25-581 ST. MARY CATHOLIC PARISH V. ROY

DECISION BELOW: 154 F.4th 752

LOWER COURT CASE NUMBER: 24-1267

QUESTION PRESENTED:

Colorado's so-called universal preschool program pays for families to send their children to the preschool of their choice, public or private. To participate, preschools must ensure all families have an "equal opportunity" to enroll regardless of, *inter alia*, race, religious affiliation, sexual orientation, gender identity, income level, or disability. Colorado nonetheless permits numerous exemptions from this requirement, both categorical and discretionary, allowing preschools to admit only "children of color," "gender-nonconforming children," "the LGBTQ community," low-income families, and children with disabilities. But Colorado excludes Catholic preschools because they admit only families who support Catholic beliefs, including on sex and gender.

The Tenth Circuit upheld Colorado's decision to exclude Catholic preschools. Applying *Employment Division v. Smith*, it held that Colorado's secular exemptions and discretion did not undermine general applicability. In so doing, the court sided with the minority position in an entrenched and acknowledged 7 -4 split over what kinds of exemptions and discretion undermine general applicability. The court also eschewed *Carson v. Makin*, concluding that its rule was inapplicable because Colorado's exclusion was not "on the explicit basis" of religion.

The questions presented are:

1. Whether proving a lack of general applicability under *Employment Division v. Smith* requires showing unfettered discretion or categorical exemptions for identical secular conduct.

2. Whether *Carson v. Makin* displaces the rule of *Employment Division v. Smith* only when the government explicitly excludes religious people and institutions.

3. Whether *Employment Division v. Smith* should be overruled

THE PETITION FOR A WRIT OF CERTIORARI IS GRANTED LIMITED TO QUESTIONS 1 AND 2 PRESENTED BY THE PETITION.

CERT. GRANTED 4/20/2026