal rule of general applicability to commercial establishments open during Covid-19 vis-à-vis all churches or religions.

It is an altogether different exercise for this Court to allow a religious concept of a particular religion or sub-set of that religion to excuse compliance with a law of general applicability prohibiting forms of discrimination that the ultimate hierarchy of that organized religion clearly condemns.

These problems compound where, as here, the doctrinal concepts on which Petitioners rely are not condoned and are the subject of great criticism, by the hierarchical leadership.

In a case based upon religious claims or assertions, may this Court fail to examine who or what constitutes the highest authority in that Church’s hierarchical order and who has the ultimate theological “say?” As a corollary, if there is a requirement that a proceeding be instituted

based upon “sincerely held religious beliefs”, is there not a good faith duty for a litigant to reveal conflicting or contrary teachings of the highest hierarchy within that very same Church? How and under what jurisprudential theory and authority does the Court engage in such decision-making? None—such matters belong beyond the pale of the Court.

The actions of Petitioners in refusing admission of a child to a pre-kindergarten program—a Christian community—because he or she might be gay or to bar parents of the child because they are a same-sex couple combined with refusal to sign a nondiscrimination declaration while simultaneously seeking state funding for that program reflects neither current nor settled Catholic teaching. Is the Court being asked to recognize the existence of a religious belief supporting such, or is it being asked to ratify and rely upon one very contested and challenged account of that belief regarding the purported doctrinal need to engage in rejection and denial of pastoral service or care for gay persons? And is the conduct of a pre-kindergarten program exclusively a matter of “doctrine” or does it necessarily also implicate the welcoming pastoral care owed to all children and families, including those with gay parents, as SG9 and the Papal teachings so clearly encourage?

II. The Worldwide Synodal Process and the Report of Synod Study Group No. 9 Confirm That Catholic Teaching on Same-Sex Attraction Must Combine Doctrine and The Religious Duty to Render Pastoral Care

A. The Synodal Process

Over the past five years, under the leadership of Pope Francis and Pope Leo, the Roman Catholic Church has engaged in a worldwide process of synodality. All baptized Catholics were encouraged to gather in local groups—in communion, participation, and mission—and to proceed with “parrhesia” (courage, as Pope Francis urged) in discussing matters affecting the Church. As water runs from small rivulets to streams to rivers, the input gathered at the diocesan level proceeded through continental gatherings and ultimately to Rome. Pope Francis personally presided over the Synodal Sessions of lay persons and clergy held over several weeks in Rome, in both 2023 and 2024, resulting in the “Final Document of the XVI Ordinary General Assembly of the Synod of Bishops.” <https://perma.cc/AEK7-GLVR>

B. Synod Study Group No. 9: “Experiences of Persons of Faith with Same-Sex Attractions”

The Final Document carved out several issues for continued study, including by Study Group No. 9 <https://perma.cc/2RNG-NSGR> which addressed “relevant questions from the synthesis report of the First Session of the XVI Ordinary General Assembly of the Synod of Bishops” (SG9 pg. 3-7; 1.0 – 5.0). Study Group No. 9 was tasked with two issues: first, and most relevant here,

“experiences of persons of faith with same-sex attractions”; and second—important, though not addressed further in this brief—“active nonviolence.” The welcoming and acceptance of LGBTQ+ persons, and the end of rejection of them, were the subject of concern in more than fifty percent of world-wide submissions to the Synod.

Study Group No. 9 issued its final report, accepted by Pope Leo as Bishop of Rome and the Church’s ultimate hierarchical leader, under the title “Theological Criteria and Synodal Methodologies for Shared Discernment of Emerging Doctrinal, Pastoral and Ethical Issues.” <https://perma.cc/2RNG-NSGR>

In approaching questions of same-sex attraction, SG9 emphasized that doctrinal, pastoral, and ethical issues are not separate matters occupying three distinct spheres, but instead must be joined in a close circular relationship—“mutually interrelated in the mission of the Church.” Reference was made to St. Augustine:

“Those who believe they have understood the divine Scriptures, or any part thereof, but in such a way that this understanding does not lead them to cultivate the twofold love of God and neighbor, have in reality not yet understood them.”—St. Augustine, SG9 pg. 9; 1.1(<https://perma.cc/2RNG-NSGR>)

SG9 continues:

“[T]he Church’s mission is not a matter of abstractly proclaiming and deductively applying principles that are set out in an

immutable and rigid manner, but [is a matter] of fostering a living encounter with the person of the risen Lord Jesus by engaging with the lived experience of faith of the people of God in its personal and social relevance, in relation to the diverse situations of life and the many cultural contexts.” The Report recognizes “a generative dynamism of Tradition,” and cautions “against the temptation of the sterile and regressive ossification of principles and statements, of norms and rules, regardless of the experience of individuals and communities” (SG9 pg. 9; 1.1).

When Petitioners and similarly situated entities come before this Court and contend that their “faith” compels rejection of LGBTQ+ persons or same-sex partners, extreme caution is warranted. As Pope Leo has explained:

“Doctrine appears as the product of research, and hence of hypothesis, discussions, progress and setbacks, all aimed at conveying a reliable, organized and systematic body of knowledge about a given issue. Consequently, a doctrine is not the same as an opinion, but is rather a common, collective, and even multi-disciplinary pursuit of truth. ‘Indoctrination’ is immoral. It stifles critical judgment and undermines the sacred freedom of conscience. It resists new notions and rejects movement, change, or the evolution of ideas in the face of new problems” (SG9 pg. 9; 1.1).

Study Group No. 9 continues:

“[T]he experience of the Synodal Church demands that we listen to one another, opening ourselves to every person and all people. Particular attention must be paid to those who are most vulnerable, or those who are ‘out of the game’ or ‘outside the box,’ with a view to gathering their unique experiences (including those who are sick, people in poverty, those who are civilly divorced and remarried, people with same-sex attractions, people facing discrimination, victims of abuse and injustice, etc.)” (SG9 pg. 10; 1.2).

“Every person, first and foremost, is singular, irreducible, irreplaceable, and original. This is the meaning of the biblical-theological theme of the human being, male and female, created in the image and likeness of God (cf. Gen. 1:26)” (SG9 pg. 10; 1.2).

SG9 continues that through interpretation grounded in the documents of the Second Vatican Council and made explicit in the Church’s living Tradition, the Council committed itself—as Pope Francis emphasized—to “overcome this divorce between theology and pastoral care, between faith and life. I dare say that the Council has revolutionized to some extent the status of theology—the believer’s way of doing and thinking.” *Veritatis Gaudium*. <https://perma.cc/62VK-76R4>

C. The Synod’s Findings on Lived Experience of Persons

Section III of SG9 <https://perma.cc/2RNG-NSGR> is titled, “Towards Synodal Exercise of Discernment in Local Churches . . .” and addresses same-sex attraction. It concludes:

“ . . . the Christian community, at all levels—local and universal—can represent a decisive place of ‘healing and inclusion’ through practices of welcome and hospitality. . . . We wish to highlight the following: the solitude, anguish, and stigma that accompany persons with same-sex attractions and their families, not only within society but also within the Church; . . . another element of difficulty found in the experiences we heard is the disintegrating separation between faith and sexuality” (SG9 pg. 25; 2.1). <https://perma.cc/2RNG-NSGR>

“[T]he stability of a healthy affective relationship, which allows for the sharing of life perspectives, ethical convictions and faith; the recognition of the importance of sexuality, which nevertheless does not justify considering it the sole aspect of life; self-acceptance linked to the deepening of faith and to active participation and service within the life of the Christian community; the liberating power of a personal encounter with Christ, who loves us just as we are; and the specific contribution of a theology capable of opening up a contextual and hermeneutic reading of the Bible” (SG9 pg. 25; 2.2)

In conclusion, the Synodal Study Group Report No. 9 outlines seven distinct recommendations concerning doctrine and pastoral care combined and directed at LGBTQ+ persons, each warranting close examination when issues (‘problems’) such as those raised in the instant matter arise. (SG9 pg. 26-27; 2.4) <https://perma.cc/2RNG-NSGR>

The first and arguably the approach most directly applicable to the Archdiocese of Denver as petitioner in this case concerns the interpretation of the Bible’s references to homosexuality. It counsels against reflexive rejection of LGBTQ+ persons:

“It is necessary to go beyond a mere repetition of their current presentation and take into account insights gained from diverse exegetical readings. To accompany this reflection, we suggest the authoritative pages of the Pontifical Biblical Commission’s 2019 document entitled *What Is Man? (Ps. 8:5): A Journey Through Biblical Anthropology. . .*” (SG9 pg. 26; 2.4).

That authoritative work, “What is Man”, as referenced, in discussing homosexuality, states:

“We know that various biblical affirmations in the areas of, cosmology, biology and sociology have little by little been seen as no longer relevant with the steady advance of the natural and human sciences; it is deduced by some that a new and more adequate understanding of the human person radically questions the exclusive evaluation of the heterosexual union, and invites similar acceptance of homosexuality

and of homosexual unions, as a legitimate and worthy expression of the human being. “What is Man? (p.182)

In the end, this Court must decide whether it will rule: summarily in favor of the Petitioners, who contend that Church teaching compels the rejection of LGBTQ+ persons including infant children of same-sex parents; or in the inclusive, welcoming, and pastorally grounded manner taught by the Church’s own hierarchical leaders, including Pope Francis and Pope Leo, and reflected in the Synod Study Group No. 9 Report and the Pontifical Biblical Commission’s *What Is Man? (Ps. 8:5): A Journey Through Biblical Anthropology* (see especially pp. 160–170; 182-191).

The concerns Justice Scalia expressed in *Employment Division v. Smith*, and in his extrajudicial writings both before and after that decision, remain sound. This Court should not navigate these waters by perpetually carving out confusing, indiscernible exceptions, which the citizenry cannot fathom no less understand, to generally applicable rules. If the Court wades too far into matters of religious doctrine, it risks either provoking or serving as a catalyst for chaos, disorder and harm within the very religious communities whose “teachings”—“faith?”, “truth?” presented in a summary and cursory it now purports to enforce.

III. Scholarly and Doctrinal Authority Confirms That There Is No Roman Catholic Theology Supporting Denial of Pastoral Care or Rejection of LGBTQ+ Persons

Central and crucial to the work of Study Group No. 9 <https://perma.cc/2RNG-NSGR> and the issues of sincerely held beliefs of the Roman Catholic Church is the authoritative Pontifical Biblical Commission's book, *What Is Man? (Ps. 8:5): A Journey Through Biblical Anthropology*, published under Pope Francis's direction in 2019.

On the issues related to homosexuality, theologian Elizabeth A. Johnson, a Professor at Fordham University in her review and discussion of SG9, emphasized that

“the release of that Report by the Vatican represented a significant step forward in dealing with the impasse between pastoral practice and current doctrine that defines homosexuality as an “objective disorder” (which it must be said is not infallible and is therefore subject to development [emphasis added] (remember geocentric theory; remember slavery).” <https://perma.cc/X4W3-DEX8>

Diarmaid MacCulloch, a Fellow at the University of Oxford, in his comprehensive history “*Lower Than the Angels: A History of Sex and Christianity*,” which was published before the issuance of SG9 but remains very relevant concludes:

“Christian theology is not just a matter of opening the Bible and reeling off a text or learning Church dogma. It is dependent on countless echoes of the past, back to Greeks, Jews, even Hindus or Buddhists. The consequence is that, contrary to many assertions over the last two centuries, a sustained journey through Christian history reveals that there is no such thing as a Christian theology of sex. There are multiple Christian theologies of sex, many of which have over the millennia been downright contradictions of each other . . . ” (pp. 492-493)

MacCulloch’s history illustrates how the zealousness of well-intentioned believers can produce devastating results.

Lisa Fullam, who teaches Moral Theology at the Jesuit School of Theology at Berkeley, also emphasizes that “no aspect of magisterial sexual teaching [of the Roman Catholic Church] has been infallibly defined,” and that “the development of doctrine is often driven by the diligent work of scholars.” Lisa Fullam, *Civil Same-Sex Marriage: A Catholic Affirmation*, New Ways Ministry (2019) <https://perma.cc/JV7D-XSBP>

She has observed that some Church leaders treat magisterial teaching on sexuality “as irreformable, while in fact there has been considerable development in authoritative sexual teaching over the centuries,” and that “[t]o assert that sexual teaching as we have it now has reached perfection is unjustified in light of the history of its development.”

Citing an encyclical of Pope Paul VI, Fullam emphasizes further:

“civil law is fittingly expressed in a doctrine of rights and duties which forbids discrimination before the law on religious grounds: government is to see to it that equality of citizens before the law, which is itself an element of the common good, is never violated whether openly or covertly for religious reasons.” In Dr. Fullam’s view, by refusing to recognize the civil marriages of same-sex couples, “we [Catholics] discriminate against them precisely because they are homosexuals, a form of unjustifiable discrimination contrary to Catholic Social Teaching.” <https://perma.cc/JV7D-XSBP>

IV. The Solicitor General’s Brief Improperly Asks This Court to Endorse Discrimination in the Form of Rejection of LGBTQ+ Persons

The arguments of the Solicitor General support Petitioners’ exclusionary approach instead of the inclusive, welcoming approach articulated by the Church’s own hierarchical and authoritative leaders—Pope Francis and Pope Leo—and reflected in the Study Group No. 9 Report <https://perma.cc/2RNG-NSGR> . In doing so, Petitioners and their supporting amici disregard a decade of hierarchical teaching urging the Church to combine “doctrinal, pastoral and ethical issues” in a “mutually interrelated” and “circular manner” in carrying out its mission.

In contrast to the rigid religious approaches as espoused by the Solicitor General and counsel for the parties and amici supporting the Petitioners, Pope Leo has cautioned that the Church must resist “the temptation of the sterile and regressive ossification of principles and statements, of norms and rules, regardless of the experience of individuals and communities.” Those who argue in support of Petitioners have failed to grapple with Pope Leo’s observation that “doctrine appears as the product of research, and hence of hypothesis, discussions, progress and setbacks, all aimed at conveying a reliable, organized and systematic body of knowledge about a given issue,” and that “[a] doctrine is a common, collective and multi-disciplinary pursuit of truth.”

Rejecting the approach urged by Petitioners resembles what Pope Leo has termed “indoctrination”: conduct that “is immoral,” “stifles critical judgment,” “undermines the sacred freedom of conscience,” and “resists new notions [and] rejects movement, change or the evolution of ideas in the face of new problems.” Doctrine, by contrast, functions as “a serious, serene, and rigorous discourse [that] aims to teach us primarily how to approach problems and, even more importantly, how to approach people.” (SG9, p.9; 1.1)

Petitioners’ supporters likewise fail to acknowledge that “the Church’s mission is not a matter of abstractly proclaiming and deductively applying principles . . . set out in an immutable and rigid manner, but [of] fostering a living encounter with the person of the risen Lord Jesus, by engaging with the lived experience of faith of the people of God[,] . . . in relation to the diverse situations of life and the many cultural contexts.” Id.

The foregoing must be contrasted with the Solicitor General's brief and those of others supporting Petitioner based on the record, which dilute such important Papal teaching, if one employs the terminology of Pope Leo, to the point of unacceptable "indoctrination":

"Consistent with the teachings of the Catholic Church, Petitioners believe that marriage is exclusively between a man and a woman; that there are two sexes, male and female, determined by biological sex, and created by God; and that acting contrary to those teachings is sinful. Pet. App. 11a. They also believe that parish schools are vital to their Church's mission. Pet. 6. . . . [T]he petitioner preschools require parents to sign a 'Community Beliefs and Commitments' statement which states that signatories understand and accept precepts including Catholic teachings on sexual identity, marriage, family and parenting. Pet. App. 236a–237a."

The Office of the Solicitor General—a civil, secular taxpayer supported government entity—has presented these theological concepts in a rote and incomplete manner. It is remarkable that the Department of Justice would intrude to such an improper extent into religious territory full, disregard of the Establishment Clause. The broad endorsement within the Roman Catholic Church concerning acceptance of, and accompaniment, and pastoral service on behalf of gay Catholics—a subject the worldwide Synod treated extensively goes unmentioned in the government's brief and in the briefs of other amici supporting Petitioners. The conclusion to be drawn is

apparent; the Record is inadequate and the underlying issues of the religion involve have not been explored to the extent necessary to support a proper and correct ruling based upon hierarchical teachings and structures. And the Court should not be engaged in any aspect of such analysis in the first place as Justice Scalia emphasized with great wisdom in his jurisprudence

V. In Its Jurisprudence This Court Should Recognize That A Central Component of Religion Is The Pastoral Welcoming and Inclusion of All

Meghan Sullivan, Professor of Philosophy at the University of Notre Dame, recently discussed “Why an increasing share of Americans now identify as religiously unaffiliated” in a May 20, 2026 interview with New York WNYC-FM radio host Brian Lehrer. During that discussion, Professor Sullivan observed:

“[I]n this day and age, we oftentimes don’t pay enough attention to this concept of human dignity that’s been a central part of Jewish and Christian faith—this idea that every single human being contains a universe that’s worth loving. That is . . . the central teaching of these religions from the very first pages of the Bible, and probably a lesson that it would serve us to pay a whole lot more attention to right now in our country.” Brian Lehrer Show, interview with Meghan Sullivan (WNYC radio broadcast, May 20, 2026 <https://perma.cc/X5ZT-VXRM>).

That teaching to the effect that every human life, including the life of every child, contains a universe

worth loving is difficult to reconcile with a decision by this Court that would enable religious pre-kindergarten programs receiving public funds to turn away or reject a child because that child might be gay or because his or her parents' non-binary family structure. Colorado's generally applicable non-discrimination requirement does not offend the constitution merely because it fails to recognize the Petitioners hierarchically errant, rigid and discriminatory non-pastoral rejection of human beings purportedly compelled by faith. Any claim to the contrary is patently frivolous and *Newman v. Piggie Park* should therefore apply.

CONCLUSION

For the foregoing reasons, amici respectfully request that this Court affirm the judgment of the court of appeals.

Respectfully submitted,

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*Undersigned counsel drafted the arguments and substantive content of this brief in preliminary form and utilized an artificial intelligence tool to assist with citation verification, proofreading, and layout to effectuate final document preparation. Counsel reviewed and approved all substantive content and citations herein.

APPENDIX

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