NO. 25-581

IN THE
Supreme Court of the United States

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

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,
Respondents.

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

BRIEF OF DARREN PATTERSON CHRISTIAN ACADEMY AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Darren Patterson Christian Academy is an educational institution that, under an injunction's protection, participates in Colorado's universal preschool program. The Academy's mission is simple, yet profound: to aid parents in the religious upbringing of their children by providing a distinctly Christian educational environment that emphasizes knowing Christ, imitating His character, and integrating the Bible into all aspects of life. To effectively instill the faith it exists to teach, the Academy conducts all its operations in accordance with biblical principles, including on matters of sex and gender.

The Academy accepts students and families of all faiths and backgrounds—including those who identify as LGBTQ. The Academy thus complies with the State's mandate to "provide eligible children an equal opportunity to enroll and receive preschool services regardless of ... religious affiliation, sexual orientation, [or] gender identity." Colo. Rev. Stat. § 26.5-4-205(2)(b); *St. Mary Cath. Par. in Littleton* v. *Roy*, 154 F.4th 752, 775 (10th Cir. 2025) ("[W]hen a school takes money from the state that is meant to ensure universal education, then its doors must be open to all."). At the same time, like Petitioners' schools, the Academy's policies preserve its ability to teach and operate in a manner that coherently instills its faith by requiring that all employees and students adhere to its religious understandings of sex and gender.

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[1] No party's counsel authored this brief in whole or in part, and no person other than amicus and its counsel made any monetary contribution to fund the preparation or submission of this brief. Counsel were timely notified of this brief. S. Ct. R. 37.2.

That's a problem for Colorado, which interprets its Equal Opportunity Mandate to exclude the Academy—and parents who wish to enlist the Academy in the religious upbringing of their children—from the State's universal preschool program. The State does not abide the Academy's religious beliefs, including policies based on those beliefs involving pronouns, a dress code, and sensitive places, like bathrooms. *Darren Patterson Christian Acad.* v. *Roy*, 699 F. Supp. 3d 1163, 1172 (D. Colo. 2023).

The Mandate's conditions burden both parents' right to direct the religious upbringing of their children and the Academy's ability to teach its faith. To receive a generally available educational benefit, the Mandate requires the Academy to alter internal policies in a manner that would thwart the Academy's ability to teach its faith and direct the religious upbringing of the children in its care.

Excluding the Academy because it cannot accept these burdens violates the Free Exercise Clause. A federal district court agreed and, applying strict scrutiny, permanently enjoined the *St. Mary* Respondents from excluding the Academy from Colorado's universal preschool program. *Darren Patterson Christian Acad.* v. *Roy*, 765 F. Supp. 3d 1194 (D. Colo. 2025). But the Tenth Circuit's *St. Mary* decision imperils that protection.[2] The Court should grant the petition and reverse.

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[2] Colorado's appeal from the district court's permanent injunction is pending in the Tenth Circuit. *Darren Patterson Christian Academy* v. *Roy*, No. 25-1187. Although the Academy's free-exercise claims should prevail even under the *St. Mary* decision, Br. of Appellee at 51–52, No. 25-1187 (10th Cir. Nov. 10, 2025), Dkt. No. 56, Colorado will argue otherwise.

SUMMARY OF THE ARGUMENT

Religious institutions can "prov[e] a free exercise violation in various ways." *Kennedy* v. *Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022). As Petitioners outline, strict scrutiny applies to Colorado's regime because the Mandate is neither neutral nor generally applicable under *Employment Division* v. *Smith*, 494 U.S. 872 (1990), and conflicts with *Carson* v. *Makin*, 596 U.S. 767 (2022). Pet.8–10, 14–30. The Tenth Circuit's contrary conclusion—and the circuit splits that conclusion exacerbated—alone warrant this Court's review.

But strict scrutiny applies to Colorado's regime for a third, independent reason. As this Court recognized just last term, *Smith* does not apply where "the special character of the burden" on free-exercise rights "requires" courts to "proceed differently." *Mahmoud* v. *Taylor*, 606 U.S. 522, 564–65 (2025). And the character of the burdens imposed by Colorado's law requires just that.

The Mandate imposes a burden of the same character as *Mahmoud*. It conditions access to a generally available education benefit on a school's willingness to accept a burden on its ability to assist parents in directing the religious upbringing of their children on matters of sex and gender. The Mandate also imposes a burden of the same character as this Court's religious-autonomy cases. It interferes with a religious school's internal policies and decisions regarding the institution's faith, doctrine, mission, and manner of teaching its faith. The special character of these burdens requires strict scrutiny regardless of whether Colorado's regime is neutral and generally applicable.

Failure to recognize the special character of the burdens imposed by Colorado's Mandate renders this Court's recent free-exercise precedents meaningless. Three times in the last decade, this Court held that strict scrutiny applies to the withholding of generally available educational benefits based on a religious school's refusal to relinquish its religious character or conduct. But states are thwarting this Court's precedents by using general language to impose the very same burdens on religious exercise. And the danger extends beyond educational institutions. Nationwide, religious institutions of all stripes are forced to choose between participating in an otherwise available benefit program or remaining a religious institution. The character of the Equal Opportunity Mandate's burdens on free-exercise rights alone warrants review and requires strict scrutiny.

ARGUMENT

I. Strict scrutiny applies to Colorado's law because of the special character of the burdens on free-exercise rights.

The First Amendment broadly protects the free exercise of religion. But *Smith* "ordinarily" exempts "neutral" and "generally applicable" government action from meaningful First Amendment scrutiny. *Fulton* v. *City of Phila.*, 593 U.S. 522, 533 (2021). Though its rule sits uncomfortably with the Constitution's text and structure, *Smith* continues to govern many free-exercise claims. *Id.* at 543 (Barrett, J., concurring).

But *Smith*'s domain has limits. As this Court recognized just last term, *Smith* does not apply where "the special character of the burden" on free-exercise rights "requires" courts to "proceed differently." *Mahmoud*, 606 U.S. at 564–65; accord, *e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC*, 565 U.S. 171, 189–90 (2012); *Miller* v. *McDonald*, No. 25-133, 2025 WL 3506969 (U.S. Dec. 8, 2025).

This is such a case. Colorado's law imposes burdens of a special character on free-exercise rights. The Mandate conditions access to a generally available education benefit on religious schools' and parents' willingness to accept a burden on their ability to direct a child's religious upbringing. And the Mandate burdens religious schools' internal policies and decisions regarding their faith, mission, and manner of teaching their faith. The "special character" of these burdens "requires" courts to set *Smith* aside and "proceed differently." *Mahmoud*, 606 U.S. at 564–65. Strict scrutiny applies.

A. *Smith* does not apply where the character of the burden requires a different approach.

This Court's precedents identify two burdens on religious exercise whose "special character" trigger the highest constitutional scrutiny "regardless of whether the law is neutral or generally applicable." *Mahmoud*, 606 U.S. at 565. *First*, laws that condition a generally available education benefit on a parent's willingness to accept a burden on their ability to direct their child's religious upbringing. *Second*, laws that interfere with a religious organization's internal policies and decisions regarding its faith, doctrine, mission, and manner of teaching its faith.

1. *Smith* does not apply where the burden is of the same character as that in *Mahmoud*.

In *Mahmoud*, this Court addressed a challenge to a Montgomery County policy that subjected public school students to an LGBTQ+-inclusive curriculum inculcating the County's views on the topic. 606 U.S. at 529–39. To accept the benefit of a public education, the County required parents to subject their children to instruction on sex and gender that undermined the religious beliefs and practices that parents wished to instill. *Id.* at 540–43.

The parties disputed whether the County's policy was neutral and generally applicable under *Smith*. But the Court did not resolve this dispute. Instead, "the character of the burden" on the parents' rights required the Court to "proceed differently." *Id.* at 564.

The County's policy imposed a burden of a "special character" because the policy "substantially interfered with the religious development of the parents' children." *Id.* at 565 (citation modified). Specifically, the policy posed "a very real threat of undermining the religious beliefs and practices" on sex and gender "that the parents wish[ed] to instill in their children." *Ibid.* (citation modified). The County subjected young, impressionable students to educational content—from school officials that children would view as authoritative—that would undermine the parents' ability to instill their religious beliefs on sex and gender. *Id.* at 554–55. That meant that the policy "impose[d] a burden of the same character as that in [*Wisconsin* v.] *Yoder*," making strict scrutiny "appropriate regardless of whether the law is neutral or generally applicable." *Id.* at 565.

Importantly, *Mahmoud* clarified that a law's burden need not be identical to a prior precedent sitting outside *Smith*'s domain. *Mahmoud*, 606 U.S. at 557–58 (rejecting the Fourth Circuit's limitation of *Yoder* to its precise facts). Rather, the burden need only be of the "same *character*." *Id.* at 564 (emphasis added). That conclusion was essential to the Court's holding because the burdens in *Yoder* and *Mahmoud* differed in certain respects.

In *Wisconsin* v. *Yoder*, Amish parents faced a stark choice: comply with state law or "abandon" their right to direct the religious upbringing of their children. 406 U.S. 205, 218 (1972). The parents' sincere religious belief precluded their children from attending *any* formal education past eighth grade—public or private, religious or secular. *Id.* at 207, 210. But state law compelled formal education until age 16. *Id*. at 207. So the law "affirmatively compel[led]" the parents, "under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs." *Id.* at 218. No third option avoided that Hobson's choice.

The burden in *Mahmoud* was arguably less severe. State law allowed parents to simultaneously comply with state law and direct their children's religious upbringing through private or homeschool education. 606 U.S. at 561. But the Court still held the burden on Montgomery County parents was "of the same character as that imposed in *Yoder*." *Id.* at 564; *id*. at 561 ("[T]his option is no answer to the parents' First Amendment objections.") (comparing the situation to *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 462 (2017)). That's because the County required parents to accept a burden on their right to direct their children's

religious upbringing to avoid public sanction—this time, the loss of a generally available educational benefit. *Id.* at 561–62 (citing *Trinity Lutheran*, 582 U.S. at 462).

Mahmoud thus held that *Smith* does not apply when a state "condition[s]" the "availability" of a generally available educational benefit "on parents' willingness to accept a burden" on their right to direct their children's religious upbringing. *Id.* at 561, 564–65. Instead, the "special character of the burden" in such cases "requires" courts "to proceed differently" and apply strict scrutiny "regardless of whether the law is neutral or generally applicable." *Id.* at 564–65.

2. *Smith* does not apply where the burden is of the same character as this Court's religious-autonomy precedents.

As with *Mahmoud*'s character-of-the-burden analysis, this Court has elsewhere recognized that *Smith*'s neutral and general applicability test does not apply where the burden on religious exercise is of a special character. *E.g.*, *Trinity Lutheran*, 582 U.S. at 461 n.2; *Fulton*, 593 U.S. at 545–555, 600–01 & n.77 (Alito, J., concurring in the judgment); *Masterpiece Cakeshop* v. *Colorado C.R. Comm'n*, 584 U.S. 617, 632 (2018) (it "would be well understood in our constitutional order" that, regardless of whether a law was neutral and generally applicable, "a member of the clergy who objects to gay marriage on ... religious grounds could not be compelled to perform the ceremony without denial of his or her right to the free exercise of religion.").

Consider this Court's religious-autonomy precedents. The Court has long held that the First Amendment prohibits governmental "control," "manipulation," and "interference" with a religious institution's internal operations on matters involving faith, doctrine, religious instruction, and governance. *Kedroff* v. *St. Nicholas Cathedral of Russian Orthodox Church*, 344 U.S. 94, 116 (1952). Applying those principles in *Hosanna-Tabor*, the Court held that the First Amendment required an exemption to neutral and generally applicable employment discrimination laws. 565 U.S. at 182–90. The government maintained that *Smith* foreclosed any exemption. *Id.* at 189. But the Court held that *Smith* did not apply. *Id.* at 190.

Though the statute at issue was "a valid and neutral law of generally applicability," the burden imposed by the law justified a departure from *Smith*. *Ibid*. As the Court explained, the provision interfered with "internal ... decision[s]" that affected the religious institution's "faith," "mission," and ability to operate in conformity with and teach its faith's tenets. *Ibid*.; accord*, e.g.*, *Our Lady of Guadalupe Sch.* v. *Morrisey-Berru*, 591 U.S. 732, 746 (2020) (religious institutions have "autonomy with respect to internal management decisions that are essential to the institution's central [religious] mission," regardless of whether the law is neutral and generally applicable). Because the law burdened the institution's ability to "teach [its] faith" and "carry out [its] mission," *Smith* did not apply. *Hosanna-Tabor*, 565 U.S. at 196.

That makes sense. *Smith* concerned an across-the-board prohibition of illegal drug use and held that "the right of free exercise does not relieve an *individual* of the obligation to comply" with a valid, neutral criminal law of general applicability. 494 U.S. at 879 (emphasis added). But the First Amendment "gives 'special solicitude to the rights of *religious organizations*' to operate according to their faith without government interference." *Seattle's Union Gospel Mission* v. *Woods*, 142 S. Ct. 1094, 1094 (2022) (Alito, J., statement respecting the denial of certiorari) (emphasis added); accord *Catholic Charities Bureau, Inc.* v. *Wisconsin Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 256–59 (2025) (Thomas, J., concurring). Laws that burden a religious *institution's* ability to teach and operate in conformity with its faith place a "burden on free exercise that ... is of a fundamentally different character from that at issue in *Smith*." *EEOC* v. *Catholic Univ. of Am.*, 83 F.3d 455, 462 (D.C. Cir. 1996).

The religious-autonomy cases make clear that *Smith* does not apply where a law burdens a religious institution's "internal" policies and "decisions" regarding the institution's "faith," "doctrine," "mission," and ability to "teach [its] faith." *Hosanna-Tabor*, 565 U.S. at 186, 189–90, 196; accord *Trinity Lutheran*, 582 U.S. at 461 n.2; *Fulton*, 593 U.S. at 600–01 & n.77 (Alito, J., concurring in the judgment). Burdens of this "special character" require courts "to proceed differently." *Mahmoud*, 606 U.S. at 564–65.

This Court's precedents make clear that *Smith* does not apply where the special character of the burden on religious exercise requires a different approach.

B. The special character of the burdens imposed by Colorado's law—as shown by the law's unique burden on religious schools—requires strict scrutiny.

The special character of the burden imposed by the Mandate triggers strict scrutiny for two reasons. *First*, the Mandate burdens parents' ability to direct the religious upbringing of their children. *Second*, the Mandate burdens Petitioners' and the Academy's internal policies and decisions regarding their faith, mission, and ability to teach the faith.

1. Colorado's Mandate imposes a burden of the same character as that in *Mahmoud*.

Colorado's law triggers strict scrutiny because it "imposes a burden of the same character" as that in *Mahmoud*. 606 U.S. at 565. The law "substantially interferes with the religious development of the parents' children." *Ibid.* (citation modified). Parents must either relinquish their right to enlist religious schools in their children's religious upbringing or forgo a generally available educational benefit. That places this case outside *Smith*. See *Mahmoud*, 606 U.S. at 564.

Like the public education benefit in *Mahmoud*, Colorado's universal preschool program offers a generally available educational benefit. Indeed, the benefit is even broader; it can be used at both public and private schools—a set of providers "that enables parents to select" a school "from as broad a range" of providers "as possible." Colo. Rev. Stat. §§ 26.5-4-203(12), 26.5-4-204(2).

And like *Mahmoud*, Colorado conditions the availability of that benefit "on parents' willingness to accept a burden" on their right to direct their children's religious upbringing on matters of sex and gender. 606 U.S. at 561, 564–65. Consider a concrete example. The Mandate requires school officials to use students' preferred pronouns, even if unconnected to biological sex. The Mandate thus compels speech that directly conflicts with many religious schools' beliefs and beliefs that parents wish to instill when sending their children to the Academy or Petitioners' schools. *E.g.*, *Darren Patterson Christian Acad.*, 699 F. Supp. 3d at 1171; Pet.8. That legal requirement "substantially interferes" with parents' ability to control their children's religious upbringing on matters of sex and gender. *Mahmoud*, 606 U.S. at 550–51. The Mandate requires religious schools to present "the opposite viewpoint to young, impressionable children" through "a set of values and beliefs that are 'hostile' to their parents' religious beliefs." *Id.* at 551, 554.

The "objective danger" to these children's religious upbringing "is only exacerbated by the fact that the [pronouns] will be presented to young children by authority figures in [preschool] classrooms." *Id.* at 554. "Young children ... are often impressionable and implicitly trust their teachers." *Id.* at 555 (citation modified). By "requir[ing] teachers to instruct young children using [pronouns] that explicitly contradict" the religious beliefs that parents enlist religious schools like Petitioners' schools and the Academy to instill, Colorado's law "carries with it precisely the kind of objective danger" to parents' right to direct the religious training of their children "that the First Amendment was designed to prevent." *Ibid.* (quoting *Yoder*, 406 U.S. at 218).

The Mandate's instruction-distorting burden extends beyond pronoun policies. Colorado's Mandate requires religious schools like Petitioners' schools and the Academy to restructure any number of internal policies that seek to reflect (and support the schools' teachings on) religious understandings of sex and gender, including policies involving dress codes and sensitive places, like bathrooms. *E.g.*, Pet.8; *Darren Patterson Christian Acad.*, 699 F. Supp. 3d at 1172.

Requiring religious schools to restructure these internal policies to comply with Colorado's dictates on sex and gender would "undermine[ ]" the "religious beliefs and practices" on those topics that parents, by selecting the schools for their children, wish to instill. *Mahmoud*, 606 U.S. at 552, 556. Revising these policies would "explicitly contradict" the beliefs that the schools wish to instill and imply to "impressionable" preschoolers—who look to school authorities that would implement these policies as "authority figures"—that they should not act in accordance with those beliefs. *Id.* at 554–55. After all, their own religious school would not be acting in conformity with its religious view that gender is based on sex, not a choice made by parents or students. Cf. *Bostock* v. *Clayton Cnty.*, 590 U.S. 644, 729 (2020) (Alito, J., dissenting) (employee conduct contrary to school's religious beliefs undermines the communication of those beliefs to students).

For the same reason, the revised policies would also "pressure" students "to conform" to the State's views on sex and gender—views that "explicitly contradict" the religious views that religious schools like Petitioners' schools and the Academy, and the parents that enlist their services, wish to instill. *Mahmoud*, 606 U.S. at 550, 555.

All that "substantially interferes with the religious development" of children attending religious schools and thereby "imposes the kind of burden on religious exercise that" *Yoder* and *Mahmoud* "found unacceptable." *Id.* at 550.

Under Colorado's regime, parents may either (1) enlist religious schools that operate consistently with the parents' religious objectives in directing their children's religious upbringing, or (2) receive the universal preschool benefit. Put differently, parents may either send their children to preschools that impose the State's views on matters of sex and gender, or forgo the State's generally available educational benefits. By conditioning the preschool benefit on a "parents' willingness to accept a burden on their religious exercise," Colorado's law imposes a burden of a "special character" and thereby triggers strict scrutiny "regardless of whether" the Mandate "is neutral or generally applicable," just like in *Mahmoud*. 606 U.S. at 561, 565.

Indeed, the burden imposed by Colorado law is arguably more severe than in *Mahmoud*. The Constitution guarantees a parent's right to direct their children's religious upbringing and send their children to religious schools that instill and operate in conformity with their faith—including on matters of sex and gender. *Mahmoud*, 606 U.S. at 547, 550; *Espinoza* v. *Montana Dep't of Revenue*, 591 U.S. 464, 486 (2020). Yet Colorado's Mandate seriously undermines the exercise of that right. Schools cannot simultaneously operate an educational institution that instills religious beliefs and comply with the State's dictates on sex and gender. The result is a law that incentivizes schools to alter their internal policies regarding religious doctrine and simultaneously

abandon their religious mission to educate children in the faith. Cf. *Sherbert* v. *Verner*, 374 U.S. 398, 404 (1963).

Worse, Colorado's regulatory regime is putting religious preschools out of business, thwarting parents' ability to enlist religious schools in the parents' effort to direct the religious upbringing of their children. In response to Colorado's restrictions, two of Petitioners' preschools shuttered due to shortfalls in funding and decreased enrollment. Pet.12. And the economic effects of Colorado's regime imperil the religious preschools that remain, with enrollment declining across the board. *Ibid.*[3]

That market-distorting impact hinders parents' ability to use religious schools in directing their children's religious upbringing. "The Constitution deals with substance, not shadows," and the Free Exercise Clause's prohibition on burdening a parent's ability to direct the religious education of their children "is levelled at the thing, not the name." *Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023) (citation modified). Just as states may not directly close the doors to religious education, *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925), they may not accomplish the same objective indirectly by imposing regulatory requirements that put religious schools out of business.

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[3] In many locales, the consequences of Colorado's regime threaten the very existence of a parent's constitutional right "to send his or her child to a private religious school." *Mahmoud*, 606 U.S. at 547. In Chaffee County, for example, the Academy is the only Christian school offering religious instruction from preschool to middle school.

It's irrelevant that Colorado's program is a public benefit. "The provision of education is an expensive endeavor," *Mahmoud*, 606 U.S. at 561, and preschool education in Colorado is no different. As *Mahmoud* clarified, "[i]t is both insulting and legally unsound" to tell parents that they must forgo generally available education benefits to exercise their constitutional right "to raise their children in their religious faiths." *Id.* at 562. A state may not "condition" the "availability" of these benefits "on parents' willingness to accept a burden" on their right to direct their children's religious upbringing. *Id.* at 561, 564–65. When a state puts parents to that choice, the state imposes a burden whose "special character" triggers strict scrutiny. *Id.* at 565.

2. Colorado's law imposes a burden of the same character as that in the Court's religious-autonomy cases.

The special character of the Mandate's burden on religious schools also mirrors the burdens encompassed by the Court's religious-autonomy precedents. *Smith* does not apply where a law burdens a religious institution's internal decisions regarding the institution's faith, doctrine, mission, and ability to teach its faith. *Hosanna-Tabor*, 565 U.S. at 186, 189–90, 196. Yet that's precisely the burden the Mandate places on religious schools.

The Academy accepts students and families of all faiths and backgrounds—including those who identify as LGBTQ. So the Academy complies with the Mandate to provide "children an equal opportunity to enroll and receive preschool services regardless of ... religious affiliation, sexual orientation, [or] gender identity." Colo. Rev. Stat. § 26.5-4-205(2)(b).

Yet the Mandate still reaches into and interferes with religious schools' internal decisions on matters of faith and doctrine. Most significantly, the law precludes the Academy and Petitioners' schools from conducting their core classroom and educational programs consistent with the institutions' religious beliefs on matters of sex and gender. *Darren Patterson Christian Acad.*, 699 F. Supp. 3d at 1172; Pet.8.

Requiring the use of pronouns unconnected to biological sex creates a substantial imposition on Petitioners' and the Academy's religious mission—an imposition that burdens the schools' ability to "teach their faith" on matters of sex and gender. *Hosanna-Tabor*, 565 U.S. at 196. Teachers who are required to use pronouns inconsistent with the biblical definition of sex cannot effectively or persuasively teach the schools' faith-based views on those topics. The state-mandated pronouns would confuse students, "contradict the [faith's] tenets," and potentially "lead" student's "away from the faith['s]" teaching on these matters. *Our Lady of Guadalupe*, 591 U.S. at 747.

Nor can Petitioners' schools and the Academy effectively instill their religious views by enforcing sensitive place and dress code policies that contradict the religious views they seek to teach. Cf. *Bostock*, 590 U.S. at 729 (Alito, J., dissenting). And the disconnect between the schools' professed religious views and real-world conduct could cause students to question other tenets of the faith. Few things influence a child's religious beliefs more than a role model's actions. Helen M. Alvaré, *Church Autonomy After* Our Lady of Guadalupe School, 25 Tex. Rev. L. & Pol. 319, 362–65 (2021) (Alvaré). And few things undermine the acceptance of a belief system more than a conflict between professed belief and real-world conduct. *Ibid.*

Simply put, Colorado's regime thwarts religious schools' religious "mission[s]" and ability to "teach their faith." *Hosanna-Tabor*, 565 U.S. at 190, 196. For most religious schools, "educating the young in the faith" is the institution's "central purpose." *Our Lady of Guadalupe*, 591 U.S. at 756. The Academy is no different. Like Petitioners' schools, the Academy's mission is to provide a distinctively Christian environment that emphasizes knowing Christ, imitating His character, and integrating the Bible in all aspects of the education the Academy provides.

Colorado's law thwarts that very mission. Religious schools like Petitioners' schools and the Academy cannot both comply with Colorado's Mandate and assist parents by communicating and instilling Christian beliefs on sex and gender. The State's dictates require the schools to structure their internal operations in a way that undermines their ability to raise students in the Christian faith.

The Constitution grants religious schools the right to be authentically religious and structure their curriculum and character accordingly. Religious schools have a right not only to exist but to operate in accordance with their religious teachings and mission. Where, as in Colorado, a state burdens a religious institution's "internal ... decision[s]" on matters affecting the institution's core religious "mission" and ability to "teach [its] faith," *Smith* does not apply. *Hosanna-Tabor*, 565 U.S. at 190, 196. The special character of the burden requires greater constitutional scrutiny.

II. Failing to recognize the special character of the burdens imposed by Colorado's law renders recent free-exercise precedent meaningless and imperils religious organizations nationwide.

Recognizing that Colorado's regime triggers strict scrutiny aligns with this Court's repeated emphasis that states may not condition generally available educational benefits on schools' and parents' willingness to give up, or accept conditions that undermine, their religious exercise. Pet.24–26. Three times in the last decade, this Court held that strict scrutiny applies to a state's withholding of generally available educational benefits based on a religious school's refusal to relinquish its religious character or conduct. *Carson*, 596 U.S. at 778–80; *Espinoza*, 591 U.S. at 474–79; *Trinity Lutheran*, 582 U.S. at 466. But states like Colorado are thwarting this Court's precedents by using general language to impose the very same burdens on religious exercise. Pet.26–28.

Failure to apply strict scrutiny based on the character of the burden imposed by laws like Colorado's gives states *carte blanche* to evade this Court's commands via word games. This Court's precedents cannot be so easily evaded. Strict scrutiny applies when the government forces religious observers to "choose between their religious beliefs and receiving a government benefit." *Trinity Lutheran*, 582 U.S. at 464 (citation modified). So states cannot avoid strict scrutiny by conditioning generally available educational benefits on a parent's willingness to accept a burden on their right to direct their children's religious upbringing. Nor may states condition a public benefit on a religious school's

willingness to restructure its internal operations in ways that impact its ability to teach its faith. These principles remain true no matter the legislative drafter's linguistic creativity. This Court's precedents "turn[ ] on the substance of the free exercise protections, not on the presence or absence of magic words." *Carson*, 596 U.S. at 785. The character of the burden dictates the judicial approach.

Failure to apply strict scrutiny based on the character of the burden imposed by laws like Colorado's also endangers the internal operations of other types of religious institutions nationwide. Take the Ninth Circuit's recent decision in *Youth 71Five Ministries* v. *Williams*, No. 24-4101, __ F.4th __, 2025 WL 3438455 (9th Cir. Nov. 26, 2025). That case involves Oregon's exclusion of Youth 71Five from the State's Youth Community Investment Grant Program, "which funds community-based initiatives serving youth at risk of disengaging from school or work." *Id.* at *3.

Youth 71Five's "primary purpose is to teach and share about the life of Jesus Christ" through its "youth centers, apprenticeship and career programs, camps, conflict-resolution workshops, and mentoring." *Ibid.* To effectuate that mission, the ministry requires its employees to affirm and adhere to the organization's statement of faith. *Ibid.*

That makes sense. Personnel is policy, and religious organizations are no different. Employees have a profound impact on a religious organization's mission and success. Alvaré, *supra*, at 354–69 (collecting social science evidence). Religious organizations cannot effectively teach and share their faith if they cannot require their employees to act in accord

with the organization's religious "tenets." *Our Lady of Guadalupe*, 591 U.S. at 747. "Otherwise, the religious institution risks losing control over its religious function and purpose." *Pulsifer* v. *Westshore Christian Acad.*, 142 F.4th 859, 864 (6th Cir. 2025). A religious organization whose central mission is to teach and share its faith only retains its status as a religious institution if it's composed of people who share the faith. See *Seattle's Union Gospel Mission*, 142 S. Ct. at 1096 (Alito, J., statement respecting the denial of certiorari).

Yet Oregon excludes 71Five from receiving a grant solely because it exercises that basic First Amendment right to remain a religious institution by employing coreligionists. And the Ninth Circuit blessed that discriminatory exclusion. 2025 WL 3438455, at *5. The Constitution forecloses that approach. Laws that force religious institutions to choose between "participat[ing] in an otherwise available benefit program or remain[ing] a religious institution" trigger the highest constitutional scrutiny. *Trinity Lutheran*, 582 U.S. at 462. *Mahmoud* confirmed that principle remains true regardless of whether the state law is neutral and generally applicable. 606 U.S. at 561 ("[W]hen the government chooses to provide public benefits, it may not 'condition the availability of [those] benefits upon a recipient's willingness to surrender his religiously impelled status.'" (quoting *Trinity Lutheran*, 582 U.S. at 462)).

Failure to recognize the special character of the burden imposed by laws putting religious institutions to these choices endangers not only religious preschools in Colorado, but religious organizations nationwide.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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