No. 25-581

In the Supreme Court of the United States

ST. MARY CATHOLIC PARISH, LITTLETON, COLORADO, ET AL.,

Petitioners,

v.

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

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF *AMICUS CURIAE* CENTER FOR AMERICAN LIBERTY IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICUS CURIAE*[1]

The Center for American Liberty (CAL) is a 501(c)(3) non-profit law firm dedicated to protecting free speech and civil liberties. CAL has represented litigants across the country, including in this Court, in cases seeking to vindicate individuals' religious freedom, free speech, and parental rights, among other things, against oppressive state action. *See, e.g.*, *Regino v. Staley*, 133 F.4th 951 (9th Cir. 2025); *Antonucci v. Winter*, 767 F. Supp. 3d 122 (D. Vt. 2025), *appeal docketed* No. 25-514 (2d Cir. Mar. 4, 2025); *Doe v. Weiser*, No. 1:24-CV-2185-CNS-SBP, 2025 WL 295015 (D. Colo. Jan. 24, 2025), *appeal docketed* No. 25-1037 (10th Cir. Jan. 31, 2025). CAL has an interest in ensuring that courts apply the correct legal standard in cases involving these rights.

SUMMARY OF THE ARGUMENT

The promise of Colorado's universal preschool program (the "Program") was simple: to give every family the freedom to choose the preschool setting best suited for their child. But in practice, that promise rings hollow. The "quality standards provision" impermissibly burdens faith-based schools that are unwilling to

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[1] Pursuant to Supreme Court Rule 37.2, counsel for amicus timely notified all known parties of the intention to file a brief of amicus curiae in this case. In accordance with Supreme Court Rule 37, no party or party's counsel has authored this brief either in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person or party not related to amicus contributed money that was intended to fund preparing or submitting the brief.

surrender their religious identity concerning day-to-day operations with respect to bathrooms, dress codes, and pronouns. In doing so, Colorado has turned a program meant to expand educational choice into one that shrinks it. Families of faith are denied full participation in a system they help fund, while schools may obtain exemptions from the quality standards provision for any number of secular considerations, like income level, employment, and language status. That is not general applicability. It is the product of an impermissible effort to standardize children.

The consequences of that effort fall most directly on parents, whose constitutional right to direct the upbringing and education of their children has been repeatedly reaffirmed by this Court. This Court has long held that "the child is not the mere creature of the State" and that parents have the "right, coupled with the high duty," to direct their children's education. *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). When the government conditions public benefits on the abandonment of religious exercise, it not only violates the Free Exercise Clause but also undermines the parental autonomy that anchors a pluralistic society. As this Court recently reaffirmed in *Mahmoud v. Taylor*, the state may not force parents to choose between subjecting their children to instruction that burdens their religious beliefs and requiring them to bear financial hardship to avoid such a burden. 606 U.S. 522, 569 (2025). Colorado's policy creates precisely that unconstitutional choice.

This case is about more than two Catholic preschools in a Colorado town. It is about whether states may design a "mixed delivery system" that purports

to welcome religious schools to privilege secular preferences and punish religious convictions to the detriment of parents' rights to guide their children's upbringing and education. If left unreviewed, the decision below will supply a blueprint for states to marginalize religious education in programs marketed as universal, while eroding a century of precedent protecting family autonomy. This Court's intervention is needed to restore the proper general-applicability analysis, safeguard parental rights, and prevent the spread of a regulatory model that conditions public benefits on the abandonment of religious identity.

CAL urges this Court to grant certiorari and restore the constitutional balance—protecting both religious liberty and the parental right to choose diverse educational paths for their children.

ARGUMENT

I. MAXIMIZING PARENTAL CHOICE IN A MIXED-DELIVERY SYSTEM BENEFITS ALL FAMILIES

Parents—not the state—are the primary decisionmakers in their children's education and upbringing. This foundational principle underpins the Constitution's protection of family autonomy and demands that government regimes like the Program expand, rather than restrict, families' options. By rigidly enforcing the quality standards provision without providing exemptions for religious exercise, Colorado undermines this principle, artificially limiting the "mixed delivery system" it promised and harming families in the process. The Court should grant certiorari to restore the Program's intended breadth,

aligning it with longstanding constitutional commitments to parental choice and educational pluralism.

A. Parents Have the Fundamental Right to Direct the Upbringing and Education of Their Children

The Constitution has long recognized that parents hold the primary right to direct the upbringing and education of their children. In *Meyer v. Nebraska*, this Court held unconstitutional a prohibition on the teaching of foreign languages to children because it interfered with "the power of parents to control the education of their own." 262 U.S. 390, 401 (1923). Two years later in *Pierce*, this Court struck down an Oregon statute requiring parents to send their children to public school, explaining that "[t]he child is not the mere creature of the State" and that parents have both the "right [and] the high duty" to guide their children's education. 268 U.S. at 535.

This Court has reaffirmed these principles repeatedly. In *Wisconsin v. Yoder*, the Court held that Amish parents could not be forced to send their children to school beyond the eighth grade, noting that "the primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." 406 U.S. 205, 232 (1972). In *Troxel v. Granville*, a plurality of the Court recognized the parental right as "perhaps the oldest of the fundamental liberty interests recognized by this Court." 530 U.S. 57, 65 (2000) (plurality op.). And most recently, in *Mahmoud*, this Court noted that "the rights of parents to direct 'the religious upbringing' of their children . . . extends to the choices that

parents wish to make for their children outside the home" and "follow[s] those children into the public school classroom." 606 U.S. at 547 (citations omitted).

Together, these precedents establish that parental choice in education is not a matter of state grace or policy preference but a constitutional imperative. They reject the idea that the state may homogenize education by excluding disfavored viewpoints or institutions, as such "standardiz[ation]" of children threatens the diversity that fosters a free society. *Pierce*, 268 U.S. at 535 (warning against efforts to "standardize [the state's] children by forcing them to accept instruction from public teachers only"); *Yoder*, 406 U.S. at 231–32 (emphasizing that parental rights protect "traditional concepts of parental control over the religious upbringing and education of their minor children"); *see also Parker v. Hurley*, 514 F.3d 87, 101 (1st Cir. 2008) (holding that this Court's "schooling cases" "evince the principle that the state cannot prevent parents from choosing a specific educational program" (citation omitted)). By effectively excluding religious schools from the Program based on so-called quality standards that allow secular carve-outs—such as preferences for low-income families or employees' children, *see* Colo. Rev. Stat. § 26.5-4-205(1)(b)(II), (2)—Colorado elevates uniformity over diversity, substituting bureaucratic judgment for parental discretion and eroding the constitutional commitment to family autonomy.

Respondents argued below that Colorado's quality standards provision advances child welfare by ensuring "equal opportunity" and protecting against emotional harms. *See* Appellees' Br. at 45–49, *St. Mary*

Cath. Par. in Littleton v. Roy, 154 F.4th 752 (10th Cir. 2025). But this argument overlooks the fact that there is no evidence that granting *religious exemptions* from rules governing day-to-day operations cause such harms. Indeed, in a related case, Colorado was preliminarily enjoined from enforcing those rules against a private Christian academy for eight months, yet it was unable to muster a shred of evidence of resulting injury to anyone. *See* Appellee Br. at 52, *Darren Patterson Christian Academy v. Roy, et al.*, Case No. 25-1187 (10th Cir. May 8, 2025). The argument also ignores how parental rights precedents prioritize family choice over state-imposed norms. *See Troxel*, 530 U.S. at 72–73 (requiring some measure of deference to fit parents' decisions). Indeed, *Yoder* teaches that even compelling state interests like child education must yield to parents' religious exercise unless the state's efforts to further those interests are narrowly tailored, a standard that the state cannot satisfy where, as here, secular exceptions abound. 406 U.S. at 214–25. Ensuring broad participation in the Program affirms this commitment, allowing parents to select environments that nurture their children's holistic development, including spiritual growth.

B. The Constitution Favors Expanding, Not Narrowing, Educational Options

The Constitution not only protects parental rights but requires that government programs that broaden educational choices through inclusion of private schools must be open to religious options, thereby honoring schools' free exercise rights and empowering families. In *Zelman v. Simmons-Harris*, this Court upheld Ohio's school voucher program, which

included religious schools, because it provided "genuine choice among options public and private, secular and religious[,]" leaving decisions to parents rather than the state. 536 U.S. 639, 662 (2002). The Court emphasized that such neutral, parent-directed programs reinforce liberty and promote equality by expanding access for low-income students, all while avoiding Establishment Clause concerns because funds flow to religious schools only through families' independent choices. *Id.* at 652–53, 662–63; *see also id.* at 681 (Thomas, J., concurring) (noting that the "inclusion of religious schools" aids in "expanding the reach of the scholarship program" and "increasing educational performance and opportunities"). *Zelman* built on precedents like *Witters v. Washington Department of Services for the Blind*, 474 U.S. 481 (1986), and *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993), which permitted state aid to religious institutions when distributed through private choices, underscoring that inclusion of faith-based options enhances, rather than undermines, constitutional values. 536 U.S. at 650–52.

In *Espinoza v. Montana Department of Revenue*, this Court extended *Zelman*. In *Espinoza*, Montana created a scholarship program funded by tax credits but barred parents from using those funds at religious schools. 591 U.S. 464, 468–70 (2020). This Court struck down that prohibition, holding that once the state chooses to fund private education, "it cannot disqualify . . . private schools solely because they are religious." *Id.* at 487. As this Court explained, it has "long recognized the rights of parents to direct 'the religious upbringing' of their children . . . . by sending their children to religious schools." *Id.* at 486 (quoting

Yoder, 406 U.S. at 213–214). And the no-aid provision cut against that right by "penaliz[ing]" parents' constitutionally protected choice to send their children to religious schools "by cutting families off from otherwise available benefits if they choose a religious private school rather than a secular one." *Id*. Thus, this Court held, "[a] provision [that] puts families to a choice between sending their children to a religious school or receiving such benefits [from the state]" violates the Free Exercise Clause. *Id*. at 480.

More recently, in *Carson v. Makin*, this Court extended *Espinoza*. In *Carson*, Maine provided tuition assistance for students in rural areas without public high schools but barred funds from being used at "sectarian" schools that integrated faith into their curriculum. 596 U.S. 767, 773–74 (2022). This Court held that the prohibition was unconstitutional because it discriminated against schools based on the religious use of funds, not just their religious status. *Id*. at 784–87. *Carson* thus made clear that the Free Exercise Clause forbids states from requiring religious schools to secularize their policies or programs as a condition of participating in a neutral public benefit. *Id.* Yet that is exactly what Colorado demands: that religious schools strip away their faith commitments to receive Program funds. Under *Carson*, that kind of forced secularization is indistinguishable from outright exclusion.

Together, *Zelman*, *Espinoza*, and *Carson* confirm that programs that maximize options based on parental choice bolster parental liberty while avoiding governmental coercion and establishmentarianism. Moreover, these cases stand for the proposition that

when a state designs a program to expand parental choice in education to include private schools, it must allow religious options to stand on equal footing as other private options to avoid burdening not only free exercise rights but parental rights as well.

Here, the Program was enacted to provide "universal" access to preschool through a "mixed delivery system" that includes both public and private schools. Colo. Rev. Stat. § 26.5-4-205(1)(b). Yet by excluding religious schools that cannot comply with the quality standards provision in connection with their day-to-day operations without violating their faith, Colorado narrows participation in the Program, reducing parental choice and contradicting the principles set forth in *Zelman*, *Espinoza*, and *Carson*. Instead of accommodating religious schools, Colorado has chosen to weaponize its quality standards provision so that it may condition funding on the surrender of religious identity. That is irreconcilable with the Constitution's promise that parents remain free to direct their children's education, including through faith-based schools, on equal terms with their secular peers.

Colorado contends that the Program's requirements are neutral and generally applicable, thereby preserving the Program's integrity without favoring or disfavoring religion. *See* Appellees Br. at 18-38, *St. Mary*, 154 F.4th at 752. But this contention ignores how waivers and preferences create carve-outs that tolerate exemptions for secular reasons but not faith, devaluing religious exercise in operation. True general applicability expands choices, rather than constricting them, ensuring parents—not state officials—select what best suits their children. Allowing secular

carve-outs while simultaneously effectively closing the Program's doors for faith-based schools undermines the very equality the Program purports to offer, particularly for underserved families reliant on local faith-based schools.

C. Excluding Religious Schools Harms All Families, Not Just Religious Families

Effectively excluding religious preschools from the Program does not protect vulnerable families and children; instead, it harms them by shrinking the overall pool of options in a program meant to be inclusive. Families with LGBTQ+ children, for instance, already enjoy abundant affirming preschool choices across Colorado, from public district programs with explicit inclusivity policies to secular private schools and nonprofits dedicated to diversity.

The Denver Preschool Program—which partners with over 270 preschools—works with organizations like Denver Pride to highlight LGBTQ+-friendly environments and resources. *See Promoting Access and Opportunity Through DPP's Partnership with Denver Pride*, Denver Preschool Program, (May 15, 2025), available at https://perma.cc/WQN4-YZBX. Districts like Cherry Creek provide support for LGBTQ+ youth, ensuring access without reliance on religious schools. *LGBTQ+ Resources*, Cherry Creek Schools, https://perma.cc/3BD9-GJ2V. By contrast, only 40 of the over 2,000 preschools participating in the Program statewide are religious. 303a; 4.App.0805. This is an exceedingly small number of religious options for the 41,000 children in the program. *See* Schimke, Ann, *Inside Colorado's high-stakes preschool lawsuit*

pitting religious liberty against LGBTQ rights, Chalkbeat Colorado (Sept. 19, 2024), available at https://perma.cc/VN8W-VT7V.

Allowing faith-based schools to participate in the Program fully would not diminish choices for parents in any way; rather, it would expand the system for everyone. By contrast, excluding faith-based schools reduces the pool of available options. The resultant harm from this contraction of schools is particularly acute for rural families, where faith-based preschools are sometimes the only local option. 91a. In those areas, exclusion leaves parents—religious and non-religious alike—with no realistic alternatives.

The broader harm from this decrease in opportunities is evident in similar programs nationwide, where nondiscrimination mandates have discouraged religious participation, limiting options for low-income families and exacerbating disparities. In states like Michigan and New Jersey, requirements to secularize curricula or prohibit religious activities during funded hours force schools to choose between identity and funding, leading to pervasive non-participation where less than 31% and 29% of 4-year-olds in each state, respectively, are being served. Garver, Karin, et al., *State Preschool in a Mixed Delivery System Lessons From Five States*, Learning Policy Institute (Mar. 15, 2023) at 3–4, available at https://perma.cc/U284-GAGX. In contrast, states like West Virginia, which permit faith-based schools and instruction, the participation rates are significantly higher (56% in 2023). *Id*. In short, policies that force religious schools to abandon their faith can cut religious school involvement by significant margins,

which necessarily affects thousands of preschool-aged children and their families throughout the income spectrum. This not only limits parental choice but perpetuates inequality, as low-income and rural families lose affordable, community-rooted options.[2]

Colorado's focus on uniform protections for LGBT children overlooks this reality, assuming, without evidence, that inclusion of religious schools inherently harms LGBT children. That assumption defies logic. After all, even if religious schools with conservative values are included in the Program, families with LGBT children can continue to choose schools with "LGBT-friendly" policies if that is what they want.

This Court's decision in *Fulton v. City of Philadelphia* underscores why Colorado's exclusionary approach is not necessary to protect LGBTQ families. There, even though Catholic Social Services (CSS) could not certify same-sex foster parents for religious reasons, "no same-sex couple has ever sought certification from CSS" and there were multiple other agencies in the City that stood ready to serve all families. 593 U.S. 522, 529–30 (2021). On that record, the Court rejected Philadelphia's insistence that excluding CSS was necessary to safeguard access, emphasizing that CSS sought only "an accommodation that will allow it to continue serving the children of

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[2] A December 2020 national survey "found that 31% of households with a single parent or two working parents used center-based care, and over half (53%) of these families used one that was affiliated with a faith organization." Morris, Suzann, Smith, Linda, *Examining the Role of Faith-Based Child Care*, Bipartisan Policy Center (May 2021) at p. 5, available at http://bit.ly/46Sa7OT.

Philadelphia," not the ability to interfere with anyone else's eligibility. *Id.* at 541. The same logic applies here: Colorado already offers thousands of preschool options that will provide LGBTQ families environments they want, and allowing a small number of faith-based preschools to participate does not limit any family's ability to choose a different environment. What exclusion accomplishes is not protection but contraction, reducing the overall number of seats available to *all* families in a program that purports to be universal.

Respecting parental rights by expanding the choice of preschools enhances child welfare because families, not states, are best positioned to choose "safe and welcoming" environments for their children, and diverse options foster empathy and long-term benefits like higher graduation rates and reduced inequality. Colorado's own experience—with over 2,000 schools serving diverse needs—confirms that inclusion need not conflict with access. Excluding schools like St. Mary's and St. Bernadette's only contracts the system, contravening the Program's goals and constitutional principles.

* * *

In sum, the Constitution does not permit the state to shrink family options and impose homogeneity based on religion. By effectively driving out religious schools, Colorado narrows the range of choices available to parents and substitutes families' judgment with that of the state. Granting the petition for a writ of certiorari will ensure the Program fulfills its purpose: to expand opportunities for all families by

affirming parental autonomy and honoring educational diversity.

II. THE EQUAL-OPPORTUNITY REQUIREMENT LACKS GENERAL APPLICABILITY, UNDERMINING PARENTAL RIGHTS TO EDUCATIONAL CHOICE

The "principle underlying the general applicability requirement" is that the government may not create a regulatory regime that allows it to "impose burdens only on conduct motivated by religious belief." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543 (1993). Laws can violate this principle in two ways. First, "[a] law is not generally applicable if it invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton*, 593 U.S. at 533 (cleaned up). Second, "[a] law . . . lacks general applicability if it prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Id.* at 534.

Thus, the general applicability requirement forbids a regime that allows the government to be flexible with respect to exemptions based on secular reasons while categorically denying religious accommodations. But that is how the Program works. By statute, Colorado officials may issue temporary, case-by-case waivers "if necessary" to preserve the program's mixed-delivery system. *See* Colo. Rev. Stat. § 26.5-4-205(1)(b)(II). That is exactly the kind of individualized exemption authority this Court has condemned: once the government may excuse compliance for secular

reasons, the law is not generally applicable and strict scrutiny applies. *See, e.g.*, *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam) (holding that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny . . . whenever they treat *any* comparable secular activity more favorably than religious exercise") (emphasis in the original).

This concern is not theoretical. More than 1,000 preschools in Colorado received such exceptions in 2023–24, confirming that the Program operates as little more than a system of exceptions in practice. 2.App.0460. Colorado's consistent refrain that the equal-opportunity requirements are not subject to waiver, Appellees' Br. at 25–30, *St. Mary*, 154 F.4th at 752, misses the point of *Tandon*: once "the government permits other [secular] activities to proceed with precautions, it must show that the religious exercise at issue is more dangerous than those activities even when the same precautions are applied." 593 U.S. at 63. If it cannot make that showing, the "precautions that suffice for other activities suffice for religious exercise too." *Id*. Thus, what matters is the discretion to excuse compliance on a case-by-case basis. The Program contains that discretion and Colorado exercises it to the exclusion of conduct motivated by religion.

The quality standards provision aside, the Program's overall scheme also embeds categorical preferences that function as carve-outs whenever the state deems a secular objective worthy: reserving seats for low-income families (including Head Start integration), employees' children, multilingual learners, and neighborhood, employer ties or community ties.

4.App.0856, App.8a, 9a, 35a-37a, 347a; *see also* Colo. Rev. Stat. § 26.5-4-205(1)(b)(II), (2). Each allowance authorizes schools to differentiate among admissions. Yet when parents seek preschools whose policies align with their faith, Colorado draws a bright line. That is *Tandon* reincarnate. This secular-favoring asymmetry results in underinclusiveness in service of the state's asserted interest and overreach against the very families the Constitution protects. *See, e.g.*, *Lukumi*, 508 U.S. at 543 (holding that underinclusiveness is fatal when a law "fail[s] to prohibit nonreligious conduct that endangers [the state's] interests in a similar or greater degree than [the religious conduct] does").

Colorado has tried to dodge that conclusion by carving the program into components, insisting that access-oriented preferences live on one side of the statute while nondiscrimination rules live on the other. Appellees' Br. at 12, *St. Mary*, 154 F.4th at 752. But whether exceptions appear in a different subsection of a statute is not dispositive.

Bates v. Pakseresht is instructive. There, the Ninth Circuit struck down an Oregon policy under which individuals could not be certified to adopt foster children unless they agreed to "not discriminate" against transgender identifying foster children by affirming the children's gender identity and facilitating their "gender-affirming" medical treatment. 146 F.4th 772, 777 (9th Cir. 2025). The Ninth Circuit concluded that the policy was not generally applicable because, just as in the Program here, there was no "formal set of criteria" by which Oregon would assess what practices did and did not comport with its antidiscrimination

provision. *Id.* at 797. Just as Colorado does, Oregon argued that other provisions in the statute did not operate as exemptions and were not relevant to the antidiscrimination statute's general applicability analysis. *See Appellees' Br.* at 18–21, *Bates*, 146 F.4th at 772. The Ninth Circuit disagreed, concluding that these sorts of "irrelevant non-exemptions" serve to "incorporate[ ] ad hoc decision making based on non-objective criteria." *Bates*, 146 F.4th at 797. "This creates the distinct possibility of uneven application of the policies reflected in [the statute], posing an undue risk of case-by-case discrimination on the basis of religion." *Id.* Applying that reasoning here, because the exemptions both within and surrounding the quality standards provision give context to "[Colorado's] conception" of what constitutes discrimination, they grant "ample discretion" to Colorado, thereby rendering the quality standards provision not generally applicable. *Id.*

If Colorado can tolerate comparable burdens on its stated interest for secular reasons anywhere in the Program, it must extend the same regard to religious exercise. Dressing up secular carve-outs as "preferences" or "implementation flexibility" does not change what they are: exemptions that destroy general applicability. Contrary to Colorado's framing of its statute as merely recognizing certain "preferences," the practical effect of the statutory provisions is unmistakable: secular-based priorities are honored while faith-based imperatives are devalued.

What is more, the Program's lack of general applicability hits parents where their rights are strongest. Under *Meyer*, *Pierce*, *Yoder*, *Troxel*, and

Mahmoud, parents—not the state—direct their children's upbringing and education. *See* Section I.A, *supra* at 4–6. Colorado's approach narrows the mixed-delivery marketplace by permitting myriad secular exceptions while denying comparable religious accommodations, skewing the market toward less suitable secular alternatives. This is impermissible: Colorado is effectively conditioning public benefits on the abandonment of religion, which is detrimental not only to Petitioners but also to all Colorado parents.

In short, the Program (1) vests officials with the ability to grant discretionary waivers, (2) tolerates secular carve-outs, and (3) tries to avoid scrutiny by compartmentalizing the scheme into different, unrelated components. Under this Court's precedent, that is not generally applicable. And by shrinking faith-based options in a program designed to expand parental choice, Colorado burdens the very constitutional liberty it is bound to respect.

III. THE DECISION BELOW THREATENS THE CONSTITUTIONAL ARCHITECTURE PROTECTING PARENTAL AUTHORITY NATIONWIDE

The decision below does more than misapply free-exercise doctrine. It also destabilizes the constitutional framework that safeguards the right of parents to direct the upbringing and education of their children. As discussed, this Court has continuously recognized over the past 100 years that parents, not the State, possess the authority and duty to guide their children's moral and religious formation. *See* Section I.A, *supra* at 4–6. That structural limitation on state power does not evaporate simply because the

government channels education through a public-benefits program.

Yet that is precisely what the Tenth Circuit's decision permits. By upholding a regulatory scheme that conditions participation in Colorado's "universal" preschool program on families' willingness to accept the State's contested views on sex and gender, the Tenth Circuit sanctioned state interference at the heart of the parent-child relationship. That constitutional offense will have an impact that extends well beyond Colorado. Universal preschool programs—many built on mixed-delivery systems that rely heavily on private and faith-based providers—are rapidly expanding nationwide. *See* Heubeck, Elizabeth, *As Pre-K Expands, Here's What Districts Need to Know*, Education Week (Sept. 29, 2025), https://perma.cc/3BNH-F35Y. States now look to each other when designing the regulatory frameworks that govern early education.

The Tenth Circuit's approach therefore provides a ready-made template for States to engineer "universal" systems that systematically disfavor religious formation. This Court's precedents reject that model. The state may not compel families to abandon the religious upbringing of their children merely because it prefers a different vision of education. *Yoder*, 406 U.S. at 214–15. And when the government funds private education, it must do so without penalizing parents who select religious instruction "because of their religious exercise." *Carson*, 596 U.S. at 781. Under the rule adopted below, however, States are emboldened to embed their preferred ideology in anti-discrimination mandates and then wield those mandates to define religious formation as uniquely disqualifying—a

result irreconcilable with the constitutional demand for educational pluralism.

The constitutional stakes are especially high because, as a practical matter, preschool is not optional for many families. For parents who rely on state-funded early education to allow them to work, universal preschool programs are not simply a benefit but an essential tool for daily life, particularly in rural and lower-income communities. When states are permitted to condition access to that benefit on parents' willingness to expose their young children to teachings contrary to their faith, the burden is neither hypothetical nor incidental. As this Court emphasized in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, "[t]o condition the availability of benefits . . . upon [a recipient's] willingness to . . . surrender[ ] his religiously impelled [status] effectively penalizes the free exercise of his constitutional liberties." 582 U.S. 449, 462 (2017). Colorado's scheme nullifies that autonomy by forcing parents like the Sheleys to choose between participating in a universally available program and adhering to the convictions that guide their children's religious formation. *See Mahmoud*, 606 U.S. at 547 (parental rights extend to choices made "outside the home" and "follow those children into the public school classroom"). A program structure that allows States to impose this Hobson's choice at the preschool level would leave parental rights hollow in practice.

The Tenth Circuit's rule also deepens a jurisprudential divide that is intolerable for rights of this importance. Several circuits have held, consistent with this Court's precedent, that when a State creates secular exemptions or has the discretion to grant

exemptions for secular conduct that undermines its asserted interests in ways similar to religious conduct, the refusal to extend similar accommodations to religious conduct triggers strict scrutiny. *See*, *e.g.*, *Bates*, 146 F.4th at 793–94; *Fraternal Ord. of Police v. Newark*, 170 F.3d 359, 364–66 (3d Cir. 1999). Circuits have also recognized that States may not deny religious schools' access to public programs because their religious practices are inconsistent with state-preferred norms. *See, e.g., Mid Vermont Christian Sch. v. Saunders*, 151 F.4th 86, 94 (2d Cir. 2025) (enjoining state actors from punishing private Catholic school for forfeiting a girls' playoff basketball game to avoid playing a team with a transgender-identifying athlete). Here, by contrast, the Tenth Circuit endorsed a regime that permits carve-outs for secular activity while treating religious exercise as categorically beyond accommodation. *St. Mary*, 154 F.4th at 773–774. That divergence means that the constitutional protection afforded to parents who select religious education for their young children now hinges on the happenstance of geography—an outcome squarely at odds with the uniformity this Court has long insisted upon in matters involving fundamental rights.

In addition, the decision below invites precisely the form of ideological gatekeeping this Court has repeatedly warned against. "Universal" cannot mean "universal except for families of faith." When a State demands that schools conform to contested views on sexuality, identity, and human nature as the price of participating in a public benefit, it is not enforcing neutrality but imposing orthodoxy. This Court's precedents stand for the principle that the State may not use its regulatory power or its financial leverage to

"standardize its children" by compelling families and schools to embrace the government's preferred ideology. *Pierce*, 268 U.S. at 535. Allowing Colorado's model to stand would invert that rule, transforming a universally available program into a mechanism for pushing families toward state-approved views at the earliest stages of childhood. Certiorari is therefore essential to restore the constitutional balance this Court has long maintained and to ensure that parental authority remains a meaningful constraint on state power, not an exception the State may rewrite at will.

This case is an ideal vehicle to avoid the widespread effects the Program will have on parental rights and State-conditioned access to public benefits. The record is fully developed, the conflicts are clear, and the legal issues cleanly presented. The Program (1) offers multiple secular exemptions and discretionary waivers, (2) denies comparable accommodations for religious exercise, and (3) conditions families' access to a universal public benefit on schools' willingness to accept contested ideological positions. These features of the Program present the ideal opportunity to allow the Court to clarify the proper application of the general-applicability requirement and to ensure that States may not structure their educational programs to sideline religious schools or penalize parents who want to choose them.

Uniformity on these fundamental constitutional issues cannot wait. The petition should be granted.

CONCLUSION

For the foregoing reasons, the Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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