

No. 24-1267

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

ST. MARY CATHOLIC PARISH IN LITTLETON;
ST. BERNADETTE CATHOLIC PARISH IN LAKEWOOD;
DANIEL SHELEY; LISA SHELEY;
THE ARCHDIOCESE OF DENVER,

Plaintiffs-Appellants,

v.

LISA ROY, in her official capacity as Executive Director
of the Colorado Department of Early Childhood;
DAWN ODEAN, in her official capacity as Director
of Colorado's Universal Preschool Program,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Colorado
Case No. 1:23-cv-2079-JLK – Hon. John L. Kane

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 23-cv-2079-JLK

ST. MARY CATHOLIC PARISH IN LITTLETON, et al.,

Plaintiffs,

vs.

LISA ROY, et al.,

Defendants.

REPORTER'S TRANSCRIPT

Bench Trial, Vol. 1

Proceedings before the HONORABLE JOHN L. KANE, Judge,
United States District Court for the District of Colorado,
commencing on the 2nd day of January, 2024, in Courtroom A802,
United States Courthouse, Denver, Colorado.

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P R O C E E D I N G S

(Proceedings commenced at 9:47 a.m.)

THE COURT: I have a few things I want to raise with you. First of all, it's quite understandable that the defendants do not have access to their office right now. It's been shut down because of a disturbance that occurred there with a shooting, and that building is locked up, so they couldn't bring their exhibits with them today. I don't know when it will open up again, but we will let you file those exhibits later.

The next thing is that the deposition testimony has been submitted to the Court, and the local rule provides that it's supposed to be submitted under seal, and it wasn't, but I'm not going to make a federal case out of that. We'll just go ahead with it.

The next thing is that I'm not going to read all of these designated exhibits now. If the witness is here and ready to testify, the witness should testify and not use the deposition, except for cross examination purposes for impeachment with regard to prior inconsistent statements. But to read through all of those depositions to find one needle in the haystack doesn't make any sense.

So, if you have something in the deposition that you specifically want me to read, I will do that, but only when it's pointed out to me specifically. And that's in conformity with our local rule about adding incorporation by reference to other

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1 printed materials that exist. And that's the instance in which
2 you have to specify rather than just dump the entire deposition
3 on the Court.

4 So, if a witness is here to testify, we don't need the
5 deposition except for cross examination. If you have somebody
6 who is not present and unable to testify by whatever this thing
7 is called, then you can make an offer for a deposition for
8 somebody that isn't present, and we will hear that specifically.

9 The next thing is that I've reviewed as much of this as
10 I can, as I was able to with time permitting, and it's
11 abundantly clear to me that we're not going to finish in three
12 days. The testimony projected alone in your trial briefs points
13 out that the time exceeds the time that we have available.

14 So, I'm going to make a few changes, and one is that we
15 will start at 9:00 a.m. rather than 9:30 until the case is
16 completed. The other is that we will hold court on Friday. I
17 have another matter to attend to, so we will recess on Friday at
18 11:45 and come back at 1:45. But other than that, the time will
19 start at 9:00 and will stop at 5:00.

20 I think I should explain to you why we stop at 5:00,
21 and the disruption of the Colorado Supreme Court offices and the
22 attorney general's office should provide ample illustration of
23 why we stop at 5:00. But let me add to that that there are many
24 people, including court employees, who are encouraged to use
25 public transportation. There are people that are attending here

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1 that I must assume at least some of them are also involved in
2 using public transportation.

3 And in addition to that, there are others who need to
4 go to their cars, wherever they're parked. And we have --
5 unfortunate to say, but it's a fact of life, we have a number of
6 violent episodes that occur in this area. And so -- and then
7 the final thing is that some people will have daycare
8 arrangements, and they have to leave by a certain time in order
9 to continue to have daycare for their offspring.

10 So, we will stop at 5:00, promptly, and I will be
11 somewhat like Mussolini in making the trains stop at that time.
12 So, that's as -- if we need to go into Monday we will, if we
13 don't finish on Friday.

14 Now, before proceeding further, and I know that you've
15 signed this appearance sheet, or my courtroom deputy has gotten
16 your names, but nevertheless, in establishing a record of these
17 proceedings, I will begin with the plaintiffs' counsel, and ask
18 each of you to enter your appearance for this hearing at this
19 time, and I will begin by letting you decide who goes first, but
20 all five of you.

21 MR. RASSBACH: Sure. Eric Rassbach for plaintiffs.

22 THE COURT: Did you get that?

23 THE COURTROOM DEPUTY: Stand and speak.

24 MR. RASSBACH: Sure. Eric Rassbach for plaintiffs.

25 MR. REAVES: Nick Reaves for plaintiffs.

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1 MR. DAVIS: Joseph Davis for plaintiffs.

2 MR. VARBERG: Jordan Varberg for plaintiffs.

3 MS. DIXON: Amanda Dixon for plaintiffs.

4 THE COURT: And now for the defense, please.

5 MS. CARRENO: Virginia Carreno for defendants.

6 MS. FISCHER: Good morning. Janna Fischer for
7 defendants.

8 MS. NORTON: Good morning. Helen Norton for the
9 defendants.

10 MS. RUST: Nicole Rust for defendants.

11 THE COURT: Thank you.

12 MR. WHITEHAIR: Greg Whitehair on behalf of
13 defendants, Your Honor.

14 THE COURT: Thank you. And the record should reflect
15 as well that the two named defendants, Dawn Odean and Lisa
16 Ray [sic] are present and sitting at counsel table. So, with
17 that, and knowing that we're pressed for time, I will hear an
18 opening statement, but remember Shakespeare's dictum that
19 brevity is the art of wit.

20 Before you begin, I should say one further thing, and
21 that is for your benefit. I have what's called realtime. The
22 reporter types it out, and it appears on a screen. So, I will
23 be looking at the screen while you're speaking many times.

24 The other thing is I wear hearing aids, and so I ask
25 you to project and to enunciate so that I can hear everything.

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1 But if I'm not hearing it, I'm going to be looking at it in
2 writing to keep things going. All right? So, I'd say pretend
3 like you're in a Broncos game, but nobody cheers them anymore.

4 MR. REAVES: Thank you, Your Honor. Good morning
5 again. My name is Nick Reaves, and I'm one of the counsel for
6 plaintiffs in this case. For many Catholic families like
7 plaintiffs Lisa and Dan Sheley, raising their children in the
8 faith and providing them with a Catholic education is an
9 important religious obligation.

10 This is a case about the ability of these families,
11 families like the Sheleys, to have equal access to Colorado's
12 Universal Preschool Program, also called the UPK program.
13 Throughout this case, you will hear how the Archdiocese of
14 Denver and its Catholic Schools foster a community of believers
15 and an environment conducive to faith-filled Catholic education
16 in their schools.

17 You will hear how the Archdiocese and its Catholic
18 Schools work to ensure that families who enroll in their schools
19 understand and agree to support what the school teaches, and
20 that these schools do this in part to avoid creating unnecessary
21 conflict within the school and within the child's own family.

22 And you will hear that because of this sincere
23 religious exercise, defendants have excluded the plaintiff
24 preschools, St. Mary's Catholic Preschool and Wellspring
25 Catholic Academy, from Colorado's Universal Preschool Program,

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1 denying plaintiffs' request for religious accommodation.

2 But in addition to what you will hear, I also want to
3 highlight what you won't hear during testimony at trial. You
4 won't hear, for example, that defendants have applied the same
5 strict, quote, serve everybody requirement to other UPK
6 providers, like Head Start programs that can limit enrollment
7 based on income level, school districts that can consider
8 disability when making enrollment and student placement
9 decisions, and faith-based providers that can serve only members
10 of their congregation.

11 Instead, throughout this trial, the evidence will show
12 that defendants have selectively enforced their
13 nondiscrimination requirements, permitting some providers to
14 operate according to their mission and mandate, but denying the
15 plaintiff preschools that same opportunity. Rather than create
16 a Universal Preschool Program, Colorado has privileged certain
17 providers while excluding others.

18 In order to make the showing, plaintiffs will first
19 present testimony from Ms. Abriana Chilelli, the Archdiocese of
20 Denver's acting superintendent of Catholic Schools.
21 Ms. Chilelli will testify to the Archdiocese's mission of
22 providing Catholic education to families who enroll in Catholic
23 Schools, and to explain how the Archdiocese advances this
24 mission.

25 You will hear that religious education is a central

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1 mission of the Archdiocese, and that the Archdiocese advances
2 this mission by providing direction, supervision, and support to
3 its Catholic Schools. You will hear that to provide effective
4 religious education, the evidence will show that the Archdiocese
5 asks teachers at all its schools to agree to uphold and abide by
6 the Catholic Church's teachings on matters of faith and morals.

7 You will also hear that the Archdiocese believes
8 parents are the primary educators of their children, and that as
9 a result, the Archdiocese and its schools seek to ensure that
10 parents who send their children to Catholic Schools are on the
11 same page regarding what the school teaches.

12 You will also hear that Archdiocesan preschools,
13 including St. Mary's and Wellspring, meet with parents before
14 enrollment, explain the school's religious beliefs and mission,
15 and ask that parents who send their children to these schools
16 will support and affirm what is being taught in the school.

17 The testimony will also show that the Archdiocese
18 believes that if what is being taught and modeled at home
19 contradicts what is being taught in school, this would create a
20 conflict for the student.

21 You will also see evidence confirming that despite
22 being open and -- open about its beliefs and policies, not one
23 of the Archdiocese's 36 preschools has any history of a
24 complaint from a LGBTQ family or other person alleging
25 LGBTQ-based discrimination.

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1 Next, you will hear about the two plaintiff schools in
2 this case, St. Mary's Catholic Preschool and Wellspring Catholic
3 Academy. You will hear that these preschools are required to
4 and do follow the guidance of the Archdiocese on matters of
5 faith and morals, and you will hear that there are several ways
6 in which the Archdiocese guidance impacts the operation of these
7 schools.

8 This includes mandatory teacher contracts. This
9 includes statements of community belief signed by all staff.
10 This also includes schools meeting with and giving tours to
11 families before enrolling them in their school to make sure the
12 family and the school are on the same page about the school's
13 education.

14 This also means that parents and families have to
15 review and sign that handbook that each school has which
16 incorporates their religious beliefs and incorporates the ways
17 in which they operate their school for parents to know ahead of
18 time. And this also means that teachers and sometimes school
19 administrators meet with families one on one to help ensure that
20 the family and the school are on the same page. You will also
21 hear that many families who come to these schools are
22 specifically seeking a Catholic education, and that's why they
23 chose these schools.

24 You will also hear that in rare circumstances, a school
25 has had to tell a family that they might not be a good fit for

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1 the school, because the family's beliefs and practices conflict
2 with what the school teaches and how the school operates,
3 ultimately denying that family admission to the school.

4 The evidence will also show that St. Mary and
5 Wellspring would benefit from participating in the UPK program,
6 not only by receiving UPK-provided bonuses, but more
7 importantly, by being able to offer 15 hours of free preschool
8 to their families.

9 Next, you will hear testimony from Ms. Lisa Sheley, a
10 parent and plaintiff in this case. Ms. Sheley will testify
11 about how she and her husband Dan believe in providing their
12 children with a Catholic education and about how St. Mary's
13 supports them in fulfilling that obligation.

14 You will also hear how the Sheleys would benefit from
15 the UPK program, as their four-year-old is currently eligible
16 for the program right now, and their two younger children will
17 soon be eligible for this benefit if St. Mary's were able to
18 participate.

19 You will also hear a lot about Colorado's new Universal
20 Preschool Program, which plaintiffs -- portions of which
21 plaintiffs are challenging in this lawsuit. Specifically, you
22 will hear testimony that the program completely changes how
23 families enroll in preschool, creating a brand new matching
24 process that prohibits schools from interviewing and screening
25 families, instead requiring schools to accept all families

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1 matched with them.

2 You will hear that the UPK statute has a statutory
3 nondiscrimination provision, which we've been calling the equal
4 opportunity mandate, that requires all preschools to provide all
5 families matched with them equal access to preschool enrollment
6 and preschool services, without regard to, among other things, a
7 child or family's religious affiliation, sexual orientation,
8 gender identity, and others.

9 It also requires them to operate the preschools in the
10 same way. But at the same time, you will see evidence that
11 defendants have allowed numerous exceptions from the statutory
12 requirement of equal access. You will hear that preschools can
13 preference families based on religious affiliation, including by
14 limiting admissions to only Catholic families. You will hear
15 that providers can preference families based on income level,
16 and you will see evidence that UPK providers can provide
17 preschool services that take into consideration a child's
18 disability.

19 You will also hear that providers can request
20 individualized exceptions that would also contradict the equal
21 opportunity mandate's plain terms, and you will hear testimony
22 about how the UPK statute itself allows providers to participate
23 in the program without meeting all the quality standards.

24 Plaintiffs will also put on evidence regarding how the
25 Archdiocese preschools took steps to try to participate in the

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1 UPK program before litigation. The evidence will show that a
2 coalition of faith-based providers asked the departments of
3 early childhood for a religious accommodation that would allow
4 them to participate in the program without violating their
5 sincere religious beliefs. You will then hear that the
6 defendant denied this request based on its view that it cannot
7 grant exceptions from the UPK statute's equal opportunity
8 mandate.

9 The evidence will also show that the Archdiocese told
10 its preschools they could return an unsigned UPK agreement along
11 with a form letter explaining why they can't sign the agreement
12 consistent with their religious beliefs, but you will hear that
13 this attempt to participate was unsuccessful, because the UPK
14 program requires providers to return a signed agreement.

15 Unable to obtain a religious accommodation, you will
16 also hear testimony about how the Archdiocese instructed its
17 preschools not to sign the UPK program service agreement.

18 Next, you will hear testimony from defendants as they
19 attempt to justify their exclusion of St. Mary's and Wellspring
20 from the UPK program. But here, there are a few things that you
21 wouldn't hear or see in the evidence. You won't hear that the
22 department or the legislature considered and rejected religious
23 accommodations based on concerns about LGBTQ families being
24 unable to access UPK preschools.

25 You won't hear anything about how keeping two Catholic

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1 preschools out of the UPK program will increase the number of
2 preschools available to LGBTQ families. You won't hear that the
3 department appealed its loss in Darren Patterson, instead
4 allowing a preschool with similar religious beliefs and
5 requirements to participate in the program right now.

6 You also won't hear any testimony about how LGBTQ
7 families have had trouble finding affirming preschools in
8 Denver. And finally, you won't hear evidence from a single
9 LGBTQ family today about how allowing St. Mary's or Wellspring
10 to participate would cause them harm.

11 Instead, you will hear testimony confirming that over
12 1,000 preschools are exempt from the requirement that a provider
13 accept all matches, and you will hear testimony that the UPK
14 provider website already includes numerous disclaimers alerting
15 parents to the fact that many preschools do not in fact accept
16 all applicants.

17 Allowing two Catholic preschools to participate in the
18 UPK program just like Darren Christian -- Darren Patterson
19 Christian Academy already does will actually advance the
20 department's own goals of creating more options for families so
21 that families like the Sheleys can also find the just-right
22 provider.

23 Put simply, the testimony and evidence will establish
24 that the religious beliefs and obligations of the Archdiocese
25 and its Catholic preschools, including St. Mary's and

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1 Wellspring, are the reason that these schools cannot participate
2 in the UPK program. This harms not only the schools, but also
3 families like the Sheleys who sincerely believe in the
4 importance of providing a Catholic education for their children.

5 Plaintiffs therefore ask this Court to enter an
6 injunction that would allow St. Mary's preschool and Wellspring
7 to participate in the UPK program without having to violate
8 their sincere religious beliefs. Thank you, Your Honor.

9 THE COURT: I have one question for you. In respect
10 of what -- one of the statements that you made, in going through
11 these voluminous files, I was given to understand it's contained
12 in the statements that neither St. Mary's nor St. Bernadette's
13 schools have -- haven't received any applications for membership
14 from single-sex families, transgender children, or any of those
15 that are on that list that you're seeking to qualify your client
16 from not participating without having an exception to those
17 conditions.

18 And you made a statement in your opening that a school
19 has had to tell a family that they might not be a good second --
20 a good fit for this program, and that they have not applied as a
21 consequence. Is that referring to the two named defendants in
22 this case? The two named plaintiffs, excuse me.

23 MR. REAVES: Yes, Your Honor. Just to clarify the
24 situation, Ms. Avery Coats, who will testify later this
25 afternoon, will discuss a specific instance in which a fifth

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1 grader and their family came to look at the school, and
2 ultimately Wellspring Catholic Academy was not able to enroll
3 them.

4 Our discovery responses to defendants, which I think
5 were what were cited, only spoke about preschool enrollment.
6 And we agree that there's never been an instance in which
7 St. Mary's or Wellspring have had to ask a family not to seek
8 enrollment in the preschool context. But Ms. Coats, who will
9 testify, will talk about how it's happened in a different grade
10 level at the same school.

11 THE COURT: So, it's offered to show that programs not
12 the subject of this lawsuit is a consistent practice with the
13 position of the defendants?

14 MR. REAVES: That's right. It's offered to also show
15 that the Archdiocese and its individual preschools in this case
16 have had to enforce their policies. These aren't merely
17 theoretical policies, but they actually do govern how the
18 schools themselves operate.

19 THE COURT: Okay. Thank you very much.

20 MR. REAVES: Thank you, Your Honor.

21 MS. FISCHER: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MS. FISCHER: Colorado didn't have to create a mixed
24 delivery Universal Preschool Program. It chose to. It could
25 have restricted the program to public schools only, like all the

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1 other states that have implemented similar programs. Instead,
2 it opened the program to both public and private schools,
3 including faith-based schools, to increase access for all of
4 Colorado's four-year-olds, and the program in year one has been
5 successful.

6 In the 2019-20 school year, the predecessor Colorado
7 Preschool Program served about 18,000 children, or 25 percent of
8 Colorado preschoolers. Then in 2020, Colorado voters
9 overwhelmingly passed Proposition EE, which funded statewide
10 Universal Preschool starting with the '23-'24 school year. The
11 new program was housed within a new department, the Colorado
12 Department of Early Childhood, which we will refer to as the
13 CDEC, or the department. And that department was created on
14 July 1st, 2022.

15 From day one, the Universal Preschool Program welcomed
16 all kinds of providers. The CDEC even convened a faith-based
17 working group, one of several, addressing different interests,
18 that met from late 2022 through June 2023. Former early
19 childhood transition director Michael Cooke will tell you about
20 the formation of that group, and that CDEC started it so it
21 could hear from faith-based providers and respond to their
22 concerns.

23 The director of plaintiff St. Mary Preschool
24 participated in this group. UPK started in September 2023,
25 serving 38,000 Colorado preschoolers, and currently 40

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1 faith-based providers participate, serving 904 children.

2 With regard to what brings us here today, we appreciate
3 that the Court has made a decision about standing, but I
4 mentioned that we will elicit a few items from witnesses over
5 the next few days, from Dawn Odean, Elsa Holguín, and Jesse
6 Burne so we can make our record.

7 Turning to the defense case on the merits, Ms. Cooke
8 and the director of Universal Preschool, Dawn Odean, will
9 explain that the Colorado Universal Preschool Program was
10 developed quickly. Ms. Cooke and Ms. Odean will both talk about
11 the program history. Ms. Odean will discuss the current
12 rule-making and how that is developing. The CDEC is committed
13 to working with providers to improve the Universal Preschool
14 Program.

15 The program includes and indeed welcomes faith-based
16 providers, notwithstanding plaintiffs' inaccurate claim to the
17 contrary. The *Carson*, *Espinoza*, and *Trinity* trilogy of cases
18 are all distinguishable because those cases all involve state
19 programs that facially excluded religious organizations solely
20 and precisely because they were religious. Colorado's program
21 instead welcomes religious providers, and public funds are
22 currently flowing to religious preschools under this program.

23 But Colorado's program does not permit any preschool,
24 secular or religious, to engage in discrimination that violates
25 the statute. Plaintiffs here seek special treatment not

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1 available to any other program participant: the State's blessing
2 to discriminate.

3 The Universal Preschool Program has among its
4 objectives four important ones we will talk about today over the
5 next -- and over the next few days that underpin the program's
6 design. The statutory antidiscrimination provision helps the
7 government achieve these objectives which forward the
8 government's legitimate, even compelling objective of ensuring
9 safe and healthy access to high-quality preschool for Colorado's
10 four-year-olds.

11 The first of these objectives is mixed delivery. The
12 voters approved and the general assembly enacted a Universal
13 Preschool system containing both public and private providers.
14 The goal was to provide options for families so they can select
15 the school that was the just-right fit for their family and
16 improve their child's educational outcome.

17 The second important objective is child and family
18 well-being. The goal of early childhood education in Colorado
19 is to promote a child's health, including that child's
20 behavioral health, and to support child and parent outcomes that
21 improve overall family well-being. Dr. Abbie Goldberg, a
22 psychology professor at Clark University, will discuss her
23 research into LGBTQ families and how the context in which
24 children from those families are raised can support or harm the
25 child's mental health.

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1 She will tell you that when a child receives messages
2 at school that the child or those who they love are deviant and
3 wrong, those messages create a sense of confusion and distress
4 for the child. Additionally, Dr. Goldberg will speak to her own
5 study regarding how the school's treatment of LGBTQ parents
6 affects the parents' involvement in the school setting and the
7 negative ramifications that noninvolvement of a parent in school
8 may have on that child.

9 Dr. Amy Tishelman, a psychology professor at Boston
10 College, will discuss how an unsupportive environment for a
11 child or family may increase toxic stress in a child and cause
12 confusion regarding that child's identity during early
13 childhood.

14 The third statutory objective is child safety. When
15 children receive support, including support from their teachers
16 and their school, they feel safe. Dr. Tishelman will tell you
17 about her research into childhood development, including the
18 development of gender-diverse children, and how trauma in early
19 childhood can have lifelong health, mental health, and
20 behavioral effects on a child.

21 The standards of psychological care for gender-diverse
22 children emphasize that keeping these children -- emphasize
23 keeping these children safe, as gender-diverse children have
24 been shown to have higher rates of mental health challenges and
25 suicidality. That safety includes feeling safe at school and

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1 not subjecting a child to environments that have conflicting
2 views of the child's identity or their parents' identity.
3 Dr. Tishelman will also talk about her clinical work and
4 treatment of gender-diverse children, including young children
5 with suicidal thoughts.

6 And finally, the fourth statutory objective we will
7 discuss is ensuring access for low-income families and families
8 who meet certain identifying qualifying factors. And what are
9 those factors? Students who are low-income, who are homeless,
10 who are in the foster system, who need an individualized
11 education program known as an IEP, and students who are dual
12 language learners.

13 What all of these statutory categories have in common
14 is they prioritize access to preschool for children who would
15 most benefit from that preschool. LGBTQ families also have
16 reduced access to quality early childhood education due to
17 larger percentages of LGBTQ families living in poverty or in
18 more rural areas than the average cisgender family, as
19 Dr. Goldberg's research shows, and these families benefit from
20 access to schools.

21 That is in line with the Colorado general assembly's
22 legislative priorities, and the department's thoughtful
23 implementation of those objectives. Over the next few days, we
24 will show that the statutory nondiscrimination provision at
25 Section 26.5-4-205(2)(b) of the Colorado Revised Statutes is

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1 neutral and generally applicable. You will hear from Dawn
2 Odean, Michael Cooke, and Denver Preschool Program CEO Elsa
3 Holguín about the importance of early childhood education.
4 Ms. Odean will tell you how the goal and design of the Universal
5 Preschool Program is to support those statutory objectives. The
6 nondiscrimination clause in the statute, which is repeated in
7 the year-one version of the program contract, is in line with
8 the objectives of the statute.

9 None of the programmatic preferences include exceptions
10 from the nondiscrimination provision. Neither does the
11 temporary waiver which limits -- which gives a provider time to
12 bring a program into compliance, but does not give a provider
13 permission to not follow the nondiscrimination clause. We will
14 show that both the preferences and the waiver are generally
15 applicable.

16 We've heard a lot already about these programmatic
17 preferences, which plaintiffs' counsel describes as a selective
18 enforcement of the statutory requirement. First, plaintiffs are
19 wrong to claim that any preference exempts a provider from the
20 statutory antidiscrimination provision. In fact, these
21 preferences are merely departures from the algorithm-matching
22 process, which are each designed to expand the provider base.

23 As Ms. Cooke will tell you, they are created in
24 response to providers' concerns about being able to run their
25 programs in ways that best serve the needs of the preschool

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1 populations that they serve.

2 Ms. Odean will tell you more about each of these nine
3 preferences in detail. I will share a few here that are
4 supported by the statute's objectives. These preferences came
5 out of the need for certain providers to comply with federal
6 requirements or out of a real-world need for a true mixed
7 delivery system. They are called out specifically in statute,
8 or they prefer schools to prefer community members in a way not
9 in violation of the nondiscrimination requirements.

10 The congregation preference, which the two plaintiff
11 preschools would be able to take advantage of, along with the
12 preferences for siblings and continuity of care, does not exempt
13 faith-based providers' concerns -- does not exempt faith-based
14 providers from the antidiscrimination provision. It was
15 developed in response to the providers' concerns, as Ms. Cooke
16 will tell you, and it permits those providers to hold their
17 seats for members of their communities as they define them, just
18 as other providers are permitted to serve their self-identified
19 communities by prioritizing children of employers or from school
20 district boundaries.

21 In other words, preferring members of your congregation
22 is a preference based on relationships apart from religion, even
23 if those in the relationship share the same religion. It's akin
24 to the sibling preference, which is based on relationships apart
25 from race, national origin, or religion, even though siblings

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1 often share the same race, national origin, and religious
2 identity.

3 The preferences for allowing programs to specialize in
4 children's -- serving children with certain disabilities to
5 prioritize those children with disabilities and that allow Head
6 Start programs to preference children who meet the Head Start
7 requirements benefit children who are from populations that
8 especially benefit from access to preschool. Permitting
9 providers to prioritize these roots is not discriminating
10 against children who are able-bodied or higher-income children
11 on those bases.

12 Plaintiffs claim that permitting
13 publicly-funded preschools to hold slots for low-income families
14 or for children with disabilities permits discrimination in
15 violation of the statutory nondiscrimination provision.
16 Plaintiffs wrongly interpret the statutory term "discrimination"
17 for these purposes.

18 That is an absurd reading of the statutory provisions
19 that prohibit discrimination based on income or disability
20 status given the statute's express objectives to ensure access
21 for low-income children or children with disabilities, and to
22 ensure inclusion of providers that specifically serve those
23 children.

24 The Supreme Court has made clear that the Government's
25 distinctions on the basis of income or disability and most other

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1 characteristics are subject only to rational basis review when
2 evenly administered. Think of the federal Age Discrimination in
3 Employment Act, which prohibits discrimination only against
4 those over 40 and not against younger folks. The government is
5 free to define age discrimination in this way, because the Court
6 subjects the government's age-based distinctions only to
7 rational basis review.

8 Here too, the State is free to prohibit discrimination
9 against only low-income children or children with disabilities
10 who are the most vulnerable populations that the statute
11 expressly prioritizes. For purposes of this statute, it would
12 be absurd to interpret the statute's antidiscrimination
13 provision to prohibit a school that specializes in serving
14 visually-impaired students from prioritizing those seats for
15 visually-impaired students, and it would be absurd to interpret
16 the statute's antidiscrimination provision to prohibit a school
17 that receives Head Start funding from saving its seats for
18 low-income families served by the Head Start program.

19 And indeed the department does that logical thing. In
20 no case may a provider receive an exception to the statutory
21 mandate in Section 26.5-4-205(2)(b). The antidiscrimination
22 thus remains neutral and generally applicable, and under *Smith*
23 it triggers rational basis scrutiny.

24 As to express plaintiffs' expressive association claim,
25 we have -- we have identified evidence in the papers, but we

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1 will come back to that in closing.

2 You will hear from Ms. Odean that Colorado's
3 congregation preference does not discriminate amongst religions,
4 because it is available to all faith-based providers. It is
5 equally available to all denominations and does not prioritize
6 any one religion over another.

7 To obtain an injunction, in addition to succeeding on
8 the merits, the plaintiffs need to show that they have an
9 irreparable injury. Plaintiffs' preschools first of all have --
10 there have not put forth any evidence of a specific child turned
11 away from a preschool program, as plaintiffs' counsel just
12 acknowledged, and plaintiff preschools can and have signed
13 contracts with similar nondiscrimination clauses in the past and
14 have agreed to that language without complaints.

15 Ms. Holguín of the Denver Preschool Program and Jesse
16 Burne, the manager of CCCAP, will tell you how their managers
17 handle their contracts and their expectations of providers, yet
18 St. Mary and St. Bernadette see the language in the Universal
19 Preschool Program as somehow different.

20 At the conclusion of our presentation of evidence, my
21 colleague, Ms. Carreno, will invite the Court to make findings
22 of fact in our favor and conclude that the Universal Preschool
23 Program's requirements are neutral, generally applicable, and do
24 not violate the plaintiffs' free exercise of rights under *Smith*.
25 Thank you.

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1 THE COURT: Thank you. I should mention we got off --
2 it's all right. No. I don't have any questions for you. I
3 want to address all of you. We got off to a late start this
4 morning, understandably with the difficulties that I've already
5 mentioned. And normally I would declare a recess at some time
6 between 10:15 and 10:30, but we didn't start, and I don't think
7 it's necessary.

8 So, we will go ahead with the first witness for the
9 plaintiff, but I do want to point out something that henceforth,
10 we will start at 9:00, and I will take a recess at some point,
11 not trying to interrupt the flow of the testimony, between 10:15
12 and 10:30. And then we will recess between noon and 1:15, and
13 then come back and take another recess appropriately enough
14 between 3:15 and 3:30, and then go until 5 o'clock, at which we
15 will stop.

16 Now, I want to make this very, very clear to people,
17 that if you need a recess other than what I've just announced,
18 all you have to do is ask for it. I may have been accused of
19 being a disciple of the Marquis de Sade, but it's not true. So,
20 if you need a break, just raise your hand and stand and say you
21 need a break, and I will do that. Okay.

22 MR. REAVES: Thank you, Your Honor.

23 MS. CARRENO: And, Your Honor, before we move forward,
24 we didn't get a chance to do a little bit of housekeeping at the
25 beginning, and in light of the Court's order, I noticed that the

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1 plaintiffs have said that they intend to call Ms. Chilelli from
2 the Archdiocese of Denver.

3 In light of the Court's order dismissing the
4 Archdiocese from the case, we would just move that that witness
5 be precluded from testifying, as the testimony is unnecessary.
6 Only St. Mary and St. Bernadette are the plaintiffs in this case
7 and can speak specifically about why they can or cannot
8 participate in the UPK program.

9 THE COURT: I am not going to do that. I am going to
10 permit the plaintiffs to call the witnesses they wish. I do
11 want you to understand, all of you, very clearly, that I am not
12 going to invade the question of authenticity of doctrine or
13 belief.

14 I read some cases in which Courts have done that, and
15 they're wrong. So, the sincerity of the belief and the practice
16 of it are matters which I don't think require anything further.
17 But it is relevant that -- and the allegations in the pleading
18 show this already, and in the briefs, that these two schools and
19 the plaintiff parents feel obligated as a matter of faith to
20 follow the doctrines established by the Archbishop or the
21 Archdiocese.

22 I'm not going to get into what Pope Francis has to say
23 about it or what the National Conference of Catholic Bishops say
24 about it or what canon law says about it. Those are clearly
25 beyond the competence of this Court to engage in, but we will

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1 accept it as a fact unless there is some evidence to the
2 contrary that these are not sincerely-held beliefs. Whether
3 they are protected by the First amendment or not is another
4 matter. That's why we're here. But that's strictly a question
5 of civil law. But on the other hand, the plaintiffs are
6 entitled to call whoever they want from the Archdiocese.

7 I said that the Archdiocese is not a party because
8 there's nothing I can enforce against the Archdiocese. They
9 don't have standing. But that's -- I know the plaintiffs have
10 disagreed with that, and it seems rather strange that a civil
11 judge would say that an Archbishop doesn't have standing. He
12 does in his cathedral, but not here. And I don't have any
13 authority over his cathedral.

14 MS. CARRENO: Thank you, Your Honor. And the other
15 matter I wanted to raise is the Court seemed to invite the
16 parties to talk about the possibility of a stipulation regarding
17 some of the changes to the employment provision. Because the
18 order came in on Saturday, we haven't had a chance to properly
19 confer.

20 THE COURT: What do you want to do? Do you want to do
21 that now, or do you want to wait until the noon hour to do that?
22 What pleases you?

23 MS. CARRENO: I think that it might be helpful to do
24 it now so that we can potentially limit the issues.

25 THE COURT: That makes sense to me. All right. I

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1 will -- I will listen to your first witness later, but we will
2 declare a recess for counsel. And the jury room is available
3 for you to use as a conference room. With the number of you
4 here, I think you probably need some room, and we have it there.
5 So, our courtroom deputy will show you the jury room, and when
6 you're through with your conference, let me know. It's a fair
7 request. We will be in recess.

8 (Recess at 10:32 a.m., until 10:54 a.m.)

9 THE COURT: Did that recess produce anything?

10 MS. CARRENO: We believe so, Your Honor. We believe
11 that the parties are going to be able to enter into a
12 stipulation as to counts two and three, with the expectation
13 that the contractual provision 18B will be removed from the
14 contract in year two. And to the extent that the plaintiff
15 preschools, or any of the Archdiocese's preschools, for that
16 matter, intend to sign on to the UPK program in year one, that
17 that provision would not apply to them.

18 THE COURT: Okay. Did you get the stipulation?

19 THE COURTROOM DEPUTY: Yes.

20 MR. DAVIS: We're planning to work on a written
21 stipulation, Your Honor.

22 MS. CARRENO: Yes.

23 THE COURT: All right. Okay.

24 MS. CARRENO: But while we move forward with
25 testimony, we're not going to fully develop testimony around

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1 those issues in the anticipation that we're going to be able to
2 enter that written stipulation either later today or tomorrow.

3 THE COURT: Okay. Whenever you get it is fine. Are
4 we ready to proceed now?

5 MR. DAVIS: Yes, Your Honor.

6 THE COURT: Who is your first witness, please?

7 MR. DAVIS: Thank you, Your Honor. Joseph Davis for
8 the plaintiffs, and I am going to call our first witness. But
9 before I do that, I had two other housekeeping matters that I
10 think will be very brief -- briefer than that last one. The
11 first is there were a number of stipulated exhibits on the
12 parties' unified exhibit list.

13 THE COURT: Yes.

14 MR. DAVIS: And I didn't know how the Court would like
15 us to handle that. We can go ahead and move those.

16 THE COURT: I'm glad you raised that. Any stipulated
17 exhibits are admitted, because these are rules of inclusion, not
18 exclusion, and you stipulated to them, so I will admit them as
19 exhibits.

20 As to any objected exhibits, I think this is one of
21 those anomalies in the law that have been commented upon by
22 higher Courts. It's not something I'm trying to originate, but
23 it's -- the rules of evidence provide and they contemplate
24 applying to juries. And so a judge in a jury trial has to look
25 at an exhibit and make a ruling before the judges of the fact,

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1 the jurors, can read it.

2 But when it's a bench trial, the rule makes no sense,
3 because the judge has to look at it to decide whether it's
4 admissible or not. So, I'm going to be looking at inadmissible
5 statements as well as admissible ones, and I think it's better
6 that we will just -- you tender them, and I will reserve my
7 ruling until the findings of fact as to which ones I am using
8 and which ones I am not.

9 MR. DAVIS: Thank you, Your Honor.

10 THE COURT: So, that will speed things up a little, I
11 hope. But if I have to look at it to see whether or not I can
12 look at it, so be it. Now I know why Charles Dickens said what
13 he said.

14 MR. DAVIS: That works for us, Your Honor. Just to
15 clarify for the record's purposes, those stipulated exhibits
16 were 11 through 22, 24 through 25, 28 through 32, and 34 through
17 37.

18 THE COURT: All right. Very well.

19 MR. DAVIS: Thank you, Your Honor. And the one other
20 point I would raise is, as Your Honor is aware, we have one
21 witness who will be testifying remotely today from her hospital
22 room. That's Ms. Coats. And because of her monitoring schedule
23 and the medical needs there, it turns out that she needs to be
24 able to testify at a particular time. It looks to us that
25 2:30 p.m. is a time that works for her.

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1 THE COURT: We will accommodate that.

2 MR. DAVIS: Okay. Great.

3 THE COURT: We will stop whatever we're doing and go
4 with that testimony, and then go back to where we were.

5 MR. DAVIS: Thank you, Your Honor. Perfect.

6 THE COURT: Okay.

7 MR. DAVIS: So, with that, plaintiffs will call our
8 first witness, Ms. Abriana Chilelli.

9 THE COURT: If you would face the courtroom deputy,
10 she will administer an oath to you.

11 (The Witness is Sworn)

12 THE COURTROOM DEPUTY: Please be seated. Please state
13 your full name for the record, and spell your last name.

14 THE WITNESS: Good morning. My name is Abriana
15 Chilelli. My last name is C-H-I-L-E-L-L-I.

16 THE COURT: Go ahead, please.

17 **DIRECT EXAMINATION**

18 BY MR. DAVIS

19 Q Thank you, Ms. Chilelli, and thank you for being here
20 today. You have already stated your name and spelled it for the
21 record, so we will just dive right in. Ms. Chilelli, who do you
22 work for?

23 A I work for the Archdiocese of Denver.

24 Q And what's your role at the Archdiocese?

25 A My role at the Archdiocese is acting superintendent of

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1 Catholic Schools.

2 Q How long have you been in that role?

3 A I've been in that role since December 5th of this year.

4 Q Okay.

5 A 2023.

6 Q And then what role did you have before that?

7 A Before that I served as assistant superintendent over our
8 Catholic Schools.

9 Q And who was your supervisor when you were assistant
10 superintendent?

11 A When I was assistant superintendent, my supervisor was
12 Elias Moo, who was the then superintendent of Catholic Schools
13 for the Archdiocese.

14 Q And was that -- was assistant superintendent, was that your
15 first role at the Office of Catholic Schools?

16 A No, it was not. I've been with the Archdiocese since 2016
17 serving in a multitude of roles. Before assistant
18 superintendent I was associate superintendent. Before that,
19 director of curriculum --

20 THE COURT: Ms. Chilelli, I'm going to ask for your
21 indulgence. Would you slow down a bit?

22 THE WITNESS: Yes.

23 THE COURT: I realize that when you're on the witness
24 stand, you want to get off the witness stand. It's a thing that
25 happens, but my hearing deficits would be a lot reduced if you

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1 would slow down a bit for me.

2 THE WITNESS: I would be happy to.

3 THE COURT: And the court reporter will bless you as
4 well.

5 THE WITNESS: I would be happy to. I was explaining
6 that I've been with the Archdiocese since 2016. Before serving
7 as assistant superintendent, I served as an associate
8 superintendent overseeing academics. And before that, I served
9 as director of curriculum and instruction.

10 Q. (By Mr. Davis) And who is your supervisor now that you're
11 acting superintendent?

12 A My current supervisor is Keith Parsons. He's the chief
13 operating officer of the Archdiocese. He's directly overseen by
14 Archbishop Aquila.

15 Q Thank you, Ms. Chilelli. So, just to back up a moment,
16 what is the Archdiocese of Denver?

17 A Sure. The Archdiocese of Denver is the geographic reality.
18 So, it's, in short, the Catholic Church in northern Colorado.
19 The Archdiocese represents the Catholic Church in northern
20 Colorado. Basically if you draw a line in the state of
21 Colorado, it's the northern portion of the state. And so the
22 Archdiocese operates under the pastoral leadership of Archbishop
23 Sam Aquila, and through that delegation of his teaching and
24 governing and sanctifying authority and shepherding over the
25 Catholic faithful of northern Colorado, the Archdiocese is made

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1 up of parishes, schools, and other ministries that help
2 communicate the message of Jesus Christ.

3 Q And on that last note, what is the purpose of the
4 Archdiocese?

5 A Sure. The purpose of the Archdiocese of Denver is to
6 establish ministries across northern Colorado in order to
7 communicate the message of the gospel, the message of Jesus, and
8 in that way, in order to rescue -- provide the rescue of Jesus
9 Christ and lead the faithful and the non-faithful to the rescue
10 of Jesus Christ and for the glory of the Father.

11 Q And education, is that part of how the Archdiocese pursues
12 that purpose?

13 A Yes. Education is critically important to the mission of
14 the Archdiocese. We understand the human person as being
15 endowed of being able to come to know and understand reasonably
16 all of reality, both naturally and supernaturally. And so the
17 educational mission of the school is incredibly important for
18 forming young people especially in coming to understand reality
19 itself.

20 Q Okay. And does that educational portion of what the
21 Archdiocese does, does that include operating preschools?

22 A Yes. We have many preschools at many of our schools across
23 the Archdiocese.

24 Q Okay. Do you know how many preschools are operated by the
25 Archdiocese or one of its parishes?

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1 A Yes. We have 36 preschools in the Archdiocese of Denver.

2 Q Does that number, 36, include St. Mary in Littleton?

3 A Yes. It includes St. Mary.

4 Q And then Wellspring Catholic Academy of St. Bernadette?

5 A Yes. Wellspring is also in that 36.

6 Q About how many students attend Archdiocese preschools?

7 A Approximately 1,500.

8 Q And what is the Archdiocese's relationship to the
9 preschools?

10 A Yeah. It's just that. It's a relationship. So, all of
11 our preschools exist, like I mentioned before, as a ministry of
12 the Archdiocese, and so in that way they exist in the hierarchy
13 of the Catholic Church here locally in Colorado. So, that
14 hierarchy begins with Archbishop Aquila, who then delegates his
15 teaching authority to school pastors or through his Office of
16 Catholic Schools, me as the acting superintendent. So, we
17 oversee schools -- preschools, excuse me, that are run by school
18 pastors, or in some cases regional schools are directly overseen
19 by us.

20 And so in order to fulfill the mission of Catholic
21 Schools, there's a hierarchy of delegating teaching authority.
22 And so because of that, the Archbishop issues and promulgates
23 policies, directives, guidance so that the mission at the school
24 level is incarnated or operates from his same teaching authority
25 in ministry. And so the policies are expected to be implemented

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1 at the school level, and that in turn provides unity amongst our
2 Catholic Schools so there's consistency with the mission across
3 them.

4 Q And does that oversight function that you mentioned, does
5 that include oversight over the schools' adherence to Catholic
6 faith and morals?

7 A Yes. So, it includes standard operating procedures, all --
8 and adherence to Catholic faith, morals, the building up of
9 Catholic culture within the school, all ordered towards the
10 formation of the human person, the student, all in service to
11 the family. And so those pieces regarding faith and morals are
12 inextricable in regards to our policies, and it's a definite
13 communication through them.

14 Q Is there a particular department within the Archdiocese
15 that's charged with overseeing schools?

16 A Yes. So, the office I oversee, which is the Office of
17 Catholic Schools.

18 Q And then you may have touched on this a little bit already,
19 but how specifically does the Office of Catholic Schools
20 exercise that oversight function?

21 A Sure. So, the Archbishop delegates his teaching authority
22 through our office. And so in that way, we -- teaching and
23 governing authority through our office, so in that way we apply
24 the policies, directives, and guidance, and then in fact issue
25 those on behalf of the Archbishop. We issue those policies

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1 related to full operations of the school, including employment
2 of personnel at the school level, including enrollment and
3 admittance of families, curriculum guidelines, and then we
4 oversee that as an Office of Catholic Schools through what's
5 called a co-supervisory process and co-supervision with our
6 pastors over the particular school to ensure that the policies
7 are in place. And then for our regional schools, we directly
8 supervise on behalf of the Archbishop.

9 Q Thank you. I will have you look at our first document,
10 Ms. Chilelli. If you wouldn't mind opening the binder that's
11 labeled plaintiffs' exhibits, volume one of two. And this will
12 just be our first tab here. So, it's been marked as Exhibit 1.
13 Do you recognize this document, Ms. Chilelli?

14 A Yes. I recognize this. This is a portion of our
15 Archdiocese and administrators' manual.

16 Q So, is this a document that's issued by the Office of
17 Catholic Schools?

18 A Yes. This is issued directly from our office on behalf of
19 the Archbishop.

20 Q And you're familiar with it through your role as the acting
21 superintendent at the Office of Catholic Schools?

22 A Yes.

23 Q Okay. What's the purpose of this document?

24 A Sure. So, as I mentioned before, this document gives the
25 policy and the structure for the promulgation of the

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1 Archbishop's authority over his schools. And so it's very
2 typical policy regarding operation employment requirements, what
3 schools are required to have in place at their local school. It
4 comes from canon law that the Archbishop has the right to
5 inspect and watch over the schools in his local territory, which
6 again is that geographic reality that I was referring to.

7 Q And there are also some -- were there also some policies in
8 here that relate to personnel policies within the Archdiocese?

9 A Yes. There's a whole section on personnel policies.

10 Q And within the schools as well; right?

11 A Yes.

12 Q So, I'll direct you to a particular page. This is the
13 bolded page ten there at the bottom right. And are there any
14 religious certification requirements for teachers that are
15 mentioned in this document?

16 A Yes. We require what's called a catechetical certificate
17 for all of our -- all of our teachers. We require that all of
18 them are certified, which means thoroughly trained in
19 Catechesis, which is the teaching of the faith.

20 MR. DAVIS: Your Honor, we would move to admit
21 Exhibit 1. I understand you'll take it under advisement.

22 THE COURT: It's admitted.

23 MR. DAVIS: Thank you.

24 Q. (By Mr. Davis) Ms. Chilelli, if you could turn to the
25 document that's labeled Exhibit 3, tab three.

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1 A Yes.

2 Q And do you recognize this document?

3 A Yes. This document is our mission and charter document,
4 and so it communicates the mission and charter of each of our
5 Catholic Schools in unity with one another.

6 Q And is this also a document that's issued by the Office of
7 Catholic Schools?

8 A Yes. On behalf of the Archbishop, we issue this to all of
9 our school pastors and school leaders.

10 Q And you're familiar with it through your role at the Office
11 of Catholic Schools?

12 A Yes.

13 Q And what is the mission of Catholic Schools?

14 A Sure. The mission of Catholic Schools are that our
15 Catholic schools exist to be what we call sanctuaries of
16 education, and supporting parents. So, we see parents as the
17 primary educators of their children, and so our mission is to
18 support parents and empower families in their mission, which is
19 to lead children to Jesus Christ in order that those children
20 might have abundant life for the glory of the Father.

21 MR. DAVIS: Your Honor, plaintiffs move to admit
22 Exhibit 3.

23 THE COURT: I will look at that when it comes back at
24 the end. You don't need to offer it now.

25 MR. DAVIS: Thank you, Your Honor.

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1 Q. (By Mr. Davis) All right. So, we've been discussing the
2 Archdiocese's oversight of Catholic Schools on matters of faith
3 and morals. Specifically with respect to faith and morals, how
4 does the Archdiocese exercise that oversight?

5 A Sure. In a few different ways. The faith and morals of
6 the Catholic faiths are threaded throughout our policy manual.
7 So, in that way, by requiring our schools to operate within the
8 Archdiocesan policy for the operation of their schools. We also
9 have language regarding faith and morals in guidances that we
10 issue to our schools that we ask them to follow. We also have
11 language related to faith and morals in work agreements or
12 teacher contracts, for teaching faculty and nonteaching faculty.
13 And then we also communicate the expectations regarding faith
14 and morals through documents such as we call it a statement of
15 community beliefs, which is a document that provides abundant
16 clarity on what we believe in the Catholic school.

17 Q Okay. Does the Archdiocese also issue curriculum
18 guidelines to its schools?

19 A Yes, we do.

20 Q If you wouldn't mind tabbing or turning to the document
21 that's tabbed as Exhibit 9.

22 A Okay.

23 Q And do you recognize this document, Ms. Chilelli?

24 A Yes. This is our early childhood curriculum guidelines
25 that we issue from the Archdiocese.

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1 Q Okay. And are all Archdiocesan preschools expected to
2 follow these guidelines?

3 A Yes. Per the administrators' manual, it's required that
4 schools are required to follow those curriculum guidelines. And
5 then like I was mentioning before, in our teacher work
6 agreements or contracts, teachers are also required to teach the
7 curriculum guidelines.

8 Q And if you could flip to page 25, the bolded page 25 in the
9 bottom right.

10 A Okay.

11 Q Does the curriculum guidance require Archdiocesan
12 preschools to include religious instruction in their curriculum?

13 A Yes. Every preschool is required to teach religious
14 instruction, which means that every teacher is required to teach
15 religious instruction as a separate block of time during the
16 day, but also threaded throughout the entirety of the other
17 disciplines in preschool: reading, math, science, et cetera.

18 Q Okay. And so at the preschool level, it's the main teacher
19 that's doing the religious instruction as well; is that right?

20 A Yes. It's the main teacher.

21 Q Thank you. If we could turn back to the exhibit that's
22 tabbed as Exhibit 2.

23 A Okay.

24 Q You mentioned the statement of community beliefs earlier.
25 Is this the statement of community beliefs that you were

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1 referring to?

2 A Yes. This is our statement of community beliefs, and we
3 have versions for multiple roles of employees in the schools:
4 teachers, leaders, nonteaching faculty, support staff, et
5 cetera.

6 Q Okay. And just to spell that out, it looks like the
7 version that begins on the bolded page one, is that the one for
8 principals?

9 A Yes. This is for presidents, so some of our schools have a
10 president-principal model. This one is for principals, and then
11 assistant principals as well.

12 Q Okay. Great. And then on the bolded page three, that's
13 the one for teachers?

14 A Yes.

15 Q Bolded page five, that's for other staff?

16 A Yes. Any other staff in the school is required to sign
17 this.

18 Q Okay. And then the bolded page seven, that's for parents
19 to enroll at the school?

20 A Yes. So, parents at the time of enrollment are asked to
21 sign this document so that it's abundantly clear what the
22 Catholic school will teach and what the Catholic school
23 community believes.

24 Q Okay. And you're familiar with this document through your
25 role at the Office of Catholic Schools?

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1 A Yes, I am.

2 Q Did you help prepare this document?

3 A I did.

4 Q So, does the statement of community beliefs, does it
5 address the behavior of school employees?

6 A Yes. So, it communicates the church's beliefs, and then it
7 delineates the expectations for teaching staff, faculty staff,
8 that our faculty and staff, including teachers, that they would
9 live in such a way that would promote the church's teachings.
10 We ask them to unabashedly defend the church's teachings, and at
11 a minimum, we ask them to provide a simply supportive attitude,
12 and at the bare minimum to never live in a manner contrary to
13 church teaching that would cause confusion about the reputation
14 of the school and what it teaches.

15 Q Okay. And are there any other documents besides this one
16 that address the behavior of school employees within the
17 Archdiocese?

18 A Yes. A few. So, language from our statement of community
19 beliefs is also threaded within our teacher contracts,
20 specifically the terms and conditions of the teacher contract,
21 especially related to behavior or expectations. So, in our
22 teacher contracts, and then all of our Archdiocesan employees,
23 including those who teach in schools or work at schools are
24 required to sign the Archdiocesan code of conduct, which also
25 delineates expectations regarding behavior of employees.

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1 Q Great. And just briefly, if you could turn to the document
2 that's tabbed as Exhibit 4. Is this the code of conduct that
3 you were just referring to, whenever you get there?

4 A Yes. This is the Archdiocesan code of conduct.

5 Q Okay. So, this is a document issued by the Archdiocese?

6 A Yes.

7 Q And you're familiar with it because Archdiocesan employees
8 are also subject to this code of conduct?

9 A Yes. Anyone who works in the Archdiocese of Denver must
10 sign this and agree by it.

11 Q Great. If you could turn to the document that's tabbed as
12 Exhibit 6. Is this the terms and conditions that cross
13 reference that statement of community beliefs that you were
14 testifying about a moment ago?

15 A Yes. Exhibit 6 is the parish school teacher and formator
16 contract terms and conditions.

17 Q And these terms and conditions are issued by the
18 Archdiocese?

19 A Yes. They're issued out of our office on behalf of the
20 Archbishop, and they're required for use in all of our parish or
21 regional schools.

22 Q And who is required -- who in particular is required to
23 sign this version?

24 A Any full-time teacher or any full-time teacher support
25 staff.

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1 Q Does this contract and then the statement of community
2 beliefs that's incorporated into it, do they require employees
3 to conduct themselves consistently, specifically with Catholic
4 doctrine on human sexuality?

5 A Yes. So, the expectations for behavior regarding any
6 manner of exemplifying characteristics of Catholic living, and
7 then refraining from any public position that would -- or
8 conducting oneself in a manner that's contrary to the teachings
9 of the church, including human sexuality.

10 Q Thank you, Ms. Chilelli. And if you could just briefly set
11 out what the church's teachings on human sexuality are, just
12 because it might be relevant to what comes up later.

13 A Sure. The teachings of the church and the beliefs that we
14 ask our employees to hold are that human beings were created by
15 a loving creator, God, who creates the human person at the time
16 of conception, and in their mother's womb, and that the human
17 person is endowed, created, not only with a soul, but with a
18 body, and that the body-soul unity is the makeup of the human
19 person.

20 And so we believe and teach in our Catholic Schools
21 that in order to find happiness or human flourishing, that means
22 to find a life lived in friendship with Jesus Christ, and so
23 because of our understanding of human flourishing, the truths of
24 the body are taken very seriously. We believe strongly, then,
25 that the body is of utmost good and importance, and that the

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1 body communicates not only that purpose, but our identity as
2 well.

3 And so being a biological man or a woman is of great
4 importance and reverence. And so in that way, we take the body
5 as good, and an important contributor to human flourishing. And
6 so because of that, the church has a particular understanding of
7 marriage as being between a man and a woman, given the
8 biological realities of the body, and the way that the body is
9 ordered towards unity with one another and the procreation of
10 children, who we believe are owed the identity of being beloved
11 sons or daughters created with -- between the love of a man and
12 a woman in a marriage.

13 Q Okay. And where do these beliefs come from?

14 A Jesus Christ. But they come from the church's tradition,
15 millennia of church teaching, tradition, sacred scripture, the
16 Catechism of the Catholic Church. These have been the
17 consistent beliefs of the church throughout time. Locally they
18 come from -- locally they come from the Archbishop's own
19 teaching authority on these particular topics.

20 Q Great. Has the Archdiocese itself issued any sort of
21 teaching documents on this issue?

22 A Yes. Multiple ways. Specifically for our schools, we
23 produced and promulgated through the Archbishop a document
24 called The Splendor of the Human Person, which helps give
25 articulation for the church's teaching on human sexuality.

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1 Q Great. If you could just briefly turn to the document
2 tabbed as Exhibit 7. Is that the teaching document that you
3 were just mentioning from the Archdiocese?

4 A Yes. This is the document that we issued from our office
5 for our schools in 2021.

6 Q Great. If you could turn next to the document tabbed as
7 Exhibit 5. Do you recognize this document, Ms. Chilelli?

8 A Yes. This is a document that we issued to our schools as a
9 guidance document for any issues concerning the human person and
10 sexual identity.

11 Q Okay. And the "we" there, that's the Office of Catholic
12 Schools?

13 A Yes. On behalf of the Archbishop.

14 Q And you're familiar with it through your role at the Office
15 of Catholic Schools?

16 A Yes, I am.

17 Q What year was this guidance issued? Do you know?

18 A This was issued in 2019.

19 Q All right. And did this guidance reflect some new position
20 of the Archdiocese, or was it consistent with what the
21 Archdiocese had already taught?

22 A Yes. This was completely consistent with what the church
23 has always taught related to the human person and sexual
24 identity. This document specifically was issued in 2019 when
25 there were beginning to be a number of sort of conflicting

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1 understandings of the human person in modern or secular society,
2 and many of our school leaders needed assistance and help from
3 the Archbishop with a few things, terminology related to
4 biological sex, gender, sexual identity.

5 The guidance also goes through certain situations that
6 may come up in the Catholic school, especially in our postmodern
7 secular society, and then it gives specific directives for
8 issues related to human sexuality that may come up in the life
9 of the school.

10 Q Great. Was the guidance -- was it issued to all
11 Archdiocesan Catholic schools?

12 A Yes. Every Archdiocesan Catholic school, including our
13 preschools.

14 Q Great. And you mentioned it gave guidance on certain
15 situations that could come up in Catholic schools. Let's just
16 talk through a couple of those situations.

17 A Sure.

18 Q So, first, are there any -- is there any guidance here
19 about a situation in which a family is seeking enrollment at an
20 Archdiocesan school but isn't living in a manner consistent with
21 the church's teachings on sexuality?

22 A And you mean the parents are not living in a manner?

23 Q Correct. Yes.

24 A Yes. There is guidance. The guidance speaks specifically
25 regarding enrollment. And as mentioned earlier, the guidance

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1 communicates to the school to have an enrollment process that
2 makes it abundantly clear to any family seeking to enroll what
3 the church teaches on human sexuality. And so in that way, the
4 document communicates that if a family is presenting themselves
5 as living in a sexual relationship between one another, that's
6 outside of how the church would understand human sexuality, but
7 the principle would be abundantly clear that the church will
8 teach the church's teachings on faith and morals regarding human
9 sexuality, explain to the parents that this may cause confusion
10 for the child, that this would be difficult for the child to
11 hear from the school, especially if that's not what they hear
12 from their parents.

13 And so in that way, because the school's mission is to
14 serve the parents in their education of their children, we would
15 never want to conflict -- cause conflict with what the parents
16 are teaching in their home, and so the guidance does communicate
17 to our school leaders that students in that circumstance with
18 parents of -- in a same-sex couple, that guidance would not be
19 possible given the confusion it would create for the child and
20 the family.

21 Q Okay. The guidance would not be possible?

22 A I'm sorry. Enrollment would not be possible.

23 Q Thank you, Ms. Chilelli. If you could turn to bolded page
24 14 of this document. Just to confirm, is this the guidance in
25 the document that relates to the testimony you just gave?

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1 A Yes. So, the question here at the bottom of the page
2 refers to the testimony I just gave.

3 Q Thank you. What about for the church's teachings on sexual
4 identity? Are there any guidelines in this document for how to
5 handle situations where a family might seek enrollment of a
6 child who asserts a gender identity at odds with the child's
7 biological sex?

8 A And you're referring to at the time of enrollment?

9 Q Correct.

10 A Sure. So, at the time of enrollment, there are guidance --
11 there is guidance in this document that communicates, for
12 similar reasons that I just explained regarding children of a
13 same-sex couple, for parents desiring to enroll a child who
14 they're presenting with an identity as contrary or different
15 than the child's biological sex.

16 We -- the guidance is that a school leader ought to
17 explain to the family that we will teach the reverence of the
18 body, the good of the body's biological reality, and that in
19 that way, if the parents are teaching the child something
20 contrary to that notion, that identity could be separate from
21 biology. If parents are teaching that, then there is a conflict
22 with what we will teach in our schools, and so in that way out
23 of abundant respect for the parents and the child himself, we
24 ask the school leaders to be abundantly clear about what will be
25 taught. If the family doesn't see eye to eye on that, we ask

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1 our school leaders to please not admit the child out of abundant
2 respect for the family.

3 Q Okay. And flipping over to the bolded page six, is this
4 the part of the guidance that speaks to the situation you were
5 just addressing?

6 A I'm sorry. What was the page?

7 Q Page six. Maybe start with page five. Page five and six?

8 A Yes.

9 Q Thank you, Ms. Chilelli. And then just one more situation.
10 Does this document include any guidelines on how to handle a
11 situation in which a student is enrolled in a school but begins
12 asserting an identity that's at odds with his or her biological
13 sex?

14 A Yes. It includes guidance for that particular situation.

15 Q And what is that guidance?

16 A Sure. The guidance is that assuming and hoping for a
17 relationship with the parents to share with the parents the
18 church's teaching on identity as being inextricably linked with
19 biology, observable reality, and so in that way, the school
20 leader is asked to share with the family how we understand
21 biological sex.

22 And because of that, out of abundant respect for the
23 good of the child's body and their identity that's linked with
24 that, we ask our school leaders to explain that we would not be
25 able to make accommodations that we might see in secular

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1 institutions, but those kinds of accommodations wouldn't be able
2 to be made. And so in communication and conversation with the
3 parents, we specifically say in the guidance, reference to a few
4 different accommodations that we could not honor or provide in
5 the Catholic school.

6 For example, we can't use pronouns -- we wouldn't be
7 able to use pronouns inconsistent with the child's biological
8 sex. We wouldn't be able to allow things like bathroom use for
9 use of a bathroom inconsistent with a child's biological sex.
10 We also wouldn't be able to perhaps allow a child -- in this
11 guidance allow a child to wear a uniform that may be
12 inconsistent with their biological sex.

13 And so after explaining those conditions to the
14 parents, if the parents decide that they would like those
15 accommodations or they would like their child's identity that
16 they're sharing with us to be affirmed, we explain that
17 maintaining the relationship with the family with the child's
18 enrollment would not be possible. The school wouldn't be able
19 to fulfill their mission to support parents in their education
20 of their children.

21 Q Okay. And are the Archdiocese preschools expected to
22 follow this guidance?

23 A Yes. Every preschool is expected to follow this guidance.

24 Q Great. Thank you, Ms. Chilelli.

25 A Sure.

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1 Q Is there any other way besides the ones we've just been
2 discussing that a preschool's enrollment policies are tailored
3 to its Catholic faith?

4 A Sure. So, at the time of enrollment, many of our schools
5 are excellent, and so they often find themselves with waitlists.
6 And so because our faith teaches that Catholic parents have a
7 duty to educate their children, be that in the home or in a
8 Catholic school, Catholic parents have a duty to provide a
9 Catholic education for their children. So, because of that, we
10 prioritize Catholic families who desire the mission of Catholic
11 Schools, especially in situations with a waitlist.

12 Q And how does the Archdiocese view the relationship between
13 parents and its schools?

14 A Yeah. To use the term again, sort of inextricably linked.
15 And the mission of the Catholic school as taught through the
16 church only exists to serve the family, to serve the parents in
17 their duties as primary educators or principal educators of
18 their children. And so in that way our schools only exist to
19 serve parents, and that's why the relationship with the school
20 and the parents is so critically important.

21 We actually -- we can't fulfill our mission without
22 that partnership or that understanding of parents, understanding
23 the mission of our schools and desiring it. Desiring to teach
24 it within their family, to promote it, to defend it, and have
25 their children formed in what we call a Catholic worldview.

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1 Q Thank you, Ms. Chilelli. Switching gears here, are you
2 familiar with the Colorado Universal Preschool Program?

3 A I am familiar with the Universal Preschool Program.

4 Q Did the Archdiocese's preschools participate in that
5 program?

6 A No. Currently our schools do not participate in UPK.

7 Q And why is that?

8 A We desired to. Currently we've asked all of our preschools
9 not participate, given the current differences regarding the
10 user agreement.

11 Q Okay. And maybe you just touched on it there, but why did
12 the Archdiocese ask its schools not to participate?

13 A Yeah. There were particularities in the user agreement,
14 especially having to do with our reading of the
15 nondiscrimination clauses that would make it impossible for us
16 to act within our own policies related to enrollment and
17 admittance of the Catholic school, and would -- the user
18 agreement nondiscrimination policies would make it such that our
19 school leaders, especially our school pastors and then our
20 teachers, would not be able to fulfill their duties threaded
21 through their own contracts and work agreements and policies
22 they need to abide by.

23 Q Thank you. If you could turn to the document that's tabbed
24 as Exhibit 10. Is that the communication from the Archdiocese
25 directing its preschools not to participate in UPK?

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1 A Yes. Earlier this year, we sent -- Father Randy Dollins,
2 who is the vicar general of the Archdiocese, sent this email to
3 all of our priests of the Archdiocese with direction regarding
4 UPK, stating do not enter into any agreement for Universal
5 Preschool in Colorado.

6 Q At the bottom of the first page of this document and the
7 top of the second, it looks like it quotes the quality standards
8 provision.

9 A Yes.

10 Q And it says that elements of the nondiscrimination
11 requirements clearly run contrary to church teaching. If you
12 see that, if you could just explain what church teaching do you
13 understand that to be referring to?

14 A Sure. We saw conflict with the nondiscrimination clause in
15 regards to our teaching on human sexuality, especially sexual
16 orientation and gender identity.

17 Q Thank you. I'd like you to --

18 A And religious affiliation in our enrollment process, as I
19 explained before, does prioritize Catholic families.

20 Q Thank you, Ms. Chilelli. If you could turn to the document
21 tab as Exhibit 13. And you were just discussing the
22 nondiscrimination provisions in the provider agreement. Is this
23 the UPK provider agreement, as far as you can tell?

24 A Yes. This is the UPK agreement that we've reviewed.

25 Q And if you could turn to page two, just to make sure we're

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1 all on the same page. Can you point us to the quality assurance
2 nondiscrimination provision that we were just discussing?

3 A Sure. I'm referring to the fourth bullet down under
4 quality assurance. That reads, requirement that each preschool
5 provider provide eligible children an equal opportunity to
6 enroll and receive preschool services regardless of race,
7 ethnicity, religious affiliation, sexual orientation, gender
8 identity, lack of housing, income level, and disability.

9 Q Okay. And it's the religious affiliation and sexual
10 orientation and gender identity portions that the Archdiocese is
11 objecting to?

12 A Yes. Only those.

13 Q Okay. Were there any other issues with the provider
14 agreement besides this language at the fourth bullet point?

15 A Yes. It was our understanding that there was no ability to
16 have religious exemptions for particular pieces of the quality
17 assurance.

18 Q Okay. And then at least at the time that the Archdiocese
19 issued its directive, there was another nondiscrimination
20 provision in the contract; right?

21 A Yes, there was.

22 Q Okay. And that's paragraph 18B of the contract?

23 A Yes.

24 Q Did the Archdiocese make any effort to find a way for its
25 schools to participate in the program?

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1 A Yes. A few different efforts. So, first, we joined with a
2 coalition of other faith-based organizations in writing to
3 Governor Polis asking for religious exemption for the user
4 agreement. Following that, we did a few different things, but
5 in related -- related to the letter to Governor Polis' office,
6 we received a letter back from Dr. Roy, explaining that that was
7 not permissible for her to be able to do that per the law, to
8 provide us that religious exemption.

9 So, once we received that back from Dr. Roy, we advised
10 our schools who desired to participate in UPK -- we advised them
11 to go ahead and sign up as providers, but send back the user
12 agreement unsigned, as we weren't able to sign that and still
13 act within our own local policies and guidelines, and accompany
14 it with a letter explaining why we weren't able to sign that
15 user agreement.

16 Q Okay. And when you said the Archdiocese advised the
17 preschools to do that, was that mandatory on the preschools to
18 take that second option of sending the letter?

19 A It wasn't mandatory, but if they wanted to continue to try
20 to be a provider for UPK, they were able to do so.

21 Q Okay. And were either of those efforts successful, the
22 coalition letter or returning the agreement unsigned?

23 A No. The coalition letter was not -- like I said, Dr. Roy
24 explained that that was not permissible for her to provide that
25 religious exemption. And then the second attempt, one of our

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1 preschools did attempt that effort, signing -- sending back the
2 unsigned user agreement with the form letter, but they did not
3 hear back.

4 Q Just for the record, if you could go to the exhibit tabbed
5 as Exhibit 11. And I just wanted to ask, is that the coalition
6 letter you were just referring to?

7 A Yes. Exhibit 11 is the letter from a variety of different
8 faith-based organizations that we sent to Governor Polis.

9 Q And you understand Exhibit 12 to be Dr. Roy's response to
10 that coalition letter?

11 A Yes.

12 Q Okay.

13 A A portion of it. Oh. Yes. The entirety of it.

14 Q Thank you. Ms. Chilelli, why -- why did the Archdiocese
15 want to get its schools an opportunity to participate in UPK?

16 A Yeah. We wanted to participate in UPK because many of the
17 parents that send their children to our schools would be really
18 blessed by the support of financial assistance in this program
19 that we think is good and worthy. And we wanted our parents who
20 choose our Catholic Schools to be able to benefit from that good
21 legislation. And our schools are excellent, and so we wanted to
22 ensure that parents continued to have the ability to make
23 choices for their children that they discerned were good for
24 their family.

25 Q Ms. Chilelli, do Archdiocesan Catholic Schools participate

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1 in any other government funding programs?

2 A Yes. Multiple. Specifically to preschools, we participate
3 in DPP, Denver Preschool Program. We participate in CCCAP.
4 Yes.

5 Q Okay. If we could just talk about those two in turn.
6 Let's talk about the Denver Preschool Program first. If you
7 wouldn't mind turning to -- this is going to be the second
8 binder, Exhibit 35. And just whenever you're there, if you
9 could tell me if you recognize this document.

10 A Yes. I recognize this. This is the provider agreement for
11 the Denver Preschool Program.

12 Q And if you could just briefly say, what is your
13 understanding of what the Denver Preschool Program is?

14 A Sure. The Denver Preschool Program is similar to UPK in
15 that it provides financial assistance to parents in providing
16 early childhood education for their children. So, a good
17 program for families living in Denver to receive financial
18 assistance in providing preschool for their children.

19 Q Are you aware that it has a nondiscrimination requirement
20 in this agreement?

21 A Yes. I'm aware of that.

22 Q So, why is the Archdiocese comfortable with its schools
23 participating in the Denver Preschool Program?

24 A Sure. We're comfortable with Denver Preschool Program
25 because our understanding is that Denver Preschool Program is

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1 different than UPK in that UPK has the element of matching such
2 that families sign up for UPK, and then they are matched with a
3 preschool, whereas DPP, or the Denver Preschool Program
4 reimburses families after the time of enrollment.

5 And so parents have the freedom to sort of exercise
6 their own discernment of the best school for their children, but
7 schools in turn then have the ability to run their enrollment
8 processes. So, ours have particular guidance related to
9 enrollment, and so DPP allows us to have that enrollment
10 process. And after enrollment, then families are able to be
11 reimbursed for those tuition dollars.

12 Q Great. Any other reason that the Archdiocese is
13 comfortable with DPP?

14 A Sure. It's my understanding that DPP also has a religious
15 exemption embedded within it. And though it has a
16 nondiscrimination clause, it has a religious exemption for that.

17 Q Okay. And just for the record, if you turn to page 11 of
18 the agreement, does this page have the religious exemption that
19 you're referring to?

20 A Yes, it does.

21 Q Okay. And is that the language, nothing in this agreement
22 shall be construed as to affect the provider's rights to engage
23 in privately-funded, inherently religious activity, or affect
24 the independence of providers, including any rights protected by
25 the Colorado and U.S. Constitutions and applicable law? Is that

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1 the provision, Ms. Chilelli?

2 A Yes. That's the religious exemption that I was referring
3 to.

4 Q Okay. If you were wrong in how you understand the Denver
5 Preschool Program agreement, would the Archdiocese change its
6 mind about whether its schools could participate?

7 A If I was wrong that there was a religious exemption?

8 Q Or if you were wrong about the way the schools could follow
9 their ordinary enrollment processes?

10 A Yes. If there's any government program that we participate
11 in or any program that we participate in that would compromise
12 our ability to enact the policies that help us incarnate our
13 mission, we would cease a relationship with that particular
14 entity.

15 Q I'd like to discuss the Colorado Child Care Assistance
16 Program. I think you've called it CCCAP a moment ago?

17 A Yes.

18 Q If you could turn to the document that's tabbed as
19 Exhibit 36. Do you recognize this document, Ms. Chilelli?

20 A Exhibit 36?

21 Q Yes.

22 A Yes, I do.

23 Q Okay. Is this the CCCAP agreement?

24 A Yes. This is the user agreement that a provider would sign
25 if participating in CCCAP.

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1 Q Okay. Can you say a bit about, as you did before with
2 Denver Preschool Program, what your understanding of CCCAP is?

3 A Sure. Very similar to UPK or DPP in that it offers
4 families financial assistance and tuition for early childhood
5 education for their children.

6 Q Are you aware that it has a nondiscrimination requirement
7 in this agreement?

8 A Yes. I am aware of that.

9 Q Okay. And is that the requirement in this agreement that
10 looks like it's at page two and paragraph 12? Is that what
11 you're referring to?

12 A Yes. It says that the provider must accept referrals for
13 child care without discrimination with regard to race, color,
14 national orientation, age, sex, religion, marital status, sexual
15 orientation, or physical, intellectual, or mental health
16 disability.

17 Q Thank you. So, why is the Archdiocese comfortable with its
18 schools participating in CCCAP?

19 A Sure. CCCAP is similar to DPP, and that helps us to feel
20 comfortable in that the tuition reimbursements happen after the
21 time of enrollment. Again, for the reasons I just explained
22 regarding CCP -- I'm sorry -- DPP, that allows our schools to
23 operate within the guidance we issue them related to enrollment
24 or admittance. CCCAP also doesn't have in their
25 nondiscrimination clause the notion of gender identity.

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1 And then when we read the user agreement for CCCAP, our
2 understanding is that the nondiscrimination clauses here are
3 related not to the family, but rather the child. And so in that
4 way, sexual orientation of the four-year-old is not typically a
5 difficulty that would come with regards to enrollment at the
6 preschool level.

7 Q And if you were wrong in your understanding of CCCAP in any
8 of the ways that you just discussed, would the Archdiocese
9 change its mind about whether its schools could participate?

10 A Yes. Again, any program that we participate in that would
11 compromise Catholic faith or morals and our policy -- our
12 ability to operate within our local policies, we would cease
13 operations with if there became apparent to us a conflict.

14 Q Thank you. Are you aware that Catholic Charities operates
15 some preschool programs within -- in the Denver area?

16 A I am aware of that, yes.

17 Q Okay. What is Catholic Charities?

18 A Sure. Catholic Charities operates under the umbrella
19 within the Archdiocese of Denver. It's a beautiful ministry
20 that exists to exercise what we call the Corporal -- Corporal
21 Works of Mercy: feeding the hungry, housing the homeless,
22 providing monetary help for the poor. And so within that
23 assistance, especially to parents who are homeless or
24 significantly at a significant poverty level, Catholic Charities
25 operates Head Start programs or Early Head Start programs,

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1 specifically directed to assist parents who find themselves in
2 poverty.

3 Q Okay. Were those programs subject to the Archdiocese's
4 directive not to participate in UPK?

5 A No, they were not.

6 Q Okay. And why is that?

7 A These are two different ministries within the Archdiocese
8 of Denver. So, the Office of Catholic Schools issued the
9 guidance related to UPK for the schools that we oversee, which
10 are our Catholic Schools. The Catholic Schools have a distinct
11 ministry. It's an educational ministry ordered towards the
12 formation of the human person, towards its -- towards the human
13 persons, and of discipleship, discipleship and friendship with
14 Jesus Christ.

15 Separately, the ministry of Early Head Start or Head
16 Start programs under Catholic Charities is ordered differently
17 not towards the ends of discipleship but towards the end of
18 providing for the poor, material resources, or in this case
19 child care resources, especially for parents who need child
20 care, the watching over of their children as they go back to
21 work, work to reestablish themselves financially.

22 Q Thank you, Ms. Chilelli. Turning back to the Archdiocese's
23 Catholic preschools, so not the Catholic Charities programs, are
24 you aware that the UPK program permits faith-based providers to
25 have a preference for members of their congregation?

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1 A Yes. I'm aware of that provision.

2 Q And why isn't that sufficient for the Archdiocese to be
3 able to participate in UPK?

4 A Sure. Largely because of how we understand the notion of
5 congregation and how our own churches are organized. So, the
6 notion of a congregation is a group of faithful; right?
7 Belonging to a particular church, good, but it's separate and
8 different than how we understand our churches.

9 Our churches are set up as parishes. Parishes
10 represent a geographic reality. So, churches are established
11 across -- parishes, excuse me, are established across northern
12 Colorado. Anyone in that region who lives in that parish is a
13 parishioner. Any Catholic, excuse me, is a parishioner of that
14 parish. You could be formally enrolled at the parish, but
15 anyone in that geographic area is a parishioner.

16 And so in that way, it's different than a congregation
17 in that there's an incredible amount of numbers, excuse me, of
18 Catholics. There's a difficulty with the provision related to
19 congregation in that we have a number of parishes, 136, I
20 believe -- maybe it's 140. Excuse me. A high number of
21 parishes, but a limited number of preschools. So, we operate 36
22 preschools. So, by ratio, if we were to limit our preschool
23 enrollment to only those members of that parish, it would
24 significantly limit the number of families -- Catholic families
25 who could be served by that preschool.

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1 And then on the other end, I suppose of the
2 understanding of this, is that our Catholic Schools certainly
3 prioritize and exist for Catholic parents to be able to fulfill
4 their duties, but we also welcome non-Catholics into our
5 schools. And so in that way, if we were limited to our own
6 congregation, we wouldn't be able to fulfill the mission of
7 supporting any parent who desires the church's assistance in
8 fulfilling their duties as parents.

9 We call this evangelization, but certainly many
10 non-Catholics see the beauty happening in our schools and desire
11 it as the education for their children. And so being limited to
12 a congregation wouldn't allow us to do that.

13 Similarly, there are Catholics who are baptized
14 Catholics who enroll in our -- who desire to enroll in our
15 Catholic Schools who wouldn't be able to sign the statement of
16 community beliefs or the local school's handbook that delineates
17 those beliefs, because though they're Catholic, they may not
18 desire to form their children in the church's teachings. And so
19 limiting it to our congregation wouldn't allow us to have that
20 discernment process with the families where we ask them to take
21 seriously the teaching of their children in the beliefs, faith,
22 morals that we're going to teach in the school.

23 Q And those last two points you mentioned, evangelization and
24 the inability of even some Catholics to agree with the school on
25 all issues, those would still be there even if "congregation"

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1 were defined broadly to include any Catholic; is that right?

2 A Yes.

3 Q Just a few more questions, Ms. Chilelli. Do the
4 Archdiocese's preschools, do they have child care licenses?

5 A Yes. All of our preschools have Colorado child care
6 licenses.

7 Q Are you aware of any complaint that's ever been filed with
8 the State against one of the Archdiocese's preschools for -- or
9 from an LGBTQ-identifying family?

10 A At the preschool level, I am not aware of any complaint to
11 the State of Colorado regarding our enrollment processes.

12 MR. DAVIS: Okay. Your Honor, if I could just confer
13 with my colleagues briefly? I may be done.

14 THE COURT: Yes.

15 MR. DAVIS: Thank you. Your Honor, that's all the
16 questions I have for the witness.

17 THE COURT: All right. We'll take a recess and have
18 the cross examination starting at 1:15.

19 (Recess at 11:52 a.m., until 1:18 p.m.)

20 THE COURT: Cross examination, please?

21 MS. CARRENO: And, Your Honor, we do not have any
22 questions for Ms. Chilelli, but we just ask that the Court would
23 take notice of Exhibit 52, which has been stipulated to by the
24 parties. Specifically pages five and six, and responses number
25 three, four, and five to those interrogatory questions.

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1 THE COURT: Okay. And you don't need this witness,
2 then?

3 MS. CARRENO: No. Thank you, Your Honor.

4 THE COURT: Thank you very much.

5 THE WITNESS: Thank you.

6 THE COURT: Next witness, please?

7 MR. VARBERG: Jordan Varberg for plaintiffs. We would
8 like to call Ms. Tracy Seul to the stand.

9 (The Witness is Sworn)

10 THE COURTROOM DEPUTY: Please be seated. State your
11 full name for the record, and spell your last name.

12 THE WITNESS: Tracy Seul, S-E-U-L.

13 **DIRECT EXAMINATION**

14 BY MR. VARBERG

15 Q All right, Ms. Seul. Good afternoon. Who do you work for?

16 A I work for St. Mary Catholic Parish.

17 Q And what's your job title at the parish?

18 A I'm the director of preschool and development.

19 Q And who actually employs you? Is it the school or the
20 parish?

21 A I actually work for the parish.

22 Q And where is St. Mary's located?

23 A In Littleton, Colorado.

24 Q And how long have you been the director of preschool at
25 St. Mary's?

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1 A Just over five years.

2 Q And who is your supervisor there?

3 A Our principal, Father James DeCandra.

4 Q And could you describe your responsibilities as director of
5 the preschool.

6 A I oversee the operations of the preschool, ensure safety
7 and quality of the program, curriculum, work with the staff,
8 coaching, and recruitment of new families.

9 Q And what grades does St. Mary's serve?

10 A We serve preschool through eighth grade.

11 Q And for the preschoolers, what ages can they be?

12 A We start at two and a half, and go until five.

13 Q And is St. Mary's licensed as a child care facility in this
14 state?

15 A We are.

16 Q And are you aware of the Colorado Shines rating system?

17 A I am.

18 Q Could you describe what that is.

19 A Colorado Shines is a five-star rating program that this
20 state has for early childhood programs to be able to follow
21 quality standards and criteria for staffing.

22 Q And the maximum number of stars a school can receive is how
23 many?

24 A They can get up to five stars.

25 Q And what is St. Mary's rating?

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1 A We're a four-star school.

2 Q So, Ms. Seul, could you please -- in the exhibit binder in
3 front of you, it will be binder number one -- move to
4 Exhibit 17.

5 A Yes.

6 Q And do you recognize this document, Ms. Seul?

7 A I do. It's the parent-student handbook for the school
8 year.

9 Q For the 2023 school year?

10 A '23-'24 school year, yes.

11 Q And does this handbook apply to the preschool's operations?

12 A It does.

13 Q And now if you could move to Exhibit 18, which should be in
14 the same binder.

15 A I see that.

16 Q And do you recognize this document, Ms. Seul?

17 A Yes. This is our preschool parent handbook.

18 Q Is that for the 2023 school year?

19 A Yes.

20 Q Could you describe how this handbook relates to the
21 handbook we looked at a moment ago.

22 A This is the preschool handbook for preschool parents. It
23 is superseded by the school's handbook, but it provides
24 information for parents about our preschool, and helps with some
25 of the licensing information that they need to know.

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1 Q Okay. And, Ms. Seul, could you please describe the
2 preschool's relationship to the parish.

3 A The preschool and the school are ministries of the parish.

4 Q And when you say ministries of the parish, what do you mean
5 by that?

6 A Sorry. I'm having trouble with the binder. We are there
7 to be able to help the -- help families to be able to be part of
8 our Catholic education.

9 Q And could you also describe the parish's relationship to
10 the Archdiocese of Denver?

11 A The parish is one of hundreds of parishes in the
12 Archdiocese.

13 Q And, Ms. Seul, is the preschool subject to the religious
14 authority of the Archdiocese?

15 A We are.

16 Q Can you explain what that means.

17 A All of our programs and activities follow the Archdiocesan
18 guidelines for Catholic doctrine, morals, and faith. They're
19 also there to help us with, you know, specifics to operational
20 things for Catholic Schools. They're there to help us consult
21 with us for questions and issues that we might have. The
22 day-to-day functioning, though, is the responsibility of the
23 principal, Father James DeCandra; and our pastor, Father Jose
24 Noriega.

25 Q And how do you describe the mission of St. Mary as a

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1 school?

2 A Our mission is to work with families to be able to make
3 sure that we can help our students flourish in not only academic
4 rigor and academic excellence, but also to learn and know their
5 value -- their virtues and grow in those virtues as well.

6 Q And what role do teachers play in that mission?

7 A They play -- they play a central role in the moral
8 development and passing on the faith.

9 Q And how would you describe the role of educators at
10 St. Mary more broadly?

11 A Just like every educator, we want academic excellence from
12 our students, make lifelong learners out of them. But at
13 St. Mary, we educate also the hearts and minds of the students.
14 So, we want to make sure that we instill virtue in our students
15 and help them to be able to be successful with that through
16 their lives.

17 Q And are teachers expected to witness to the Catholic faith
18 in their own lives?

19 A Yes.

20 Q And are teachers -- and let's talk about preschool teachers
21 in particular. Are they expected to make faith a part of the
22 classroom?

23 A Yes. You know, it starts at the beginning of our day and
24 goes throughout the day. They create lesson plans and play
25 based on Bible themes and religious stories. And then they also

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1 make sure that they have a -- that they've -- that they have
2 good moral behavior so that they can be good witnesses and
3 character -- help the students learn right from wrong, learn
4 character development as well. And if there were a problem with
5 behavior or something like that, we use restorative discipline
6 to help build those relationships back up in a virtuous way.

7 Q And is prayer ever a part of the preschool curriculum?

8 A Oh, yes. Absolutely. We have prayer and religious songs,
9 stories, Bible verses, things like that as well.

10 Q Ms. Seul, let's go back to the first binder there. It's
11 Exhibit 2. If you could please pull that up.

12 A Okay.

13 Q And are you familiar with this document, Ms. Seul?

14 A Yes. This is the statement of community beliefs that the
15 Archdiocese has created.

16 Q And is St. Mary's staff required to sign this document?

17 A We are.

18 Q All staff, or a portion of them?

19 A I'm sorry. Yes. As you can see by the document, there is
20 different forms of the document. There's one for
21 administrators. There's one for teachers, for other staff, and
22 for parents. So, there's different versions of the document,
23 but all with the same purpose of making sure that we understand
24 and are led by and comprised of a community of believers and
25 understand what our beliefs are.

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1 Q Okay. Now, at St. Mary, are teachers required to be
2 Catholic?

3 A They are.

4 Q Can you explain what that looks like, practically speaking?

5 A Well, our student -- sorry. Our teachers need to obviously
6 be good role models in the morals and faith of the church. So,
7 they need to be able to instill those values to our students as
8 well. In doing so, they are practical in their -- in their
9 faith and in their guidance with the students.

10 Q And speaking about the employee population, are all
11 employees required to be Catholic at St. Mary?

12 A Not all of our staff is required to be Catholic, but they
13 need to be supportive of our beliefs, and they also need to make
14 sure that they understand and are supportive of our teaching and
15 theology.

16 Q Now, does the school have anything in place to help
17 teachers grow in their own faith?

18 A We do. We pray together as a team all the time, and
19 encourage each other in our faith. We have book studies,
20 articles that we read, and discussions and workshops that the
21 priests help us to -- or lead us through as we grow and learn
22 more about our faith.

23 Q And could you walk us through the preenrollment interview
24 and screening process for preschool applicants.

25 A Yeah. So, if a family is interested in our school, they

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1 will go to our website and fill out an inquiry form. That
2 inquiry form asks them a few questions about who they are and
3 why they want to come to our school. We will then call and set
4 up a tour with them.

5 During that tour, it's kind of a discernment on both --
6 from both perspectives. We ask them lots of questions about who
7 they are and what their faith life is like, what their home life
8 is like, and then what their expectations are for their
9 education of their students. And we give them a lot of
10 information about who we are, what our values and vision is, and
11 what we believe and how we teach our religious teachings as well
12 as how we teach them academically.

13 So, it's a good way for them to be able to get a feel
14 for what our school is like and who we are, and certainly they
15 get to meet our teachers and so forth as well so that they
16 understand and feel comfortable with where they're coming.

17 After the tour, if they choose to still apply to the
18 school, they are sent an application that's also online, where
19 they're asked a few more questions, a few more detailed
20 questions about coming to the school. After the application,
21 then they are -- once that application is received, then we set
22 up a meeting with Father James. And he likes to meet all of our
23 applicants so that he can also explain the vision and mission
24 and make sure he understands where they're coming from from
25 their perspective as well.

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1 Q And why do you offer tours of the school, Ms. Seul? And
2 feel free to grab some water before you answer.

3 A Thank you. Sorry. We offer tours so that -- for a couple
4 of different reasons. First of all, we want to make sure that
5 the families understand who we are and understand what our
6 values and mission and vision is.

7 But then we also provide tours for the families to get
8 to know us. And I can especially speak for preschool, these
9 little pumpkins that come to us are less than a thousand days
10 old, and so in some cases it may be the first time that their
11 parents have sent them away from their homes, and so they want
12 to get a good feel for us as well. So, it's a good way for them
13 to be able to decide if they are comfortable with us, and also a
14 good way for us to make sure that they fit the beliefs and
15 values of -- in our teachings as well.

16 Q And in the enrollment process, does St. Mary consider the
17 family's beliefs or conduct?

18 A Absolutely. They need to make sure -- we need to make sure
19 that they are supportive of our teachings, that they're willing
20 to live in accordance with our values and our beliefs, and we
21 want to make sure that they know, you know, who we are.

22 Q Is there any fear of creating conflicts of some sort if you
23 don't know enough about the family?

24 A Oh, absolutely. We don't want to create any conflicts that
25 would cause there to be a problem in the preschool or beyond in

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1 the school as well. You know, when they continue on through the
2 school. When you come to St. Mary, we don't want you to just
3 join the preschool. It's really we want you to be part of the
4 family of families. So, we want you to start in preschool and
5 continue through eighth grade.

6 To do that, you want to make sure that they know what
7 the preschool is all about, and then going forward. And so if
8 there's a conflict, we don't want to start in the preschool and
9 then have conflict later on as well. We want to make sure that
10 the messages from home and the family are the same.

11 Q Now, is there anything that parents need to sign for their
12 preschooler to be fully admitted?

13 A Yes. So, once they've met with Father James and he's
14 approved their application, then we go ahead and send them an
15 enrollment packet where they have a lot more forms, hear a lot
16 more information. They've signed the commitment of -- I'm
17 sorry. The family -- I'm sorry. The community beliefs
18 statement. They've signed the parent handbook and other
19 compliance forms that are necessary for our licensing agreements
20 for the preschool.

21 Q And the community belief statement you just referred to, is
22 that one of the documents we looked at a moment ago?

23 A Yes. I think it was in the exhibits before, and it was --
24 it's the parent version of that community belief.

25 Q Now, during the process, do families ever decide not to go

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1 forward with an application at St. Mary's?

2 A Yeah. Absolutely. There's many reasons, I'm sure, but
3 there's opportunities for people -- because of the tour, they
4 have opportunities to be able to decide whether or not it's a
5 good fit for your family.

6 Q We'll go back to the exhibit binders. We will pull up
7 Exhibit 5 this time, Ms. Seul. And do you recognize this
8 document?

9 A Yes. This is the statement of theological guidance
10 concerning the personhood and sexual identity from the
11 Archdiocese.

12 Q And does St. Mary's consider itself bound by this document?

13 A Absolutely.

14 Q Do you follow it in running the preschool's operations?

15 A I do.

16 Q Has St. Mary's ever received an inquiry from a same-sex
17 parent or student?

18 A Not to my knowledge.

19 Q Has St. Mary's ever had a student in a same-sex
20 relationship?

21 A Not that I know of.

22 Q Has St. Mary's ever received an inquiry from a student who
23 identifies as transgender?

24 A Not to my knowledge.

25 Q Has St. Mary's ever enrolled a student who identifies as

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1 transgender?

2 A Not to my knowledge.

3 Q And has St. Mary's ever received a complaint from an LGBTQ
4 person about discrimination?

5 A No.

6 Q If you were to have a preschool waitlist, how would
7 St. Mary's decide which preschoolers and families to admit?

8 A We prioritize admission based on a number of different
9 factors. We start with people who are parishioners -- or, I'm
10 sorry -- siblings of our parishioners or siblings of our
11 students. And then we would go to the parishioners of our
12 St. Mary. Then the next on the list would be people who are
13 affiliated with other Catholic churches in the area, parishes in
14 the area. We would then go to people who have moved into the
15 area from other Catholic churches or other Catholic Schools.
16 And then we would then offer it to unaffiliated Catholics and
17 non-Catholics.

18 Q And why does St. Mary's prioritize these types of students?

19 A Well, we're obligated to start with our parishioners first,
20 because we're a ministry of the parish. But then we're
21 obligated also to make sure that we provide Catholic education
22 for those Catholic parents who want that for their children.

23 Q Now, are parents required to be Catholic to send a child to
24 St. Mary's?

25 A No.

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1 Q Are there any requirements for parents when it comes to the
2 school's Catholic faith?

3 A Well, they definitely need to make sure that they
4 understand our beliefs and are willing to live in accordance
5 with those beliefs. If it were a family who -- under this
6 provision that we're talking about, the guidance, if it was a
7 family who were living an LGBTQ lifestyle, we would have to
8 discern that as well. And in some cases and other cases, we may
9 not be able to provide an application invitation to them.

10 Q Ms. Seul, are you aware of any non-Christian preschoolers
11 in your time at St. Mary's?

12 A Not that I can recall.

13 Q So, what role do parents have in the educational mission of
14 the school?

15 A They're an integral part of making sure that we are
16 providing not only a Catholic education that they want for their
17 children, but they also are integral in that education and going
18 forward with the education as they -- as their kids progress.

19 Q And is there a way in which that relationship with parents
20 is formalized?

21 A We have a few different ways. We have an educational
22 covenant that we follow, and it's really a covenant between our
23 families, our staff, and our students, and really God, to help
24 to make sure that we can truly believe -- help the students
25 flourish. And so to do that, we need to build that friendship

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1 with Christ so that they can understand who he is in their
2 lives.

3 Then we also -- of course academic excellence in the
4 rigor of our academic program is important for us in that
5 covenant and helping them to understand that that's important
6 for us as well. In that educational covenant, we also explain
7 that the narrative project is very important, that the books
8 that we read are how we become the characters that we -- the
9 character traits that we have and become, and how we instill
10 that virtue.

11 And then, you know, all of that is in making sure that
12 the students understand who they are and what their -- God's
13 vocation is for them. And all that is really important, because
14 in that covenant we're trying not to have any conflict in --
15 we're trying to prevent conflict from happening so that they
16 understand our expectations and we understand theirs, and then
17 when there's a conflict, then we know that they -- that we come
18 from common goals, and we want the same things for the students.

19 Q Are there parent-teacher conferences for preschoolers at
20 St. Mary's?

21 A Yes. It seems unreal, but we want to make sure that we
22 progress as preschoolers as well. So, we have three conferences
23 per year. It actually starts with an individual learning plan
24 that the -- that we develop as staff, and as the teachers in the
25 classrooms, where we find out who those students are, who they

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1 like to play with, what they like to play, how they like to
2 interact with others, and kind of basic skill information, where
3 they are.

4 And then from that, the first conference is with
5 parents talking about their goals, and what they're looking for,
6 what their expectations are, and kind of filling in more
7 information about that individual learning plan to make sure
8 that they have a really good picture of who their student is.

9 The second conference we talk more about, you know,
10 having to assess some of the skills and some of the
11 developmental milestones that they've been reaching. We meet
12 those, and we find that -- meet with them about those.

13 And then the last one is more about what that next
14 skill level is all about. So, it's not just developmental and
15 academic progress that we talk about during those conferences.
16 It's also we're bold about, you know, what their family life is
17 like and what their faith life is like, because that's what
18 we're teaching at school, and we want to make sure that that's
19 instilled at home as well.

20 And all of that, again, is just to make sure that we're
21 all on the same page as we go forth in the conferences. And
22 then there may be times when they meet with me individually as
23 well, just one on one if they have developmental concerns or
24 behavioral concerns that are beyond the scope of the classroom
25 and I can help guide them towards some help as well.

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1 Q And are parents permitted to visit the preschool classrooms
2 at any point?

3 A We love visitors in our classrooms. They come to share
4 their times and talent -- time and talents, but they also come
5 to, you know, read Bible stories, or they host our parties for
6 religious events and feasts, or we have -- they come and read,
7 you know, do all sorts of things in our classrooms, help us with
8 centers and things like that as well.

9 Q And in terms of the preschool curriculum, is faith a part
10 of that in any way?

11 A Absolutely. Faith starts at the beginning of the day, from
12 the time they walk in the door to the time they leave, and
13 everything about who they are and how they treat others has to
14 do with our faith. But then also we follow -- the Archdiocesan
15 curriculum standards help us incorporate not only our academic
16 instruction, but weave in our faith with that so that we make
17 sure that we have a Catholic worldview within our curriculum
18 throughout the days. We also have Catechesis of the Good
19 Shepherd, and, you know, just songs and prayer and learning how
20 to go to mass and all sorts of the religious pieces as well.

21 Q And you mentioned the Catechesis of the Good Shepherd.
22 Could you explain more what's involved with that.

23 A Yeah. Catechesis of the Good Shepherd is a
24 Montessori-based program based on scripture and liturgy that is
25 a way for our students to learn about Jesus and understand who

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1 he is in their lives, that they can become his friend. And so
2 they go to Catechesis of the Good Shepherd once a week and learn
3 instruction about being in friendship with Christ.

4 Q How would you describe the ultimate goal of the preschool
5 curriculum?

6 A The ultimate goal of our program is to make lifelong
7 learners out of our students. We want to make sure that they
8 are great people and great students going forward. We try to
9 make saints, heroes, and geniuses out of all of our students.

10 Q And you mentioned earlier that St. Mary's is a Virtue
11 School. What does that mean for it to be a Virtue School?

12 A It's a pastoral project that takes a -- you know, I talked
13 earlier about how the -- we want our families to start in
14 preschool and go all the way through eighth grade. And so this
15 pastoral project is called Polaris, and it helps students -- it
16 gives each student a virtue each year, and they -- those virtues
17 build on each other, so when they start in preschool they go all
18 the way through eighth grade, and each one of those virtues they
19 have projects and learn more about that virtue and become --
20 make habits out of those characteristics so they can learn to be
21 very virtuous students.

22 So, in preschool we start with a pre-virtue called
23 wonder, because they're very curious and naturally imaginative
24 and want to be able to ask questions and explore and discover.
25 And so we find that teaching them to be good thinkers and learn

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1 about the world around them is very important, and wonder helps
2 to be able to ask those questions.

3 And when we look at creation, we see that -- the beauty
4 of the world around us, and ask those questions and want to be
5 able to wonder. So, that's what the three-year-olds do. And
6 then the four-year-olds, they build on that creation. They see
7 the appreciation of creation, and they are gracious about it.
8 So, they learn to be -- the four-year-old virtue is gratitude.
9 And so they build on that wonder and learn to be grateful not
10 only of each other and of their parents, but then they also
11 learn to be grateful of the world around them and what God has
12 given them.

13 And then those virtues go all the way through eighth
14 grade and to obedience and piety and so forth throughout their
15 career at St. Mary.

16 Q And is St. Mary's able to provide services to students with
17 disabilities?

18 A We are. We have a resource department at the school, but
19 then we also have -- that allows us to be able to offer services
20 for students. We have students with Down syndrome, with autism,
21 and we help identify other delays, maybe in speech or
22 developmental delays, processing, sensory disorders, things like
23 that.

24 Q Ms. Seul, are you familiar with a program that's often
25 shortened to CCCAP? It's the Colorado Child Care Assistance

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1 Program?

2 A I am.

3 Q So, is St. Mary's a qualified provider for CCCAP families?

4 A We are.

5 Q If you could now flip over to Exhibit 37. So, that's going
6 to be in the second binder, binder two of two.

7 A Yes.

8 Q And, Ms. Seul, are you familiar with that document?

9 A Yes. It's the fiscal agreement that I signed for -- in
10 2020 with Arapahoe County to provide CCCAP at St. Mary's.

11 Q And in your experience, Ms. Seul, how has CCCAP interacted
12 with the schools' admissions or enrollment process?

13 A Well, CCCAP is a federally-funded program that the families
14 receive authorization from the County to be able to receive
15 these funds, and then they are able to go to any program that
16 they want to to be able to provide those services for them. So,
17 it doesn't bother our enrollment process at all, because they
18 come, they choose us, and we are able to be able to provide
19 services for them if we are able to.

20 Q And has St. Mary's ever determined that participating in
21 CCCAP is inconsistent with Catholic teaching?

22 A No. We don't feel like it's inconsistent with Catholic
23 teaching, and more importantly, the Archdiocese has told us that
24 it's okay to do so. And so since they've approved it, then we
25 are able to sign the agreements.

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1 Q And are any families of the school currently receiving
2 CCCAP?

3 A We have one family.

4 Q Did you have any families last year?

5 A No.

6 Q And are you familiar with a program called the Denver
7 Preschool Program?

8 A I am.

9 Q In your time at the school, has St. Mary's ever had
10 families participate in that program?

11 A No, we haven't.

12 Q So, shifting gears to the UPK program, when Colorado
13 announced it was creating a program to fund Universal Preschool
14 education, did St. Mary's plan to participate?

15 A We did.

16 Q Did you do anything to look into the program?

17 A I did. Of course I attended all of the UPK meetings that I
18 could that the State was putting on as they were going through
19 the process. When we -- during the process, when the local
20 coordinating organizations were being formed, that's when I had
21 first gone to the Archdiocese about UPK. Once they were formed
22 and I knew that Arapahoe County Early Childhood Council was our
23 LCO, I went to them to find out more about how the process was
24 going to work. So, I looked into it quite a bit.

25 Q Did St. Mary's end up participating in UPK?

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1 A We did not.

2 Q Why is that?

3 A As the process continued to roll out, we found that the
4 agreement would conflict with our beliefs, and then we were
5 provided a directive from the Archdiocese that told us that we
6 couldn't participate because of the conflict in our belief -- or
7 our beliefs.

8 Q So, if you could return to the first binder, Exhibit 10 in
9 particular.

10 A Uh-huh.

11 Q And do you recognize that email?

12 A Yes. This is the directive from Father Dollins that told
13 us that we could not participate with the UPK program.

14 Q And you're familiar with that email?

15 A Yes.

16 Q If you could now turn over to Exhibit 13 in the same
17 binder. Do you recognize that document, Ms. Seul?

18 A Yes. This is the Universal Preschool Program service
19 agreement that we were supposed to sign.

20 Q On that point, is it your understanding that to participate
21 in UPK, St. Mary's would need to sign that document?

22 A Absolutely.

23 Q How has not participating in UPK affected St. Mary's?

24 A You know, one of my jobs is to recruit families to our
25 school and to provide a Catholic education for those families

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1 who want to come there. And when we couldn't participate, you
2 know, they made some formative changes to the way families chose
3 preschools. And when that happened, we couldn't provide the
4 type of monetary assistance that UPK could for them. So, it was
5 really disappointing not to be able to give them that.

6 Then the advertisements started coming out that UPK
7 would save families \$600 a month, or up to \$600 a month on child
8 care for 15 hours, and that's really important to families.
9 Even our Catholic families who really want to come to our
10 school, they couldn't maybe decide if it was up to the monetary
11 decision.

12 And then there were bonuses for people who are -- had
13 heard that there were bonuses for providers who were -- started
14 at the beginning, and it's just those kinds of things help us
15 with ways to be able to provide more quality, better payment for
16 our teachers, all sorts of different ways for us to be able to
17 participate.

18 Q Ms. Seul, if St. Mary's were to participate in UPK
19 Colorado, would the school pass along the tuition benefit to the
20 families enrolled at the school?

21 A Absolutely.

22 Q Has anyone reached out to see if St. Mary's is
23 participating in the program?

24 A They have. During the application process, or during the
25 touring process, people have asked if we're participating. They

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1 have asked if we've, you know -- when that might be and that
2 sort of thing, but -- some of them come back and say that it's
3 not a problem, but a lot of those people who have asked, we
4 haven't seen again, and so they haven't pursued the process. I
5 assume it's because of UPK.

6 Q And, Ms. Seul, could you now turn to Exhibit 24. That's
7 going to be in the second binder again.

8 A This is the UPK Colorado provider guide.

9 Q And are you familiar with this document?

10 A I am.

11 Q Do you recall when you first saw it?

12 A I believe late fall, early winter last year.

13 Q And could you turn to page 37 in that document. Let me
14 know when you're there.

15 A I am there.

16 Q Could you describe what you see on that page.

17 A This was the exception criteria in the UPK program for
18 providers. This is the exception criteria that we were given as
19 ways that providers were prioritized in the matching system.

20 Q And did you review that risk when the guide first came out?

21 A I did.

22 Q And, Ms. Seul, would St. Mary's seek to participate in UPK
23 if the Archdiocese confirmed that doing so was consistent with
24 Catholic teaching?

25 A Yes.

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1 MR. VARBERG: Your Honor, if I may, I'd like a moment
2 to confer with my colleagues.

3 THE COURT: Yes.

4 MR. VARBERG: Thank you. Nothing further, Your Honor.
5 Thank you.

6 THE COURT: Cross examination?

7 MS. RUST: Yes. One second, Your Honor. Thank you.

8 (Pause in the proceedings.)

9 **CROSS EXAMINATION**

10 BY MS. RUST

11 Q Good afternoon, Ms. Seul. On your direct you spoke a
12 little bit about what would happen if a student who identified
13 as LGBTQ tried to enroll in your school. Do you remember your
14 testimony?

15 A I do.

16 Q Okay. Could you let us know how would you treat a student
17 who identifies as LGBTQ after they enrolled in one of your
18 preschools?

19 A Well, we would have to take that on a case-by-case basis,
20 but as I said, we would always look to the Archdiocese for
21 guidance in anything in that regard, as well as the document
22 that we talked about before with the guidance.

23 Q And has that happened before?

24 A It has not.

25 Q Okay. And then, Ms. Seul, you spoke a little bit during

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1 your direct about how not participating in the UPK program has
2 affected St. Mary's. Do you remember that section of your
3 direct?

4 A I do.

5 Q Okay. And you spoke about how people have reached out to
6 ask if you were participating; is that correct?

7 A Yeah. They -- when -- during the tour, they will ask me if
8 we participate.

9 Q Do you remember who that was?

10 A No. Just random -- we have a -- we get a lot of tours that
11 come through the school, so I don't know exactly who it is.

12 Q Okay. Do you remember a timeframe of when that happened?

13 A Most of them have been last spring and this fall, for sure.

14 Q Okay. And when you were giving a tour, did you ask them if
15 they were searching specifically for a Catholic education?

16 A No. We assume they are because they're there.

17 Q And do you know if they ended up finding another school?

18 A I don't know exactly if they were. I mean, I'm sure they
19 found another school, but I'm not sure why or which ones they
20 went to.

21 Q Okay. And, Ms. Seul, I think you were in the room earlier
22 today when Ms. Chilelli testified that later in the spring, the
23 Archdiocese did tell preschoolers that they could -- or
24 preschool programs that they could participate in the UPK. Do
25 you remember that testimony?

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1 A I do.

2 Q Okay. When did that message come about?

3 A That happened at a meeting in May that the Archdiocese
4 conducted for the preschools and for pastors and the
5 Archdiocese.

6 Q And what was the reason given for their change of
7 directive?

8 MR. VARBERG: Your Honor, I would like to object. I
9 think this misstates the prior testimony from Ms. Chilelli.

10 THE COURT: You may bring that out on redirect if it
11 was misstated. Go ahead, please.

12 THE WITNESS: The directive that came from Father
13 Dollins said that we shouldn't participate in the program. The
14 meeting in May was to say that we could participate in the
15 program under certain guidelines, not to sign the agreement, but
16 to go ahead and participate if we felt that we would like to.

17 But at that time, I had already knew a little bit about
18 the program itself and how the -- how the operation went with
19 the local coordinating association or organizations, so I knew
20 that I couldn't participate, so I didn't do anything at that
21 time.

22 Q. (By Ms. Rust) Okay. So, is your testimony today that the
23 Archdiocese said you could participate in UPK in May of 2023?
24 Is that correct?

25 A No. What they said was that we didn't have -- that we

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1 couldn't sign the agreement, but that if we would like to sign
2 the agreement -- or, I mean, I'm sorry. If we would like to
3 participate without signing the agreement and give the letter
4 with that stating why we weren't going to sign the agreement, we
5 could do so. But I knew that the local coordinating
6 organization wouldn't accept that and said that they wouldn't
7 help to do that.

8 Q So, at that point, the Archdiocese told you you could fill
9 out a UPK application. You just couldn't sign the user
10 agreement; correct?

11 A We could set up a provider profile if we wanted to, but we
12 could not sign the agreement.

13 MS. RUST: Okay. Nothing further, Your Honor.

14 THE COURT: Is that it? Redirect, please?

15 **REDIRECT EXAMINATION**

16 BY MR. VARBERG

17 Q Ms. Seul, with respect to these conversations in May, did
18 you understand the May meeting to be a directive from the
19 Archdiocese that you should participate in the program?

20 A No. They suggested that we could if we wanted to, but it
21 was not -- we were not required to do so.

22 MR. VARBERG: Nothing further, Your Honor. Thank you.

23 THE COURT: Thank you. You may stand down. Thank you
24 very much. Next witness, please?

25 MS. DIXON: Your Honor, Amanda Dixon for plaintiffs.

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1 We want to change our order a little bit, just because we think
2 we can fit Ms. Sheley before we have to go remote with Ms. Coats
3 at 2:30. Does that work?

4 THE COURT: That's all right. Go ahead.

5 MS. DIXON: The plaintiffs call Mrs. Sheley.

6 (The Witness is Sworn)

7 THE COURTROOM DEPUTY: Please be seated. State your
8 full name for the record, and spell your last name.

9 THE WITNESS: Lisa Sheley, S-H-E-L-E-Y.

10 **DIRECT EXAMINATION**

11 BY MS. DIXON

12 Q Good afternoon, Ms. Sheley. Are you and your husband both
13 plaintiffs in this lawsuit?

14 A Yes. My husband, Dan, and I are named as plaintiffs.

15 Q And I think you just said it, but just for the record,
16 what's your husband's name?

17 A Daniel.

18 Q Where do you work?

19 A I work for St. Mary Catholic Virtue School.

20 Q What's your role there?

21 A I'm the front office coordinator.

22 Q And what does Dan do?

23 A Dan is a police officer.

24 Q How long have you and Dan been married?

25 A We have been married for 14 years.

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1 Q And are you and Dan both Catholic?

2 A Yes. Dan was raised Catholic. I was confirmed in the
3 Catholic Church at Easter of 2017.

4 Q Are you and Dan parishioners of a parish within the
5 Archdiocese of Denver?

6 A Yes. We are parishioners at St. Mary's.

7 Q Is that St. Mary's Catholic Parish in Littleton?

8 A Yes, ma'am.

9 Q How long have you been parishioners of St. Mary's?

10 A We've been parishioners since we got married in 2009.

11 Q How many children do you have?

12 A We have six children.

13 Q And can you tell me their ages?

14 A Fourteen-year-old boy, eleven-year-old boy, eight-year-old
15 girl, four-year-old boy, three-year-old boy, and one-year-old
16 girl.

17 Q Thank you. Where are your children currently in school?

18 A Currently our oldest is in high school at Mullen High
19 School, and then the next four attend school at St. Mary's. And
20 the youngest is in daycare.

21 Q And you said the oldest is at Mullen?

22 A Correct.

23 Q Is that a Catholic school?

24 A Yes, ma'am.

25 Q Why did you and Dan decide to send your kids to St. Mary's?

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1 A Given the faith formation, but then also as Catholics,
2 that's something that's very important, and that we value highly
3 is giving our children a Catholic education.

4 Q And you said your four-year-old is in preschool in
5 St. Mary's?

6 A Correct.

7 Q And will your four-year-old be going to kindergarten at
8 St. Mary's?

9 A Yes, he will.

10 Q Do you plan to keep your three-year-old at St. Mary's
11 through Pre-K?

12 A Yes, we do.

13 Q And do you plan to send your one-year-old to St. Mary's?

14 A Yes, we do.

15 Q Have your children always attended St. Mary's?

16 A No, they have not. We attended public school for the older
17 two, through fourth grade for the oldest, and first grade for
18 the next one.

19 Q Why did you switch?

20 A In 2019, when we switched to St. Mary's, they had joined
21 the Archdiocese variable tuition program, and that allowed us
22 the financial means to afford Catholic school.

23 Q How much tuition in total do you and Dan pay for all -- to
24 send all of your children to Catholic Schools?

25 A Approximately \$22,000.

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1 Q Is that a significant part of your and Dan's budget?

2 A Absolutely, it is.

3 Q Why do you choose to invest that much money in Catholic
4 education for your children?

5 A We feel that not only is that our directive as Catholics,
6 but that it's well worth the value of our children being raised
7 in a Catholic education.

8 Q How much do you pay in tuition to St. Mary's?

9 A Approximately \$12,000.

10 Q Do you know if your four-year-old would qualify for
11 Colorado's Universal Preschool funding if he attended a school
12 that could participate in the program?

13 A As far as I am aware, yes, he would.

14 Q Do you know approximately how much money the UPK program
15 reimburses schools for four-year-olds eligible for 15 hours of
16 free preschool?

17 A I believe in our situation it's approximately \$5,800.

18 Q Is it your understanding that St. Mary's would deduct that
19 amount of money from your tuition?

20 A Yes. That's my understanding.

21 Q Would that affect any of your tuition assistance in any
22 way?

23 A Yes. We would likely lose the parish assistance that we
24 currently receive of approximately a thousand dollars.

25 Q So, practically speaking, about how much money would you

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1 save if St. Mary's were eligible for the benefits of UPK this
2 year?

3 A Approximately \$4,700.

4 Q How would it affect your family if you were able to receive
5 that UPK funding to send your youngest children to preschool at
6 St. Mary's?

7 A Obviously with inflation, everything is extremely
8 expensive, but even more so for a family of eight. So, anything
9 we could save would be extremely helpful.

10 MS. DIXON: Your Honor, if I could just check with my
11 colleagues real quick?

12 (Pause in the proceedings.)

13 MS. DIXON: We have no further questions, Your Honor.

14 THE COURT: Thank you. Cross?

15 MS. CARRENO: One moment, Your Honor.

16 MR. WHITEHAIR: Briefly, Your Honor.

17 THE COURT: Mr. Whitehair?

18 **CROSS EXAMINATION**

19 BY MR. WHITEHAIR

20 Q Good afternoon. We've only met on our Zoom deposition; is
21 that right?

22 A Correct, sir.

23 Q I only have a couple of questions. With regard to the UPK
24 preschool program as you understand it, does it mandate your
25 four-year-old child have to attend school, any school?

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1 A Not to my knowledge.

2 Q Does it mandate that St. Mary's has to provide preschool
3 program operations?

4 A Not that I'm aware of.

5 MR. WHITEHAIR: Thank you, ma'am.

6 THE WITNESS: Thank you, sir.

7 THE COURT: Any redirect?

8 MS. DIXON: No, Your Honor.

9 THE COURT: Thank you very much.

10 THE WITNESS: Thank you.

11 MR. REAVES: And, Your Honor, we would request a
12 recess so we can prepare our final remote witness.

13 THE COURT: All right. We will take that recess, and
14 come back when you're ready. Let me know.

15 MR. REAVES: Yeah. If we could say 2:30 to come back,
16 that's when our witness will be prepared. That's what we've
17 told her, so we will be back by 2:30 and be ready to go.

18 THE COURT: Okay. We will come back at 2:30, ready or
19 not.

20 (Recess at 2:10 p.m., until 2:32 p.m.)

21 THE COURT: And your next witness is right there in a
22 hospital bed. She's on my camera.

23 MR. VARBERG: Yes, Your Honor. We would like to call
24 Ms. Avery Coats for testimony.

25 THE COURT: All right. Would you please administer

23-cv-2079-JLK AVERY COATS - Direct 01-02-2024

1 the oath to this witness.

2 (The Witness is Sworn)

3 THE COURTROOM DEPUTY: So, please state your full name
4 for the record, and spell your last name.

5 THE WITNESS: Avery Coats, C-O-A-T-S.

6 **DIRECT EXAMINATION**

7 BY MR. VARBERG

8 Q Good afternoon, Ms. Coats. Thanks for calling in. Just
9 for the record, could you please state where you're calling in
10 from for your testimony today?

11 A Presbyterian-Saint Luke's Hospital.

12 Q And, Ms. Coats, do you have any notes with you?

13 A I do not.

14 Q Ms. Coats, are you on any type of medication that would
15 affect your ability to provide accurate testimony today?

16 A No.

17 Q Ms. Coats, who do you work for?

18 A I work for St. Bernadette Catholic Parish as well as the
19 Archdiocese of Denver.

20 Q And is there a specific school within St. Bernadette that
21 you work for?

22 A Yes. Wellspring Catholic Academy of St. Bernadette.

23 Q And where is Wellspring located?

24 A We are on the campus of St. Bernadette Catholic Parish in
25 Lakewood, Colorado.

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1 Q And what's your job title at Wellspring?

2 A I am the principal and head of school.

3 Q You mentioned you also have a role at the Archdiocese.

4 What's your job title for the Archdiocese?

5 A I work as a part-time consultant to the director of student
6 support services.

7 Q And specifically with respect to your role as principal at
8 Wellspring, how long have you been the principal?

9 A I began July 1, 2022, so about a year and a half.

10 Q And who is your supervisor at Wellspring?

11 A Our pastor, Father Joseph McLagan.

12 Q And his title is pastor. We will move on. What grades
13 does Wellspring serve?

14 A We serve kindergarten through eighth grade, and we also
15 have a preschool program, there being three-, four-, and
16 five-year-olds.

17 Q And is Wellspring licensed as a child care facility in
18 Colorado?

19 A Yes.

20 Q And are you aware of the Colorado Shines rating system?

21 A I am.

22 Q And what is your preschool's Shines rating?

23 A We are currently a four star out of five.

24 Q And, Ms. Coats, how would you describe Wellspring's
25 relationship to the St. Bernadette Catholic Parish?

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1 A We -- like I said, we're on the same campus geographically,
2 but we also share an organizational hierarchy. Father Joseph
3 oversees all. We're merely a ministry of the parish. So, we
4 work in tandem with the overall parish.

5 Q And what is the parish's relationship to the Archdiocese?

6 A We are one of many Catholic churches within the Archdiocese
7 of Denver. We answer to the Archdiocese in a lot of ways, and
8 seek guidance from them.

9 Q And on that subject, is Wellspring subject to the religious
10 guidance of the Archdiocese?

11 A Yes. We follow their guidance on church teachings, faith
12 and morals.

13 Q All right. So, we're going to pull up Exhibit 2 on the
14 screen. I believe it's actually already pictured. Do you see
15 that document on your screen, Ms. Coats?

16 A I do.

17 Q And can you describe what that document is.

18 A This is our statement of community -- sorry. Statement of
19 commitments and beliefs set forth by the Archdiocese of Denver.

20 Q And is Wellspring staff required to sign this document?

21 A Yes. At the time of our contract signing.

22 Q Is Wellspring's staff required to sign any other paperwork?

23 A Yes. So, at the time of contract signing, you sign your
24 contract, this document, the Archdiocese code of conduct, and
25 the terms and conditions of your contract.

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1 Q Now we're going to display Exhibit 4 on the screen. One
2 moment for that. And, Ms. Seul, can you see that document?

3 A I do.

4 Q If we could scroll down just a bit. Right there. Okay.
5 Do you recognize this document?

6 A Yes. This is the Archdiocesan code of conduct.

7 Q And is this the document you referred to a moment ago?

8 A It is.

9 Q Ms. Coats, how would you describe Wellspring's mission?

10 A We -- we're a Catholic school that works hard to raise up
11 disciples of Christ. We do this through our motto of dig deep,
12 share more, and -- sorry -- find more, and share greatly. And
13 we have four pillars through -- that we've really achieved this.
14 Through academics, faith, service, and adventure.

15 Q And what role does Wellspring expect teachers to play in
16 fulfilling this mission?

17 A A critical role. We expect all of our teachers to uphold
18 our mission in their teaching, and who they are as people as
19 well.

20 Q And how would you describe the role of educators at
21 Wellspring more broadly?

22 A We're all passionate about our mission to raise up
23 disciples of Christ, and we work together to do so. So, we all
24 have a critical role in understanding not only Wellspring's
25 mission, but our mission and alignment with the Archdiocese of

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1 Denver, and the values of the Catholic Church as well.

2 Q Does Wellspring have any requirements regarding teacher
3 conduct?

4 A Yes. So, this would be outlined in the code of conduct,
5 which we're required to sign each year as well.

6 Q Does Wellspring do anything to help teachers grow in their
7 faith?

8 A Yes. We offer quite a bit of opportunity. The church
9 remains open throughout the day. We encourage them to use their
10 free time, their planning time, to go and pray if they need to.
11 There is daily mass, and if it works with their schedules,
12 they're free to attend. If it doesn't and they want to attend,
13 I work with them in order to do that.

14 We have the PD cycle every second week of the month, I
15 believe. We focus on faith formation. Right now we're working
16 as a staff to read a book to understand our path of faith, our
17 identity as a Catholic school, and to really dig deep into our
18 mission as well. Some of our teachers are in discipleship
19 groups, growing in fellowship and understanding in their faith
20 as well.

21 Q And, Ms. Coats, does Wellspring expect teachers to uphold
22 the values and beliefs of the Catholic Church?

23 A Yes.

24 Q And you mentioned teacher faith formation. Could you say a
25 little more about what that is.

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1 A Yeah. Faith formation happens on a lot of different
2 levels. It could be personal, their inner spiritual life.
3 Just, we would offer opportunities for them to have silence on
4 their own in the church. We also offer education. Like I said,
5 we're going through a book study right now. It could mean being
6 more tangible in the faith, like attending prayer services,
7 things like that.

8 Q And at Wellspring, are all employees required to be
9 Catholic?

10 A No.

11 Q So, are there any requirements for staff with respect to
12 the Catholic faith?

13 A We ask that all of our staff, no matter if they're Catholic
14 or not, to uphold the values of the Catholic Church. So, yeah.
15 We just -- we ask for that -- that respect and to join the
16 mission in that way.

17 Q Pivoting to the school's demographics, as of today, how
18 many students are attending the preschool at Wellspring?

19 A As of today, we have 17 enrolled.

20 Q Can you describe their demographic makeup.

21 A Yes. The majority -- sorry. The majority receive free and
22 reduced lunch. Roughly a third fall under the poverty line.
23 Over half are learning English as a second language. We have
24 several different countries represented in that room alone.

25 Q And do students at the preschool receive tuition

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1 assistance?

2 A Yes.

3 Q Could you describe what that looks like.

4 A Yes. We offer many scholarship opportunities for all of
5 our students and their families, and so we partner with a couple
6 different specific programs. A lot of times that still leaves a
7 gap, because we do serve a majority of low-income families, and
8 so the remainder would be fundraised on behalf of them.

9 Q Could you describe the application and enrollment process
10 for the preschool.

11 A Yeah. It's not different than the rest of the school. We
12 ask for -- when we receive an inquiry, whether it's through the
13 website or phone call or sometimes people just driving by, we
14 set up a tour, and we meet with the family. Oftentimes that
15 turns into a shadow day for the student, and then we would just
16 get to know them and progress towards registration.

17 Q And you mentioned a tour and a meeting with the family.
18 What do those meetings entail?

19 A The tour and the meeting would be -- we always encourage
20 the students to come to the tour. I'm sorry.

21 Q No problem. Take your time.

22 A Everything is okay. He just fell off the monitor, which
23 he's very squiggly. Sorry.

24 Q No problem.

25 A So, a lot of times we ask the student to come. We like to

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1 see how they do in the classroom, how they do with interactions
2 with others, and then we meet with the families. And this could
3 be pretty informal, pretty casual. I just like to understand
4 their family life. I like to understand what brought them to
5 Wellspring, what intrigues them about our mission. And then we
6 just learn a little bit more of their own personal dynamics.
7 Jordan, if I may?

8 Q Yes.

9 A Because he fell off, I might have a member of the medical
10 team come in. Is that okay?

11 MR. VARBERG: Your Honor, could we take a 15-minute
12 recess to allow Ms. Coats to -- we're also happy to have her
13 continue testifying, if that would be okay with you, Avery?
14 It's up to you.

15 THE WITNESS: It's fine with me. I just feel a little
16 embarrassed. I'm sorry.

17 THE COURT: That's all right. Don't be embarrassed.
18 Is there anybody that can't hear or understand? Okay. Then go
19 ahead.

20 THE WITNESS: Okay.

21 MR. VARBERG: So, you can bring in the medical team.

22 THE COURT: If that's the only annoyance I have today,
23 it will be a very fortunate day.

24 THE WITNESS: Okay. Thank you, Your Honor. You're
25 good to come in.

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1 THE COURT: Voilà. Okay.

2 Q. (By Mr. Varberg) Ms. Coats, why is it important that the
3 school have meetings with the family?

4 A When we enroll a student, one of our just crucial
5 understandings of being educators is that we partner with
6 parents. It's a partnership towards their student and their
7 child's education. So, it's vital that we understand who we're
8 partnering with, that we understand who -- the dynamics of their
9 family and what brought them to us.

10 Q And is there anything that parents need to sign for their
11 preschooler to become admitted?

12 A Yes. All of our families are required to sign the
13 Archdiocese code of conduct, the -- and our handbook as well.
14 The Archdiocesan code of conduct is kind of embedded in our
15 handbook.

16 Q Is there any preschool-specific document such as a
17 handbook?

18 A Yeah. So, our preschool families receive our student
19 family handbook. They would receive a preschool addendum as
20 well as this code of conduct, and they would be asked to sign
21 all of those.

22 Q We're going to pull up now Exhibit 16 on the screen. And,
23 Ms. Coats, do you see that document on there?

24 A I see it.

25 Q And do you recognize it?

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1 A Yes, I do.

2 Q And can you describe what it is?

3 A This is our student and family handbook for the school
4 year.

5 Q And does this handbook apply to the preschool's operations?

6 A It does, as well as their own preschool addendum.

7 Q And now we will turn to Exhibit 15. And do you see that
8 document?

9 A I do.

10 Q And can you describe it?

11 A This is the preschool addendum which I was referring to for
12 the school year.

13 Q And families are required to sign this; correct?

14 A Correct.

15 Q Ms. Coats, when making admissions decisions, is there
16 anything that the Archdiocese directs Wellspring to consider?

17 A Yes. We're asked to consider alignment with the church's
18 teaching, and they offer us guidance, especially with regards to
19 the teaching of sexuality.

20 Q We're now going to pull up Exhibit 5 on your screen.

21 Ms. Coats, do you recognize that document?

22 A I do.

23 Q Can you describe what it is?

24 A Yes. This is the guidance which I was referring to on
25 human sexuality.

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1 Q Does Wellspring consider itself bound by this guidance?

2 A Yes.

3 Q And do you follow it in running this preschool?

4 A Yes.

5 Q Ms. Coats, in your time at the school, has Wellspring ever
6 determined that admitting a family or a student would cause a
7 conflict?

8 A Yes.

9 Q Are there any recent examples of that?

10 A Yes. Last year we had a fifth grade student whose parents
11 were interested in enrolling --

12 MS. RUST: Your Honor, I would like to object to
13 relevance.

14 THE COURT: I'm sorry. I can't hear you.

15 MS. RUST: Sure. Is this -- can you hear me better
16 now, Your Honor?

17 THE COURT: Yes.

18 MS. RUST: I would like to object to relevance. I
19 know this testimony was previewed in the opening and that it
20 will be about a fifth grade student, but I do think we're here
21 today talking specifically about preschoolers and the
22 circumstances of preschoolers in the UPK program and these
23 parish schools.

24 THE COURT: The objection is overruled. Go ahead,
25 please.

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1 Q. (By Mr. Varberg) Ms. Coats, you can continue.

2 A We had a family inquire last year, and we -- they did the
3 inquiry. We invited them for a tour. I actually never met the
4 student. It was just the parents. The parents were a same-sex
5 couple. And we met a couple different times and discussed the
6 mission and the family dynamics, just our normal procedure. We
7 ultimately decided that would not be a good fit, because we
8 teach what's called Theology -- Theology of the Body.

9 It's a crucial part of our curriculum for theology,
10 Catechesis and theology, and we were concerned that this
11 teaching would cause great conflict within their own family
12 system and their own family structure. So, we didn't feel like
13 it would be a good fit for us at that time.

14 MS. RUST: And, Your Honor, could we just ask the
15 witness to elaborate as to who "we" is that she keeps stating?

16 MR. VARBERG: Your Honor, I find this inappropriate.
17 If she would like to cross examine her about that --

18 THE COURT: You can bring that up in cross. Go ahead.

19 Q. (By Mr. Varberg) Ms. Coats, does Wellspring often receive
20 inquiries from same-sex parents or students?

21 A No. This is the only one, to my knowledge.

22 Q And, Ms. Coats, I would actually like to return to that
23 situation you were describing a moment ago with the fifth grader
24 and the same-sex parents. Did this process occur while you were
25 principal and head of school at Wellspring?

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1 A Yes.

2 Q And were you involved in the discussions about how to
3 handle the situation?

4 A Yes. Very much.

5 Q Ms. Coats, to your knowledge, has Wellspring ever enrolled
6 a student who identifies as LGBTQ?

7 A Not to my knowledge.

8 Q To your knowledge, has Wellspring received any enrollment
9 inquiries on behalf of students who identify as LGBTQ?

10 A Not to my knowledge.

11 Q Has Wellspring ever received a complaint from an LGBTQ
12 person about discrimination, to your knowledge?

13 A Not to my knowledge.

14 Q Ms. Coats, if Wellspring were to have a preschool waitlist,
15 how would the school decide which preschoolers and families to
16 admit to the preschool?

17 A We would first prioritize families that have siblings in
18 the school already. We would then prioritize parishioners at
19 St. Bernadette, and then other Catholic families that are
20 parishioners elsewhere.

21 Q And why does Wellspring prioritize these groups?

22 A Well, as stated before, we partner with our families. So,
23 we definitely prioritize keeping families together. It's
24 difficult enough having multiple schools to go to, so we want to
25 keep that partnership with our families who understand our

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1 mission, who desire us. We then partnership -- or we then
2 prioritize St. Bernadette, because we're a ministry of this
3 parish, so when they thrive, we thrive. And then we prioritize
4 other Catholic families, because we just share a foundational
5 mission in life.

6 Q And has a family that went through any part of the process
7 ever determined that Wellspring is not a good fit?

8 A Yes.

9 Q Does Wellspring require parents to be Catholic to send a
10 child to the preschool?

11 A No.

12 Q So, are there any requirements for parents with respect to
13 the Catholic faith?

14 A We would -- we ask the same of non-Catholic employees. We
15 ask that they abide by -- they uphold the values of the Catholic
16 Church, that we partner together in the education of their
17 children, that they fully understand our mission and would
18 support it in their own home as well.

19 Q And, Ms. Coats, have you ever enrolled a non-Catholic
20 family in your preschool?

21 A Yes.

22 Q And how many preschool students and their families are
23 Catholic?

24 A The majority. I don't have an exact number, but the
25 majority.

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1 Q So, we're going to pivot again here. Ms. Coats, are you
2 familiar with a program called the Denver Preschool Program?

3 A Yes.

4 Q Can you describe what that program is.

5 A It is a program that offers tuition assistance to families
6 living within Denver city limits.

7 Q Has Wellspring ever had families participate in the Denver
8 Preschool Program?

9 A Yes, we have.

10 Q And are there any families currently participating?

11 A Not currently, no.

12 Q Has Wellspring ever determined that participation in the
13 Denver Preschool Program is inconsistent with Catholic teaching?

14 A No. We've always followed the guidance from the
15 Archdiocese.

16 Q And what was that guidance?

17 A That participating in this program was okay.

18 Q And has Wellspring changed any of its enrollment practices
19 so that it can participate in the Denver Preschool Program?

20 A Of course not.

21 Q What role do parents play in Wellspring's educational
22 mission?

23 A A vital role. We believe that parents are the primary
24 educators of their students, so we partner with them. And we
25 invite them in as much as possible to all of our -- all of our

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1 school gatherings, whether it be -- we start in prayer as a
2 whole school in the morning, actually. A lot of parents take us
3 up on that. A lot of our religious practices they're invited
4 to, our school assemblies, and then we offer fellowship and
5 education outside of the typical schoolday as well.

6 Q And does Wellspring provide any programming for parents of
7 admitted preschoolers?

8 A Yeah. We have -- we have educational classes a few times a
9 year, and then they're always invited to anything that the
10 parish is doing. We try to join the two ministries very often
11 through our newsletter, and a lot of our parents will attend our
12 weekly school mass with us. They'll attend our assemblies.

13 Q Is there any faith formation program for families?

14 A Yes. Our parish -- so, this is strictly through the
15 parish, not through our school. It's called Family Faith
16 Formation. And typically a family that has a student in a
17 sacrament year, that means at the end of the year they could be
18 receiving first reconciliation or Eucharist or something like
19 that. They would attend classes together as a family.

20 Now, students who are not in a sacrament year, their
21 family is still welcome to participate in this program. There
22 is a theme each week. I believe that there's monthly mass and
23 adoration. Once a month the students meet in a class, and the
24 parents meet in a separate class, and then on off weeks there
25 are programs that they take home and do together as a family.

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1 They could build something. They could read something together.
2 They could go to an activity, and it's all to better understand
3 our faith.

4 Q And, Ms. Coats, is faith a part of Wellspring's curriculum?

5 A Absolutely, yes. Yeah. So, faith is embedded in
6 everything that we do. So, not only does it have its own block,
7 which I will explain, but teachers are encouraged to bring in
8 their faith into their everyday lesson planning, their learning
9 targets, the way that they are explaining the lesson. And then
10 we also have dedicated time, which those are called Theology and
11 Catechesis. Catechesis is for the younger grades. Theology
12 starts in middle school.

13 Q Is there any type of curriculum on Catholicism's view of
14 the body?

15 A Yes. So, there are several standards through the
16 Archdiocese of Denver that we follow, and a main section of this
17 is Christian anthropology. In that we target theology in the
18 body. We use a program called Ruah Woods as a curriculum for
19 this. Yeah.

20 Q Now, what is the religious curriculum at the preschool
21 like?

22 A Yeah. The preschool, they also have dedicated time, very
23 similar. All of my answers don't really differ for preschool.
24 It's also embedded into their day-to-day, beginning in prayer.
25 They have a prayer table. The adoration, they go to mass just

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1 like the rest of us. Ruah Woods doesn't necessarily have a
2 targeted curriculum for preschool. However, Theology of the
3 Body is still very much talked about. It's Christian
4 anthropology. It's hard not to talk about it. And we do this
5 in vocabulary like mommy and daddy and marriage and family. So,
6 it's a developmentally-appropriate level.

7 Q And, Ms. Coats, we're going to pivot to the UPK program.
8 When Colorado announced it was creating a program relating to
9 Universal Preschool education, did Wellspring plan to
10 participate?

11 A Yes, we did.

12 Q And did Wellspring end up participating in UPK?

13 A No, we did not.

14 Q Is there any specific reason why you were interested in
15 participating in UPK?

16 A Yeah. We were extremely excited. As I stated before, the
17 majority of our families are low-income families. We're very
18 passionate to serve this population. I don't want it to change,
19 but any assistance that we can get so that we can continue our
20 mission in this way is hugely helpful. So, we were excited by
21 the opportunity of UPK, and we were pretty sad when -- when we
22 couldn't participate.

23 Q And why were you unable to participate?

24 A The guidance of the Archdiocese was that at that time, it
25 would be impossible to uphold our religious beliefs and

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1 participate in this program at the same time.

2 Q I'm going to pull up Exhibit 10 for you, Ms. Coats. Do you
3 see that exhibit on your screen?

4 A I do.

5 Q And do you recognize it?

6 A I do. This was a letter sent by a vicar of clergy, Father
7 Randy Dollins. And this was the guidance telling us not to
8 participate in UPK.

9 Q And, Ms. Coats, do you recall a meeting with the
10 Archdiocese in May of this year about the UPK program?

11 A I do.

12 Q And did the Archdiocese give any additional guidance in
13 that meeting?

14 A Yeah. Yes. There was an option to not sign an agreement,
15 but begin the portal and then return an unsigned agreement,
16 which we did not do.

17 Q Ms. Coats, has Wellspring lost anything by not being able
18 to participate?

19 A I believe we have, yes. It's my understanding that UPK
20 offers a provider -- not only tuition assistance to the
21 families, but provider bonuses as well as their bandwidth to be
22 able to recruit and enroll, and we've lost all three of those.

23 Q And has anyone reached out to see if Wellspring is
24 participating in the UPK program?

25 A Yes. We've had phone calls from parents here and there

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1 asking if we participate.

2 MS. RUST: And, Your Honor, I would object to that
3 statement as hearsay.

4 THE COURT: Bronco game.

5 MS. RUST: Bronco game. Your Honor, I would object to
6 the statement as hearsay, and any statements that Ms. Coats may
7 have heard from others regarding UPK participation.

8 THE COURT: Overruled.

9 Q. (By Mr. Varberg) You can continue, Ms. Coats.

10 A I don't remember where I was. I'm sorry. Yes. It's my
11 understanding -- yes. We have had inquiries if we are
12 participating in UPK, and we have said no. Yeah.

13 Q And, Ms. Coats, would Wellspring seek to participate in UPK
14 if the Archdiocese confirmed that doing so was consistent with
15 Catholic teachings?

16 A Yes.

17 MR. VARBERG: Your Honor, if I could have a moment to
18 confer with my colleagues?

19 THE COURT: Yes. Please do.

20 MR. VARBERG: Thank you. Nothing further. Thank you,
21 Your Honor.

22 THE COURT: Thank you. Cross examination?

23 **CROSS EXAMINATION**

24 BY MS. RUST

25 Q Hi, Ms. Coats. I'm glad to see you again, but not glad to

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1 see you in a hospital bed. So, we will try our best to keep
2 this quick. Ms. Coats, during your direct, you testified that
3 in May of this year, the Archdiocese presented you with an
4 option to begin filling out the UPK portal and then not sign the
5 provider agreement; is that correct?

6 A Yes.

7 Q And you just testified that you did not do those next
8 steps; correct?

9 A No. Correct.

10 Q Can you tell us why, please.

11 A Yeah. Very -- very quickly after that -- May of any school
12 year is very -- it's one of the worst months for an
13 administrator. Honestly, it got really busy. And then the
14 guidance shortly after was that it was just not in line, and to
15 not enter into this at all.

16 Q So, before you got very busy, and before the additional
17 guidance you're testifying to today, was it your intention to
18 fill out the provider portal?

19 A The pastor, Father Joe and I attended the meeting, and we
20 said we would check back in and discuss it later after just
21 praying and thinking about it. And that didn't happen. It
22 seems like very shortly after that the guidance had switched.
23 So, I don't really have an answer.

24 Q Do you remember what the time period was where that
25 guidance shifted again?

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1 A No, I don't.

2 Q Okay. Ms. Coats, you were also asked if you've ever
3 enrolled a non-Catholic family in your preschool. Do you
4 remember that question?

5 A I do.

6 Q What other religions are enrolled in your preschool?

7 A We don't ask, unless they want to share. So, anything I
8 would say -- I don't know if it would be accurate. We ask if
9 they have affiliation with a Catholic Church, and that's about
10 it.

11 Q Okay. So, if -- so, if a family says no affiliation with
12 Catholic Church, you do not ask further; is that correct?

13 A It's not really an algorithm to the conversation.
14 Sometimes it happens organically and casually, and sometimes
15 not. It's not part of our protocol to figure out what faith
16 they practice.

17 Q Okay. And is it a part of your -- any of your preschool
18 paperwork that a family must say that they are affiliated with a
19 Catholic Church or parish?

20 A Yes.

21 Q Okay. Great. Thank you for clarifying that for me.

22 Ms. Coats, we talked about -- on your direct talked a little bit
23 about circumstances in which you would allow families to enroll
24 and circumstances where you wouldn't. During that conversation,
25 we talked specifically -- your direct talked specifically about

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1 an instance with a fifth grader. Do you remember that part of
2 your direct?

3 A I do.

4 Q Okay. During it, you kept referring to we decided, we
5 discussed, we thought it was not a good fit. Can you please
6 elaborate on who the "we" is in those statements.

7 A Yes. I mainly collaborated with Father Joe, our pastor.
8 And then we also sought guidance from the Archdiocese during
9 this time.

10 Q Okay. During that situation, did that family communicate
11 to you that they were seeking a Catholic education for their
12 child?

13 A I don't remember it being very specifically Catholic, but
14 they wanted -- they were seeking -- they liked our mission.

15 Q Okay. Did the family during your interactions with them
16 give you any reason outside of your mission as to why they
17 wanted to enroll their child in your school?

18 A Yes. I do know the reason why they wanted to.

19 Q Okay. What was that reason?

20 A Their daughter was attending a public school and a public
21 elementary school. And this school was shifting their bathrooms
22 to be non-gender-specific. And they were quite appalled and
23 upset and did not want their daughter exposed to this.

24 Q Okay. What was this couple's reaction when -- or, sorry.
25 Strike that. What was the reason you gave them for denying

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1 their child enrollment?

2 A We were concerned that it would create -- that our teaching
3 within our school would create an intrafamily conflict and cause
4 confusion for the family, and we didn't want to disrupt their
5 family system.

6 Q And is that what you told them?

7 A Yes.

8 Q Okay. And did you tell them specifically what part of your
9 teachings you thought would disrupt their family?

10 A Yes. Our teachings in Theology of the Body.

11 Q Okay. And what -- how did they take that information?

12 A They were understanding. They were very kind.

13 Q Ms. Coats, during your direct you also talked about how in
14 terms of preschool, you have not had the experience of having to
15 enroll an LGBTQ child; is that correct?

16 A Correct. Not to my knowledge.

17 Q Have you had the experience of ever having to disenroll an
18 LGBTQ preschooler who was already enrolled?

19 A No.

20 Q What would you do in that situation?

21 A I would seek guidance from the Archdiocese. Like I said
22 many times throughout this testimony, we partner with families.
23 So, I would partner with this family and understand more about
24 this situation. I've never had this occur, so it's hard to
25 speculate.

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1 Q Okay. And is your testimony today -- and I'm trying to
2 understand your definition of "family" today that you're
3 testifying to. So, can you just tell me again -- I know you
4 stated in your direct, what is your school's teaching and
5 definition of "family"?

6 A Hmm. When we say "family," the environment in which our
7 potential student is raised in, what their home life looks like.

8 Q Okay. And what is the definition of "marriage" you guys
9 teach at Wellspring?

10 A That marriage is between a man and a woman, and happens
11 under the Catholic Church.

12 Q Okay. Have you ever admitted a student who comes from
13 divorced parents?

14 A Yes.

15 Q Have you ever had a student whose parents divorced during
16 the school year?

17 A I -- I'm not sure. I think so. I'm not sure.

18 Q Okay. In a circumstance where a child's parents divorced
19 during the school year, do you disenroll them?

20 A No.

21 Q And one last question, Ms. Coats. When you spoke on direct
22 for your demographics, and I know I had confusion with this
23 during our deposition, so forgive me again, but the 17 children
24 that are enrolled this year, is that preschool in total, or just
25 your four-year-olds?

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1 A That's preschool in total. And I did verify that for you
2 after our deposition. Sorry.

3 Q No problem. And then what was the number of
4 four-year-olds?

5 A I believe it's around seven or nine.

6 MS. RUST: Okay. Great. One second, Your Honor.

7 (Pause in the proceedings.)

8 MS. RUST: Thank you, Your Honor. I am complete. And
9 thank you, Ms. Coats.

10 THE COURT: Any redirect?

11 MR. VARBERG: Nothing further, Your Honor. Thank you.

12 THE COURT: All right. Thank you very much. We're
13 sorry to put you through this hardship when you're in the
14 hospital, but it's been valuable to have you here. And I hope
15 that you recover quickly, and you have my best wishes.

16 THE WITNESS: Thank you. It's been my pleasure.

17 THE COURT: All right. Next, please?

18 MR. DAVIS: Your Honor, before the plaintiffs close
19 their case, if we could just circle back and touch on one issue
20 that we discussed at the beginning of the morning about
21 deposition designations?

22 THE COURT: Yes.

23 MR. DAVIS: I understand Your Honor doesn't want the
24 parties to designate entire transcripts.

25 THE COURT: That's right.

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1 MR. DAVIS: But to be clear, what we've given the
2 Court in exhibits, I think it's 26 and 27 of the binder that you
3 have is just specific limited excerpts of the transcripts that
4 we were hoping to --

5 THE COURT: That's fine.

6 MR. DAVIS: Okay. To designate as part of our
7 affirmative case. We thought that would be more efficient than
8 trying to get all that testimony out on cross examination of
9 Ms. Holguín and Dr. Roy. In fact, neither party had actually
10 called Dr. Roy as a witness at all. So, if we're not able to
11 designate, we might have to call her as a witness tomorrow.
12 Does Your Honor -- are we able to do the deposition designation?
13 Can we move that into evidence, Exhibits 26 and 27?

14 THE COURT: Yeah. You can do that. I will have to
15 read them, and the designations in there that you are asking me
16 to read. And I'm not going to do it and keep everybody waiting
17 while I do it.

18 MR. DAVIS: Sure, yes. Yes, Your Honor.

19 THE COURT: So, you can read into the record what you
20 want me to read on those, and I will do that before tomorrow
21 morning.

22 MR. DAVIS: Yes, Your Honor. There's specific
23 highlighted portions of the depositions at Exhibits 26 and 27.

24 THE COURT: And defendants have the right to designate
25 further. So, you will have to give them that opportunity as

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1 well.

2 MR. DAVIS: Yes, Your Honor. Those are also their
3 counter-designations that are reflected in that document, as are
4 a couple of objections. So, we can -- that's our last witness
5 other than the designations. So, if Your Honor is willing to
6 take the designations into the record, then we could be done and
7 hand it over to the defendants.

8 THE COURT: Okay. Mr. Whitehair?

9 MR. WHITEHAIR: Thank you, Your Honor. We just want
10 to be sure we're understanding which of the designations he's
11 putting in. I had thought I heard the Court say if they're
12 going to testify, let's not have their depositions in.

13 THE COURT: Well, that's right. Because if they're
14 testifying to something, there's no reason to read the
15 deposition which says the same thing. And I realize that
16 attorneys have a different view of depositions than I do, but
17 I've found that they have about 90 percent that are irrelevant.
18 So, maybe you join me in that.

19 MR. WHITEHAIR: I concur, Your Honor, but this is not
20 the time for us to have that debate.

21 THE COURT: No. I understand that. Do you need some
22 time now to go over it?

23 MR. WHITEHAIR: No. I think I just need to hear what
24 plaintiffs are proposing is coming through, because they've now
25 had witnesses testify, and --

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1 THE COURT: I think you need a little bit of time to
2 do that, don't you?

3 MR. DAVIS: No, Your Honor. It's Exhibits 26 and 27.

4 MR. WHITEHAIR: Who?

5 MR. DAVIS: Dr. Roy and Ms. Odean.

6 MR. WHITEHAIR: So, for Dr. Roy, we didn't anticipate
7 that she would testify. They didn't put her on her list --
8 their list. We didn't put her on our list. So, we're
9 comfortable with the Dr. Roy designations being read tonight by
10 the Court. We did counter-designations, and there are
11 objections inside of those.

12 THE COURT: And they're in there. Okay. I will read
13 her deposition, the designated parts of it. And you had another
14 one?

15 MR. DAVIS: And then Ms. Odean, Your Honor. And she
16 is testifying tomorrow, so we're happy to elicit testimony from
17 her on cross, of course.

18 THE COURT: That would be better.

19 MR. DAVIS: Okay. I mean, I just note for the record,
20 I think that because she is a party opponent, under Rule 32, I
21 think we could designate her, but we're happy to do that on
22 cross exam. So, we will leave our case open.

23 THE COURT: I don't want to get caught up in a
24 judicial jockstrap. So, what you want to do to get it done,
25 it's fine with me.

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1 MR. DAVIS: Okay, Your Honor. We're going to have
2 some cross examination as well, I anticipate. There's just a
3 few points --

4 THE COURT: If there's something that comes up that
5 you didn't anticipate and you want to bring it out in a further
6 reading or something, I will be happy to do that.

7 MR. DAVIS: Okay. Thank you, Your Honor.

8 THE COURT: All right. So, you're resting now with
9 that understanding?

10 MR. DAVIS: With that understanding. Yes, Your Honor.

11 THE COURT: Okay. Let's have the defendants' first
12 witness, please.

13 MS. FISCHER: Defense calls Michael Cooke. And just
14 one bit of housekeeping, Your Honor. Because of the issues at
15 the Carr Center this morning, we were unable to retrieve our
16 physical binder of exhibits. We can -- I believe the witness
17 has a monitor. We can pull them up electronically. Oh, and the
18 Court does have a binder? Okay.

19 THE COURT: Yeah. I understand that you don't -- you
20 will be -- when are they going to open up again? Do you know?

21 MS. FISCHER: We have gotten word, probably not this
22 week. We will have to have some discussions with our management
23 and see if they're willing to let us be escorted in to retrieve
24 items or not.

25 THE COURT: If there's not, I'm going to issue a

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1 subpoena for them. So, just tell them that.

2 MS. FISCHER: I will definitely -- I will let AG
3 Weiser know.

4 THE COURT: If you don't allow members of attorney
5 general's staff to enter a building to pick up things that are
6 needed in court, they're going to hear from me.

7 MS. FISCHER: I'm told we have copies coming tomorrow.
8 We have apparently made arrangements.

9 THE COURT: All right. You're going to have it
10 tomorrow. Okay. My temper tantrum wasn't necessary.

11 MR. REAVES: Your Honor, we do have an extra copy of
12 defendants' exhibits, if that would be helpful on the witness
13 stand.

14 MS. FISCHER: Yes. We will take you up on that. That
15 would be great. Thank you for your patience with us. That was
16 unexpected this morning.

17 THE COURT: I'm a little picky about this, but I don't
18 like other activity going on while an oath is being
19 administered, because what happens from that is it becomes
20 trivialized, and it's anything but trivial for the person taking
21 the oath. So, that's why I want all other activity to stop.
22 Please go ahead, Bernique.

23 (The Witness is Sworn)

24 THE COURTROOM DEPUTY: Please be seated. State your
25 full name for the record, and spell your last name.

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1 THE WITNESS: My name is Mary Michael Cooke. Last
2 name is spelled C-O-O-K-E.

3 **DIRECT EXAMINATION**

4 BY MS. FISCHER

5 Q Good afternoon, Ms. Cooke. What is your current job title?

6 A I am state director for the Colorado office of Council for
7 a Strong America.

8 Q And how long have you held that position?

9 A I joined Council for a Strong America in February of 2017.

10 Q And have you worked for them continuously since February of
11 2017?

12 A In December of 2021, Council for a Strong America granted
13 me a leave of absence to go to work for the State of Colorado,
14 the governor's office as early childhood transition director for
15 an 18-month window. I returned to Council for a Strong America
16 on July 1st of 2023.

17 Q And during that 18-month window as transition director,
18 what did you do?

19 A So, my role as transition director was to launch the new
20 Colorado Department of Early Childhood, and to implement
21 Universal Pre-K for the State.

22 Q And how did you get that position?

23 A I did apply for that position. It is a position that was
24 created in statute through legislation and posted by the
25 governor's office. I was aware of the posting and applied for

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1 the position, interviewed for it, and was selected.

2 Q And why were you interested in taking on that role?

3 A I've been working in early childhood advocacy with Council
4 for a Strong America, again, since 2017. Prior to that time,
5 several years in K-12 education. I have a real passion for
6 early childhood and had worked on the legislation leading up to
7 the creation of a new state department and implementation of
8 Universal Pre-K.

9 Q And why was a transition director needed?

10 A The general assembly in 2021 in House Bill 1304 created the
11 position to assist the governor's office in establishing this
12 new cabinet level agency and implementing Universal Pre-K in
13 accordance with the wishes of the voters through the 2020 ballot
14 issue known as Proposition EE.

15 Q And was that transition director role always intended to be
16 temporary?

17 A Yes. It was a term-limited role.

18 Q And what degrees do you hold?

19 A I hold a bachelor of administration in communications and a
20 public policy and administration certificate.

21 Q I'm going to ask Jen to pull up Exhibit 48, which also will
22 be in that defendants' exhibit binder. What is this document?

23 A This is my most recent resumé.

24 Q And is it up to date?

25 A Yes, it is.

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1 Q And does that accurately reflect your qualifications and
2 experience?

3 A Yes, it does.

4 Q Thank you. You mentioned the Colorado Department of Early
5 Childhood, or the CDEC. What is that department?

6 A So, if I can go back to the passage of Proposition EE, once
7 that ballot amendment was passed which created Universal Pre-K
8 for the State of Colorado, there was much discussion and
9 deliberation amongst advocates and state agencies around how to
10 proceed with placement of that program and where it should
11 reside.

12 And it was through those discussions that the Early
13 Childhood Leadership Commission made a recommendation -- a
14 formal recommendation to designate the last constitutional
15 remaining department to early childhood so that we could remove
16 the silos that existed across state government for early
17 childhood and house everything in one place.

18 Q And when was the, I guess, formal creation of the
19 department?

20 A So, House Bill 1304 did designate that final state cabinet
21 level department to early childhood. What followed was a very
22 robust stakeholder process that was led by the Early Childhood
23 Leadership Commission to talk about what that state department
24 should look like. And what followed that process was additional
25 legislation to operationalize the department, which opened on

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1 July 1st of 2022.

2 Q And what was the additional legislation to operationalize
3 the department?

4 A That was House Bill 1295. And it operationalized the
5 department and gave us the roadmap for implementation of
6 Universal Pre-K.

7 Q And you mentioned stakeholder input. What input did you
8 get from stakeholders during this process?

9 A So, prior to my joining the governor's office as early
10 childhood transition director, I was very involved in the
11 stakeholder process that was led by the Early Childhood
12 Leadership Commission. And part of what they started was a
13 series of monthly town halls that were open to all Coloradans:
14 providers, parents, advocates, anyone with an interest in the
15 work around the establishment of the new department and
16 Universal Preschool. And once I came into my role in December
17 of 2021, we continued those town hall meetings to continue to
18 solicit and engage stakeholders in our process.

19 Q And who were some of the participating stakeholders?

20 A We had a variety of stakeholders that we worked with from
21 the time I was hired. Some were state agency representatives.
22 Again, providers. Providers, including school district
23 providers, center-based providers, home-based providers,
24 faith-based providers, families. We encouraged participation
25 throughout this process.

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1 Q And what type of feedback did these stakeholders offer?

2 A We had certainly a variety of feedback as we were working.

3 And, again, this was a two-pronged effort, establishing the
4 department and also Universal Pre-K, but a tremendous amount of
5 feedback, especially from the provider community, about how
6 implementation of pre-K would affect their programs, some of the
7 unique circumstances of the various programs.

8 Q And what were some of those unique circumstances?

9 A Well, I will talk about school districts first. School
10 districts, we continued to meet with a group of school district
11 preschool administrators, and we had a number of different
12 groups that we met with in addition to our town hall efforts and
13 other efforts to solicit feedback.

14 But for our school district partners, there were
15 concerns around boundary issues. As we all know, there are
16 approximately 176 or 178 school districts in Colorado, and they
17 all have unique boundary lines. And they have different
18 requirements relative to open enrollment across boundary lines.
19 And so there were concerns with school districts about how
20 boundaries would be managed. Also, students with individualized
21 education programs, or IEPs.

22 Q And just so we're clear on the timeline, were these
23 conversations happening before the July -- you know, July 1,
24 2022, implementation of the department?

25 A Yes. They were. They were happening right along with the

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1 movement of House Bill 1295, which passed in April of 2022. So,
2 these conversations really began in very early 2022.

3 Q And when did the department actually become operational?

4 A July 1st, 2022.

5 Q And what were some of the initial challenges faced with
6 setting up the department?

7 A Logistically, we needed to find space for the department.
8 We needed to arrange to move employees that were currently
9 employed by other state agencies or departments over to the new
10 department. We needed to hire leadership staff for the new
11 department. So, it had been over 30 years since a new state
12 department had been opened, and so we didn't really have a
13 template to work with, and so it was really from the ground up,
14 putting that department together.

15 Q And prior to the creation of the department, did Colorado
16 have any type of preschool program?

17 A Yes. Colorado has operated for many, many years, decades,
18 I should say, prior to Universal Pre-K coming into play,
19 operated under the Colorado Preschool Program, which was a
20 state-funded program administered by school districts and the
21 Department of Education.

22 Q And going back to some of the conversations with
23 stakeholders when HB 1295 was in process, you mentioned school
24 districts. Did you -- what other concerns did other
25 stakeholders raise?

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1 A We had concerns raised by providers that had relationships
2 with families that had spanned a great deal of time, maybe
3 families already enrolled in a provider setting or siblings
4 enrolled in a provider setting. We had discussions with
5 providers that offered as a benefit to their employees space for
6 child care of the employees.

7 We also worked with providers that operate co-ops,
8 where all of the families partner with the provider to support
9 the preschool program by volunteering time, which is a
10 requirement of the co-op. And so these different providers all
11 had questions that would come up, as did faith-based providers,
12 around how the Universal Pre-K program would operate within
13 their settings.

14 Q And what were some of the questions faith-based providers
15 had?

16 A So, for our faith-based providers, the first questions to
17 come to me were around serving the church community, if you
18 will, the congregation of a particular church preschool, say.
19 And in addition to that question, questions around the provider
20 rate and how it related to the tuition.

21 Q So, turning back to the passage of House Bill 1304, did
22 that occur prior to your role as transition director?

23 A Yes, it did. It passed in the 2021 legislative session at
24 the end of the session, as I recall.

25 Q And did you have any involvement with the passage of that

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1 legislation?

2 A As an advocate, I did, yes.

3 Q And can you describe that involvement.

4 A In my role as state director with Council for a Strong
5 America, again, we are an advocacy organization primarily for
6 early childhood, but policies and investments for children and
7 youth generally. I worked very closely on the legislation that
8 placed Proposition EE on the ballot.

9 Subsequently, I worked with House Bill 1304 providing
10 testimony, sign-on letters from members of our organization, et
11 cetera. And then after House Bill 1304 passed, my position was
12 created, and I moved into that role at the end of that year.

13 Q And was -- and so you were in that role when you worked on
14 House Bill 1295?

15 A Yes.

16 Q And so what were some of the main features of House Bill
17 1295?

18 A I mentioned the Early Childhood Leadership Commission work
19 that was a result of House Bill 1304, which really tasked that
20 commission with looking at the new state department and at
21 Universal Pre-K to help develop the components for each. What
22 agency should move to the new state department, and what should
23 its governance look like? And for preschool, what are the
24 components of a Universal Pre-K program that should be in place
25 in accordance with Proposition EE?

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1 So, that stakeholder process resulted in two reports.
2 The first was issued in November of 2021, and that was the
3 report on the new state department. And the second was released
4 to the general assembly in January of 2022, and that was on
5 Universal Pre-K. The general assembly in developing and the
6 sponsors of House Bill 1295 used those reports as the foundation
7 for that legislation.

8 Q And so was mixed delivery a part of the UPK program from
9 the beginning?

10 A Yes, it was.

11 Q And was the nondiscrimination a feature of UPK from the
12 beginning?

13 A Yes. The nondiscrimination was certainly part of the
14 stakeholder process and work of the Early Childhood Leadership
15 Commission. Their report stated that this should be a program
16 that was equitable and grounded in equity. This was a
17 preschool-for-all program, and House Bill 1295 carried that
18 forward by putting the equity statement into that legislation.

19 Q And why was that considered important?

20 A The voters, in approving Proposition EE, again, Universal
21 Preschool Program for all Coloradans in the year before they
22 were eligible for kindergarten intended this program to be
23 available to all families, and equitably delivered to all
24 families. And that carried through the stakeholder process and
25 into 1295. It was important that all families had equal access,

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1 equitable access to preschool programs of their choosing, and
2 would not be discriminated against based on any of the factors
3 that are included in the legislation and now in statute.

4 Q Was there opposition to HB 1295?

5 A There was opposition to House Bill 1295. It certainly did
6 not pass the general assembly unanimously, but the opposition
7 largely had more to do with whether or not it was appropriate
8 for the State to enter into state-funded preschool of this
9 nature.

10 Q Was any of that opposition driven by faith-based schools?

11 A I did not experience in my work leading up to the passage
12 of 1295 -- and I worked very closely on the drafting, on the
13 passage. I testified on 1295 in support. I did not hear any
14 opposition relative to faith-based.

15 Q And did HB 1295 include the quality standards?

16 A House Bill 1295 outlined the quality standards that must be
17 developed by the new department, and put those in the language
18 of the bill, but left it to the department to adopt those
19 standards by rule. However, in House Bill 1295, there were
20 components of the quality standards that were spelled out that
21 must be included.

22 Q And so why include those components rather than just
23 stopping at licensing?

24 A It was important to the general assembly that this program
25 delivered a quality experience. It was intended to be a

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1 high-quality preschool program, which goes beyond licensure.
2 Licensure is certainly a requirement in 1295, and so all of the
3 providers that participate must be licensed. But the quality
4 standards go beyond that and talk about the length of the school
5 year or the number of hours a student must attend in order to be
6 considered eligible for funding to go to the provider,
7 curriculum issues, a variety of quality standards.

8 Q I'm going to ask you to turn to Exhibit 13, which will be
9 in the plaintiffs' binder. I believe plaintiffs' binder one,
10 and if I could ask Jen to pull that up? Which may be easier,
11 since we have a screen.

12 A I've got it. Yes. Thank you.

13 Q And do you recognize this document?

14 A Yes. This is the UPK, Universal Preschool Colorado program
15 service agreement. This is our provider agreement.

16 Q And did you have any involvement in the drafting of it?

17 A Yes, I did.

18 Q And what was your involvement?

19 A So, I worked very closely with the Universal Pre-K
20 director, Dawn Odean, once Dawn was on board and part of the
21 leadership team for the new department to draft the bones of
22 this agreement, basically. So, we started it with drafting. We
23 received some help from contracts and procurement team in the
24 Department of Human Services, which was managing contracts and
25 procurement for the new department at that time, with some

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1 templates to give us some idea of formatting and also language
2 that should be included. And we drafted this agreement, and
3 once we had what we thought was a solid draft, shared that more
4 broadly with others in the department and Dr. Roy and others, as
5 well as individuals outside of the department.

6 Q And in terms of timing, you mentioned you started working
7 on this. Then Ms. Odean was hired. When did Ms. Odean come on
8 board?

9 A August of 2022.

10 Q And when was Dr. Roy hired?

11 A Dr. Roy was hired in May of 2022. We actually ran a
12 special bill -- a special piece of legislation to allow us to
13 hire certain leadership positions ahead of the July 1 launch so
14 that Dr. Roy and others could be part of the launch of the new
15 department.

16 Q I'm going to ask you to turn to page two, and pull up page
17 two on the screen. And under the quality assurance header, I'm
18 going to direct your attention to the fourth white bullet. I
19 know there's a black bulleted paragraph and then several white
20 bullets underneath it.

21 A Yes.

22 Q And so what does bullet four say there?

23 A So, bullet four reads, requirement that each preschool
24 provider provide eligible children an equal opportunity to
25 enroll and receive preschool services regardless of race,

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1 ethnicity, religious affiliation, sexual orientation, gender
2 identity, lack of housing, income level, or disability, as such
3 characteristics and circumstances apply to the child or the
4 child's family.

5 Q And so more broadly, what are quality standards?

6 A So, again, the quality standards are outlined in House Bill
7 1295. And in that legislation, the department was directed to
8 by rule adopt quality standards that would ensure that the
9 preschools participating in UPK were adhering to the standards
10 that are outlined in this section, and therefore considered
11 quality preschools.

12 Q And why was paragraph four included in the quality
13 standards?

14 A Paragraph four, again, it goes to the equity work that came
15 out of the Early Childhood Leadership Commission and ensures
16 that every child would have an opportunity to attend a preschool
17 of their choosing.

18 Of course, given that we have the matching factor in
19 place, but could select and be given the same opportunity as any
20 other child to attend a preschool of their choosing.

21 Q And where did this particular language come from in the
22 agreement?

23 A The exact language, I can't tell you exactly where, but
24 through drafting of House Bill 1295, this language was
25 developed.

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1 Q So, does this language track the language in House Bill
2 1295?

3 A Oh, I'm sorry. You were asking about the language here.
4 My apologies. Yes. And I misunderstood that you were asking
5 about 1295. This language on the page I'm looking at now under
6 quality assurance is literally a cut and paste in its entirety
7 from 1295.

8 And the reason for that is that we knew once we got
9 deeply into this provider agreement drafting that we were not
10 going to be able to have quality standards adopted in time for
11 year one of UPK. And we had providers that were very hesitant
12 to sign a provider agreement, and understandably so, without
13 knowing what was going to be adopted in rule and placed upon
14 them as a potential burden or requirement as a participant in
15 the program.

16 So, we made the determination to take the language
17 directly from House Bill 1295 and place it into this provider
18 agreement, giving our providers clear understanding of the
19 direction we were headed in adopting quality standards for year
20 two.

21 Q And did these quality standards go to the health and safety
22 of the children?

23 A Yes. Our goal in the mixed delivery program was to recruit
24 and engage providers, again, of all types, school districts,
25 center-based, home-based, faith-based, that could provide a

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1 safe, nurturing, inclusive, nondiscriminatory environment for
2 children.

3 Q And did you draft -- I think this is a 39-page agreement.
4 Did you draft the entirety of the agreement?

5 A No.

6 Q And which part were you responsible for?

7 A So, we drafted -- and I'm not certain of exactly how many
8 pages this goes, but we drafted the agreement up to the
9 exhibits. There are two exhibits to this agreement, Exhibit A
10 and Exhibit B, that were put together by the contracts and
11 procurement offices for Department of Human Services and for the
12 state comptroller's office. They put those pieces together that
13 became part of this agreement.

14 Q Did you consider doing rule-making to create the quality
15 standards at the -- during the time you were drafting this
16 contract?

17 A We did. And we actually were really optimistic that we
18 would be able to get that done before preschool launched in
19 August of 2023. Our hope was to go to rule-making in the May or
20 June timeframe, giving providers time to see the quality
21 standards and to opt out of the agreement before school started
22 if there was something contrary to what they were hoping to see.

23 We realized as we got into this work that it was not
24 going to be possible to achieve a rule-making process before the
25 start of year one. And so that's why we put this language here

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1 in lieu of the adopted quality standards.

2 Q Now, when was this contract released to providers?

3 A It was released in November of 2022.

4 Q And how did providers sign up for UPK?

5 A So, they went through the BridgeCare portal. BridgeCare is
6 the software system that we selected for Universal Pre-K. And
7 that system allowed for providers to enter the portal and
8 register as a UPK provider there. Once they had done so, the
9 provider agreement was made available to them by their local
10 coordinating organization, and then they would review and
11 execute that agreement in the portal.

12 Q And what is a local coordinating organization?

13 A So, one of the things, again, that came out of the
14 stakeholder process led by the Early Childhood Leadership
15 Commission was a model that recognized that local organizations,
16 whether that be providers, advocates, other community-based
17 organizations, know their communities better than the State
18 does.

19 And rather than develop Universal Pre-K in a top-down
20 model, we should really do it in a bottom-up model. So, the
21 Early Childhood Leadership Commission's report suggested the
22 creation of local organizations that would be partners with the
23 Department of Early Childhood in implementing the UPK at the
24 local level.

25 That left us -- and that was incorporated into House

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1 Bill 1295, the description of a local coordinating organization,
2 or LCO as we call them. The description of an LCO, the
3 responsibilities of an LCO, the process for bringing an LCO on
4 board, that left the department with the responsibility of
5 determining regions of the state for the LCOs so that we could
6 determine how many local coordinating organizations we would
7 need throughout Colorado, and how to divide them geographically
8 across the state.

9 And we ended up with 35 LCO regions, I believe, and
10 went through an application process and selection process to
11 choose those organizations.

12 Q And so when did the department make the portal available
13 for providers to sign up?

14 A November of -- November of 2022, I believe.

15 Q And did the department conduct any outreach to find
16 providers?

17 A Yes. We worked really in multiple ways to encourage
18 providers to take interest in this program and participate if
19 they were qualified to do so. Our local coordinating
20 organizations were put into place in June timeframe of 2022, and
21 so they were up and running and became immediately involved in
22 the process, working with providers in their communities.

23 And, again, the premise of an LCO is they know their
24 communities. We don't know necessarily all of the providers
25 well, or where they are. Certainly we have a provider database,

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1 but we did conduct outreach in other ways. We also continued,
2 as I said, to host our town hall meetings monthly, which did
3 attract providers. We reached out to provider organizations
4 that were umbrella organizations, to also work with them to
5 bring providers to the table.

6 Q And can you tell me about what kind of feedback you got
7 from providers during this process?

8 A The feedback was really very positive. Providers were
9 excited about this opportunity and the opportunity it would
10 afford their families. Certainly providers have their questions
11 or concerns, some of which I have raised earlier, about how this
12 program would affect them specifically or how they operate their
13 program. But generally, the response was very good. And when
14 the provider portal opened, the response there really emphasized
15 that.

16 Q I know you were on -- here for this morning's testimony,
17 and I heard some mention of a faith-based working group. Do you
18 recall that?

19 A Yes.

20 Q Were you involved with the faith-based working group?

21 A Yes. I actually created that working group.

22 Q And how did that come about?

23 A I had been working with a particular faith-based
24 organization just to answer questions of this organization,
25 always be available. It was always our goal to be transparent

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1 and meet with any individuals that were interested in the
2 program and wanted to meet. And so I had been working with this
3 particular program. And through discussion, we thought it made
4 good sense and would be of interest to open it up to other
5 faiths.

6 Q And what -- so, who is the faith-based provider you were
7 working with at that point?

8 A Yes. So, it was the Efshar Project, which is an umbrella
9 organization for Jewish preschools.

10 Q And who participated in this faith-based working group?

11 A So, we did some outreach to try to let faith-based
12 preschool providers of various faiths know that we were
13 convening this group as an informal working group. And we ended
14 up with participation from not just the Efshar Project and
15 members of those preschools, but also St. Mary's participated.
16 Tracy Seul was one of our early and lasting members. We had
17 members of the Lutheran faith, Presbyterian. We had a
18 representative from the Colorado Council of Churches and the
19 Interfaith Task Force, and nondenominational Christian
20 representation.

21 Q And how often did this group meet?

22 A We began meeting weekly because this was such a, you know,
23 a lot of work that was condensed into a short period of time to
24 get Universal Pre-K launched. And so we met weekly. And then
25 as time went on we went to every other week, and then to

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1 monthly.

2 Q And so what topics did these providers raise at these
3 meetings?

4 A Yes. So, we talked about a variety of topics. We
5 talked -- the two that we probably spent the most time on once
6 we had been meeting for a short period of time were the equity
7 statement in House Bill 1295 and in the provider agreement. And
8 we spent time talking about the provider rate that had been
9 established.

10 Q And what concerns did providers have about the
11 nondiscrimination statement?

12 A The concerns that were raised went squarely to sexual
13 orientation and gender identity.

14 Q And who raised those concerns?

15 A So, they were raised by Tracy Seul, and we also had a
16 representative from a Lutheran network of preschools that
17 affirmed that that network was also in discussions with their
18 leadership about those provisions.

19 Q And how did CDEC respond to those concerns?

20 A We had already been working on a number of preferences that
21 we would be able to provide for providers of different types.
22 These preferences were meant to really identify and acknowledge
23 certain relationships, I guess I would say that existed between
24 the provider and the community the provider served or families
25 the provider served.

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1 And so in looking at some of these situations -- and I
2 will go to school districts as my first example. In looking at
3 the school district's concerns that had been raised around
4 boundaries, we determined that we could offer the school
5 district a preference that would allow them to decline a student
6 that was outside of their boundary or require that student to go
7 through the open enrollment process for that particular school
8 district.

9 And so the preference really was designed to protect, I
10 guess I would say the seats in a particular provider setting
11 from the unintended consequences of our computer algorithm which
12 managed matching.

13 Q So, was the preference targeted at the matching process?

14 A It was totally targeted at the matching process. It was
15 not in any way giving a provider any kind of exception to the
16 agreement or to anything in rule or statute, but rather to
17 address circumstances with the particular provider by going to
18 the matching process.

19 Q Now, did CDEC try to work with Ms. Seul and the Lutheran
20 providers who raised concerns about the sexual orientation?

21 A Yes. So, what we had been working on, and I shared with
22 that working group, was a preference for all faith-based
23 organizations, regardless of denomination, that would allow them
24 to -- to designate a number of seats for members of their
25 congregation. So, their church family, their church community,

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1 their parish, whatever that might be, such that they could hold
2 all or a portion of their seats. They did not have to dedicate
3 all of their seats, but they could, or they could dedicate a
4 portion of their seats for members of their church family --
5 church community.

6 Q I'm going to ask you to turn to Exhibit 24, which I believe
7 is in that plaintiffs' binder. And, Jen, if you could pull that
8 up on the screen. Do you recognize this?

9 A Yes. That is the UPK provider guide, which we created as a
10 tool for providers.

11 Q And I'm going to ask you to turn to page 37.

12 A Okay.

13 Q And so what does that header say next to 14?

14 A Indicate if you are one of the following exception criteria
15 for your program.

16 Q And so what are exception criteria?

17 A So, again, these are exceptions to the matching process.
18 And so these are preferences that, again, that we agreed to with
19 certain provider types, faith-based, for instance, the co-op,
20 the co-op requiring family participation as a part of its
21 preschool program. We had granted a preference for the co-op to
22 limit their participation for Universal Pre-K to members of the
23 co-op.

24 Q And why are they called exception criteria?

25 A The term "exception" I believe was part of the software

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1 system, or used in the BridgeCare system. BridgeCare is, again,
2 software as a solution product that has been used in multiple
3 states, as well as in other areas of Colorado for other
4 purposes. And so much of the language that is in that software
5 or in that portal was already developed in the BridgeCare
6 system.

7 Q So, BridgeCare wasn't a custom product?

8 A It's customizable. It is an off-the-shelf, or a software
9 product that is customizable.

10 Q And so how did these -- what this provider guide calls
11 exception criteria, and we've been calling preferences, how did
12 they work?

13 A So, the way a preference would work, any one of these. So,
14 faith-based provider, that may require families to be part of
15 their congregation. When the computer algorithm matches
16 families, and they will only -- it would only match families to
17 one of the family's choices. Families were given at the time up
18 to five choices of a preschool provider.

19 So, it didn't randomly match families to a provider
20 they weren't interested in, but when that algorithm would match
21 families to a preschool provider, if the faith-based provider
22 was a participating provider and received -- once the algorithm
23 ran, the providers receive a list of the families that have been
24 matched to them, the children that have been matched, the
25 provider then has an opportunity to review those matches and to

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1 exercise a decline option if the match does not fit the
2 preference that has been granted to the provider.

3 When the providers exercise that decline option, then
4 we would go back in and review all those decline options to make
5 sure that they were actually accurate for the provider that
6 exercised them.

7 Q So, can any provider utilize any of these preferences?

8 A Another provider could utilize and did on occasion the
9 congregation preference, for instance. But then our review
10 would catch that, and we would reverse that decline.

11 Q And you mentioned the congregation preference. Is that
12 bullet one on this document?

13 A It is.

14 Q And what does bullet one say, just for the record?

15 A It reads, I am a faith-based provider and may require
16 families to be part of my congregation.

17 Q And where did the idea for that congregation preference
18 come from?

19 A It stemmed from early conversations that we had, and
20 certainly my early conversations with Efshar, with bill
21 sponsors, other members of the community that had asked
22 questions about how it would work within a particular church
23 family if members of that church family all lost their seats
24 because of a computer algorithm.

25 Q And is the term DAA one you're familiar with?

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1 A Yes. That is the deferred acceptance algorithm. It's the
2 algorithm I'm referring to.

3 Q And now -- so, turning back to that bullet one,
4 congregation preference, what's your understanding of how that
5 was meant to work?

6 A Again, that gave faith-based providers an opportunity to
7 designate all or a portion of their licensed capacity, licensed
8 seats, to members of their church community, their faith
9 community, church, parish, congregation. So, that -- that are
10 really attached to that preschool.

11 Q And was it particular to any one faith?

12 A No. It was open to all faiths.

13 Q Now, you were here this morning. Do you recall discussion
14 about a letter to Governor Polis from faith-based groups?

15 A Yes, I do.

16 Q I'm going to ask Jen to pull up Exhibit 11. And if you
17 prefer paper, it's in plaintiffs' binder. Do you recognize this
18 document?

19 A Yes, I do.

20 Q Is that the letter to Governor Polis that was referenced
21 earlier?

22 A Yes, it is.

23 Q And it's the date on -- can you tell me what the date on it
24 is there below the Colorado Catholic conference logo?

25 A Yes. It's dated Friday, February 17th, 2023.

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1 Q And do you recall, did you read it around that time?

2 A Yes.

3 Q Do you know if the department responded to it?

4 A The department did respond to it.

5 Q And were you involved in drafting that response?

6 A Yes, I was.

7 Q I'm going to ask Jen to pull up Exhibit 12. And are you
8 familiar with this document?

9 A Yes, I am.

10 Q And what is it?

11 A This is the draft response dated February 28th, 2023,
12 signed by Executive Director Lisa Roy.

13 Q I'm going to direct your attention to the last two
14 paragraphs on page one. And it will take a little bit of
15 scrolling. So, were you involved in drafting these two
16 paragraphs?

17 A Yes.

18 Q So, what does the second paragraph from the bottom mean?

19 A That paragraph goes specifically to Executive Director
20 Roy's authority to grant an exception to this coalition or
21 really any other request that would come in to ask for an
22 exception from what is in statute.

23 Q And did Dr. -- does this letter state that Dr. Roy had the
24 authority to grant one?

25 A It actually is contrary to that. Dr. Roy does not have the

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1 authority to -- by rule or policy, to grant an exception to
2 statute.

3 Q And why did the department say that?

4 A Well, it's factual that Dr. Roy would not be able to change
5 law unilaterally. And also, as is stated here, Dr. Roy made it
6 clear that only the legislature has the authority to do so. And
7 so that was an appropriate response.

8 Q And looking at the last paragraph on page one, what does
9 that last paragraph mean?

10 A That paragraph really invites the providers to participate
11 in the Universal Pre-K program and to work with our faith-based
12 working group, and to participate there as well with other
13 members of the faith communities.

14 Q And why did the CDEC state that faith-based providers were
15 welcome to participate?

16 A Faith-based providers have always been envisioned to be
17 part of the mixed-delivery model. We had a mandate to deliver a
18 mixed-delivery model, and that includes faith-based providers.
19 That's an important component of family choice, and mixed
20 delivery is really grounded in family choice. And we wanted to
21 certainly give families every opportunity to seek a provider of
22 their choosing, and that includes faith-based providers.

23 MS. FISCHER: Your Honor, if I could have a moment
24 just to check in with my colleagues?

25 THE COURT: Yes.

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1 (Pause in the proceedings.)

2 Q. (By Ms. Fischer) Ms. Cooke, just one further question.

3 Do you recall testifying that Ms. Seul participated in the
4 faith-based working group?

5 A Yes.

6 Q Did she state that St. Mary wanted to or intended to
7 participate?

8 MR. REAVES: Objection, Your Honor. This is clearly
9 hearsay, and Ms. Seul was on the stand earlier. If they wanted
10 to ask her that question --

11 THE COURT: Overruled.

12 MR. REAVES: -- they could have asked her as well.

13 THE WITNESS: Yes. Ms. Seul expressed on more than
14 one occasion her desire to have St. Mary's participate in the
15 UPK program. At one point she asked me to provide her with
16 screenshots of the provider portal and what a faith-based
17 provider would see when they are registering in the portal
18 relative to the congregation preference. And she felt that that
19 would help the Archdiocese get comfortable with the program,
20 knowing that they could serve members of their congregation
21 first or exclusively.

22 And so I did provide her with screenshots of every step
23 that a faith-based provider would see as they were registering
24 their seats in the portal. And she was hopeful at that point in
25 time that that would satisfy the Archdiocese, since she would be

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1 able to participate.

2 Q. (By Ms. Fischer) And did St. Mary in the end participate?

3 A No.

4 MS. FISCHER: I don't have any more questions for
5 Ms. Cooke. I do have one point where I'm seeking the Court's
6 clarification that we would move to admit Exhibit 48, which is
7 Ms. Cooke's resumé into evidence in support of her
8 qualifications to render statements that might be deemed expert
9 opinions.

10 THE COURT: Well, I'm going to rule on these matters
11 later, but you can tender it, and I will consider it. If
12 there's any objection to it, then I will consider it later.

13 MS. FISCHER: Okay. Then we will tender it for
14 consideration later.

15 THE COURT: All right.

16 **CROSS EXAMINATION**

17 BY MR. REAVES

18 Q Good afternoon, Ms. Cooke.

19 A Good afternoon.

20 Q Are you familiar with the state statute that directed the
21 department to create the UPK program?

22 A Yes, I am.

23 Q And the UPK statute directed you to implement a mixed
24 delivery system; correct?

25 A Correct.

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1 Q When thinking about what providers to include in the UPK
2 program, what factors did you consider?

3 A We were looking for, again, a variety of provider types.
4 As I mentioned earlier, school district, center-based,
5 home-based providers, faith-based providers. But primarily, in
6 search of providers that could offer a safe, nurturing, and
7 nondiscriminatory space for Colorado's children.

8 Q And did the UPK statute require providers to be licensed?

9 A Yes.

10 Q And when you were talking about what makes a provider safe,
11 what types of things are included in that?

12 A I think that's a -- a variety of factors, going first to
13 licensure. Licensure ensures physical safety, building safety,
14 making sure buildings meet appropriate codes for the
15 jurisdiction, a number of other safety -- physical safety
16 factors that weigh into that. But also, when we're looking at
17 space for -- safe space for children, it's that space that
18 supports a child's well-being, their total well-being, again,
19 nurturing and inclusive space.

20 Q Okay. I'd like you to turn to Exhibit 13 in the
21 plaintiffs' volume one binder, please.

22 A Okay.

23 Q If you could go to page two of this document, please.

24 A Okay.

25 Q And are these the quality assurance provisions we were

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1 talking about earlier?

2 A Yes.

3 Q And if you look at the second bullet point down under the
4 quality assurance header, could you read that statement, please?

5 A Quality standards relating to the health and safety as a
6 condition of participating in UPK Colorado.

7 Q And you testified earlier that you wrote this portion of
8 the contract; is that correct?

9 A I testified that I incorporated this portion into the draft
10 agreement, but I did not write this. It came out of statute.

11 Q So, is it your understanding that that language is directly
12 in the UPK statute?

13 A It is. It comes from UPK statute. There may be some word
14 variations, but nothing that would change meaning.

15 Q And at the time you wrote this, what did you understand the
16 quality standards relating to health and safety to entail?

17 A Well, again, quality standards relating to health, what
18 will be likely developed into those standards, and I'm removed
19 from that process now. So, those standards are working their
20 way through rule-making, still, as I understand it. But
21 relating to health would include some health screenings, vision
22 screenings, for instance. But general well-being of a child
23 also factors into health.

24 Q And you required preschool providers to sign this agreement
25 to participate in the program; correct?

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1 A Correct.

2 Q And how did you expect providers to understand what you
3 meant by health and safety if that wasn't explained in this
4 provision?

5 A So, again, because we didn't have the quality standards
6 fleshed out, because they were not developed and ready for
7 rule-making, we incorporated language from statute to really
8 define and give providers a sense of what we would be looking at
9 and developing in concert with providers as we moved forward to
10 prepare the quality standards for rule.

11 Q And at the time you were putting these provisions together,
12 did you understand any of the other bulleted points on the list
13 there to be health and safety quality assurance requirements?

14 A Well, I think that many of these are really overlapping in
15 many ways. I'm not certain specifically what you're asking.

16 Q Well, my question is you're asking providers to agree to
17 abide by the quality standards relating to health and safety as
18 a condition of participation in UPK Colorado. I'm just trying
19 to understand which of the quality assurance provisions are the
20 ones that you thought at the time were health and safety
21 related.

22 A So, again, the quality standards are identified in the
23 legislation, the expectation for the quality standards. And so
24 we, as I said earlier, really pulled from statute to put these
25 into the provider agreement knowing that they had yet to be

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1 fully developed, and so this is -- this is really an outline or
2 barebones of what will be ultimately in the quality standards.
3 So, the work to further develop these standards included
4 provider feedback.

5 Q So, at the time you put this together, you weren't sure
6 which provisions were health and safety standards?

7 A I need perhaps for you to clarify that question for me,
8 because I'm not certain what you're referring to relative to
9 this list.

10 Q Yeah. Let me take a step back, I guess. When talking
11 about the health and safety of quality assurance provisions, do
12 you think the legislature had a particular understanding of what
13 those entailed when it passed the UPK bill?

14 A I can't speak to what the general assembly's thoughts were
15 in terms of whether or not they had particular expectations in
16 mind as these were built out. But general -- I mean, health and
17 safety is a critical component of the delivery of Universal
18 Pre-K, making sure that every child is in a safe and, again,
19 nurturing, supportive environment. And so what the department
20 put into each of these bullets to further define them, I can't
21 address here today.

22 Q I'd like to talk a bit more about the programmatic
23 preferences that you were discussing earlier. The statute
24 doesn't mention programmatic preferences, does it?

25 A No, it does not.

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1 Q And so these were all created by the department?

2 A Yes.

3 Q And one of the purposes of this was to allow providers and
4 families to bypass the mandatory matching requirement?

5 A It was to recognize unique circumstances within certain
6 provider types, certain provider settings, and to make sure that
7 families were protected from unintended consequences of the
8 matching algorithm such that if a provider offered employees of
9 that pre-K seats for their own children, that they would not be
10 bumped by a computer algorithm.

11 Q So, Ms. Cooke, when a family goes to the UPK website to
12 apply for preschool, will they see if a provider has been given
13 a preference?

14 A They will typically see that -- not necessarily that the
15 provider has a particular preference, but they will be asked
16 questions to -- depending on the preference to determine whether
17 or not they qualify for that preference.

18 Q That's really helpful. So, just to confirm, the UPK
19 application website itself will ask families whether they meet
20 certain qualifications necessary to enroll with certain
21 providers?

22 A In some cases. So, for instance, a family will be asked if
23 they're employed by the provider. A family will be asked if
24 they have a sibling with a provider. A family would be asked if
25 they are currently enrolled with a provider, but not necessarily

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1 be told that that provider has a particular preference, et
2 cetera. But they would ask -- they would see those questions.

3 Q I'd like to talk about the congregation exemption
4 specifically. When you and the department were coming up with
5 this exemption, was there a specific definition of
6 "congregation" that you had in mind at that time?

7 A There was not a formal definition of "congregation." We
8 took "congregation" to really represent that church community.
9 Again, church parish, a church community that would be likely to
10 request seats in that church's pre-K.

11 Q And was your testimony earlier that one of the reasons this
12 exemption was developed was in response to provider feedback and
13 questions?

14 MS. FISCHER: Objection. Mischaracterizes testimony,
15 to the extent Ms. Cooke did not testify as to exemption.

16 THE COURT: You can bring that out on redirect. Go
17 ahead.

18 Q. (By Mr. Reaves) Yeah. Just to repeat the question, was
19 your testimony earlier that when you were developing with the
20 department the congregation exemption, was that in response to
21 feedback and questions you received from providers?

22 A The preferences that we developed really were all generated
23 through feedback from various providers, whether it be a co-op
24 provider, providers concerned about continuity of care with
25 families that were a part of their program, et cetera. School

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1 district providers, faith-based providers.

2 Q And so for the congregation exemption, was it your
3 testimony that it was in part responsive to concerns raised by
4 faith-based providers about the equity statement?

5 A It was not at all directed to the equity statement. It was
6 solely to allow these providers to protect members of their
7 church community from losing seats based on the computer
8 algorithm. And so the exception only goes to the algorithm.

9 Q And you no longer work with the department; is that
10 correct?

11 A That's correct.

12 Q Have you kept up on all the developments in the program and
13 the various regulations that have been passed or may be passed
14 regarding the UPK program?

15 A I really have not. I have limited knowledge about where
16 the department is headed for year two.

17 Q So, you're not necessarily aware of whether there's a new
18 definition of "congregation" or what that might entail?

19 A I am not.

20 Q So, is it possible for a church that has a statement of
21 faith that providers must agree to to limit their enrollment to
22 families who have agreed to that statement of faith?

23 A If that statement of faith is contrary to the equity
24 statement in law, then that would be problematic.

25 Q So, just to give an example, could a Jewish preschool

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1 require families to sign a statement of faith that says we will
2 abstain from eating pork, and we will keep kosher? Would that
3 be okay?

4 A Again, as long as a -- let me back up and restate that.
5 Providers certainly have, as we've heard today, provider manuals
6 and various other requirements that they may hold a family to.
7 And that could be around hours of operation, late pickup, et
8 cetera, et cetera. And we have not in any way objected to
9 providers having families go through enrollment processes, you
10 know, that fit a provider's particular program.

11 Where we would object is if there was something in a
12 statement that a family needed to sign or acknowledge that is
13 contrary to anything that's in statute or in policy or rule for
14 the UPK program.

15 Q That is helpful clarification. So, just to kind of confirm
16 regarding my question, presumably then, it would be okay to
17 require, you know, a provider to have a statement of faith
18 regarding keeping kosher, since that's not a specifically-listed
19 requirement; is that correct?

20 A Yes. I mean, that is not -- that is a question that has
21 not been posed, but again, as long as there is not anything that
22 is contrary to statute or rule or policy around the UPK program,
23 a provider may have a number of requirements for children within
24 their care around, you know, physical activity. I'm just trying
25 to think of different things that -- that the department's rules

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1 do not address.

2 Q Yeah. That makes sense. I'd like to touch briefly on the
3 other preferences that you've allowed in the provider manual.
4 One of the programmatic preferences is for Head Start programs;
5 is that right?

6 A Correct.

7 Q And Head Start programs can have certain income
8 qualifications, income level qualifications for families; is
9 that right?

10 A Right.

11 Q Another programmatic preference is for providers that
12 support children with special needs; is that right?

13 A Yes.

14 Q And this preference was put in place because not every
15 preschool setting can accommodate children with various special
16 needs; is that right?

17 A Correct.

18 Q And UPK providers could decline a match based on this
19 preference; is that right?

20 A A UPK provider cannot decline a match based on that
21 particular preference, unless that UPK provider is a school
22 district. That particular preference applies only to school
23 districts.

24 Q Thank you. So, this preference would allow school
25 districts to place children with specific special needs in a

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1 particular classroom, in a particular location based on what
2 that child needs; is that right?

3 A Consistent with a child's IEP.

4 Q I'd like to talk briefly about the Archdiocese's request
5 for religious accommodation from the UPK provision. Just to
6 confirm, you were the primary drafter of the response to that
7 request; is that right?

8 A Correct.

9 Q Why was the religious accommodation denied?

10 A The religious accommodation, as stated in that letter, the
11 request was for relief from the department, and the response
12 from Executive Director Roy was clear that the department and
13 Dr. Roy did not have the authority to grant that relief, and
14 that only the legislature could do so.

15 Q So, you testified earlier that basically the law, the
16 statute wouldn't allow you to grant an exception or an
17 exemption; is that correct?

18 A That is correct. The department did not have the authority
19 to grant an exception.

20 Q When the department was considering the Archdiocese's
21 request, did it also consider whether the UPK statute's
22 requirements were inconsistent with the U.S. Constitution and
23 the requirements of the First amendment?

24 MS. FISCHER: Objection. Ms. Cooke is not a lawyer.
25 Calls for a legal conclusion.

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1 THE COURT: I'm sorry. I did not hear you.

2 MS. FISCHER: I said Ms. Cooke is not a lawyer, and it
3 calls for a legal conclusion.

4 MR. REAVES: Your Honor, I'm just asking what they
5 considered.

6 THE COURT: Yeah. I think it's not asking for her
7 opinion as to the legality of it. The objection is overruled.
8 You may answer the question.

9 MR. REAVES: I can repeat it, or if you remember the
10 question?

11 THE WITNESS: Please repeat it.

12 Q. (By Mr. Reaves) Yes. I was basically just asking if in
13 addition to considering whether you had authority under the UPK
14 statute to grant an exemption, whether the department and
15 whether you also considered the obligations and requirements
16 that the Constitution and the First amendment specifically
17 impose on the department.

18 A In drafting the response for Dr. Roy, I considered the --
19 her ability, the department's ability to grant an exception to a
20 UPK provider that is contrary to statute.

21 Q I'd like to have you briefly turn to Exhibit 34, which I
22 think should be in the second binder. Do you see this document,
23 Ms. Cooke?

24 A Yes.

25 Q Do you recognize this document?

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1 A Give me just a moment to look at it. Yes. This is a form
2 that the department created relative to preferences or request
3 for preferences.

4 Q And if you look at the second column on the first row, and
5 again on the last row, you see the name Michael appears there?

6 A Yes.

7 Q Is that referring to you?

8 A Yes.

9 Q Can you turn to the second page of the exhibit. Thank you.
10 And do you see at the top there, it says River Canyon School
11 listed?

12 A Yes.

13 Q And do you see where, under the exception requested, it
14 says, we are declining these families for school enrollment
15 policies that we have in place?

16 A Yes.

17 Q Right at the top there?

18 A Mm-hmm.

19 Q And that exception was approved; is that right?

20 A Yeah. It appears that it was.

21 Q Ms. Cooke, do you know what specific enrollment policies
22 this is referring to?

23 A I cannot recall what the specific policies were.

24 Q Do you recall if at the time this exemption was considered
25 you all knew what specifically that school was asking an

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1 exemption from?

2 A Well, I'm certain that in reviewing this request, more
3 information would have been received by the department relative
4 to what those policies were.

5 Q But you're not recalling that at this time?

6 A No, I'm not.

7 Q And you don't see that anywhere on the spreadsheet itself,
8 do you?

9 A No. The description of the policies?

10 Q Yes.

11 A No.

12 Q Okay. You can put that one down. You testified earlier
13 about both voter intent and what the general assembly intended
14 or meant when it passed the UPK statute. Do you recall that?

15 A Yes.

16 Q Are you yourself a member of the general assembly?

17 A I am not.

18 Q Have you talked to all the legislatures -- or legislators
19 who are members of the general assembly about their views on the
20 UPK program?

21 A I have not.

22 Q Was your testimony about what the general assembly intended
23 approved by the general assembly?

24 A Can you repeat that, or give me more context?

25 Q Yeah. I'm just trying to figure out how you know what the

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1 general assembly intended when they -- when each individual
2 legislator voted to pass the UPK statute. And so I was asking
3 did the general assembly approve your testimony today before you
4 came and provided it to the Court?

5 A No.

6 Q No. And similarly, did you ask voters why they approved
7 the UPK statute when they voted on Proposition EE?

8 A No.

9 Q In your role as transition director of the UPK program,
10 were you ever in direct contact with the governor regarding the
11 program itself?

12 A I had regular meetings with the governor. I met with the
13 governor on numerous occasions.

14 Q And specifically with regard to the faith-based coalition
15 letter and the request, were you ever in communication with
16 anyone in the governor's office about the request?

17 A I was in communication with the governor's policy adviser
18 on early childhood. She is the person that sent the letter over
19 to me and asked me to draft a response.

20 MR. REAVES: Just one moment, Your Honor. I'm going
21 to confer with counsel. Nothing further from us, Your Honor.
22 Thank you.

23 THE COURT: Thank you. Go ahead, please.

24

25

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REDIRECT EXAMINATION

BY MS. FISCHER

Q Ms. Cooke, were the preferences intended to provide an exemption or exception from any of the quality standards?

A Absolutely not.

Q And is any preference an exemption from a statutory provision?

A Absolutely not.

MR. REAVES: Objection, Your Honor, to the extent it calls for a legal conclusion.

THE COURT: Overruled.

Q. (By Ms. Fischer) And, Ms. Cooke, are you here today testifying for the general assembly?

A I am not.

Q And are you testifying as to the department implemented what you read of the statute?

MR. REAVES: Objection. Vague, Your Honor.

THE COURT: Overruled.

THE WITNESS: Can you repeat that, please? Thank you.

Q. (By Ms. Fischer) Are you here today testifying as to the department implemented the statute?

A Yes.

Q And just one clarification. You've testified you no longer work for the department?

A Correct.

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1 Q So, when you describe the website, is it the website as you
2 understood in year one?

3 A Yes.

4 Q And are you familiar with the website as it appears now?

5 A I am not.

6 MS. FISCHER: Okay. Thank you, Ms. Cooke.

7 THE WITNESS: Thank you.

8 THE COURT: Okay. That concludes the testimony of
9 this witness. Thank you very much. You may stand down. And
10 it's too late in the day to have another witness. We will
11 recess until 9:00 a.m.

12 MS. CARRENO: Your Honor, just one housekeeping
13 matter. We have a -- it was Exhibit Number 21. As you know,
14 the rule-making is --

15 THE COURT: Excuse me. Exhibit 21?

16 MS. CARRENO: It was Exhibit 21 that the parties had
17 stipulated to, but as you know, rule-making for the new
18 department is underway, and so the draft version that was
19 submitted and stipulated to, we have an updated version that was
20 just released this morning. And so I had conferred with
21 opposing counsel, and we are going to add an exhibit to the end
22 of the exhibits that were already submitted to the Court, and
23 just wanted to check as to procedurally what the best way for us
24 to do that would be.

25 THE COURT: Well, you don't know when you're going to

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1 get it; is that right? Today or tomorrow?

2 MS. CARRENO: We have it now, and we've exchanged it.
3 We just haven't filed it with the Court yet.

4 THE COURT: Well, give it to Ms. Abiakam if you have
5 it now. That's fine. And we will look at it as well as the
6 deposition overnight. All right. Thank you.

7 MR. DAVIS: To be clear, one note on that, just like
8 we kept our affirmative case open with the exception of the
9 Court weighing in on the deposition designations, this new
10 proposed regulation may also be relevant to our affirmative case
11 as well. We just got it two hours ago ourselves, so we're going
12 to digest it.

13 THE COURT: You want to renew whatever objection you
14 had in the morning after you've had a chance to look at it?

15 MR. DAVIS: Yes, Your Honor.

16 THE COURT: All right. We will do that, and you can
17 wait until tomorrow to give them an opportunity to look at it.

18 MS. CARRENO: Thank you.

19 THE COURT: Okay. We'll be in recess.

20 (Proceedings concluded at 4:52 p.m.)

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