No. 25-1187

In the United States Court of Appeals for the Tenth Circuit

DARREN PATTERSON CHRISTIAN ACADEMY,

Plaintiff-Appellee,

– v. –

LISA ROY; DAWN ODEAN,

Defendants-Appellants.

RELIGIOUS AND CIVIL RIGHTS ORGANIZATIONS; SCHOLARS FOR THE ADVANCEMENT OF CHILDREN'S CONSTITUTIONAL RIGHTS; NELSON TEBBE; LAWRENCE G. SAGER, FREEDOM FROM RELIGION FOUNDATION, INC.,

Amici Curiae.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, DOCKET NO. 1:23-CV-01557-DDD-STV (HONORABLE DANIEL D. DOMENICO, U.S. DISTRICT JUDGE)

AMICI CURIAE BRIEF ON BEHALF OF THE CONSCIENCE PROJECT AND CATHOLIC FAMILIES IN SUPPORT OF PLAINTIFF-APPELLEE

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF *AMICI CURIAE* 1

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 4

ARGUMENT 5

I. *AMICI* CATHOLIC FAMILIES RECOGNIZE THEIR ROLE AS THE PRIMARY EDUCATORS OF THEIR CHILDREN AND THEIR RIGHT TO SELECT THE BEST EDUCATIONAL FIT 5

A. The Abols Family 7

B. The Ramirez Family 9

C. The Skinner-Meier Family 12

D. The Hall Family 15

E. The De La Cruz Family 17

II. THE CONSEQUENCES OF COLORADO'S EXCLUSIONARY POLICY FALL HEAVILY ON FAMILIES 20

III. COLORADO'S POLICY UNLAWFULLY DISCRIMINATES BASED ON RELIGIOUS EXERCISE 23

A. The Policy is Subject to Strict Scrutiny 23

1. Colorado's Policy Lacks Neutrality and General Applicability 23

2. Colorado's Policy includes unconstitutional preferences 23

B. Colorado Cannot Satisfy Strict Scrutiny 25

IV. COLORADO'S POLICY UNLAWFULLY COMPELS SPEECH 26

V. THIS CASE IS DISTINGUISHABLE FROM *ST. MARY* 28
VI. CONCLUSION 29

TABLE OF AUTHORITIES

Page(s)

Cases:

303 Creative LLC v. Elenis,
600 U.S. 570 (2023).....27

Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n,
605 U.S. 238 (2025).....24, 25

Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,
508 U.S. 520 (1993).....24

Darren Patterson Christian Academy v. Roy,
No. 1:23-cv-01557-DDD-STV, 2025 WL 700268 (D. Colo. Feb. 24, 2025).....3, 23, 26

Does 1-11 v. Bd. of Regents of Univ. of Colo.,
100 F.4th 1251 (10th Cir. 2024).....24

Fulton v. City of Philadelphia,
593 U.S. 522 (2021).....23, 25

Our Lady of Guadalupe Sch. v. Morrissey-Berru,
591 U.S. 732 (2020).....25

St. Mary Catholic Parish v. Roy,
2025 U.S. App. LEXIS 25393 (10th Cir. Sept. 30, 2025).....3, 26, 28

Tandon v. Newsom,
593 U.S. 61 (2021).....23

Watson v. Jones,
13 Wall. 679 (1872).....25

West Virginia State Bd. of Educ. v. Barnette,
319 U.S. 624 (1943).....26

Wooley v. Maynard,
430 U.S. 705 (1977).....26

Statutes & Other Authorities:

U.S. Const. amend. I.....3, 25, 26, 27, 29

Colo. Rev. Stat. § 26.5-4-201.....2

Colo. Rev. Stat. § 26.5-4-203(12) 2

Colo. Rev. Stat. § 26.5-4-205(1)(b)(II) 23

Colo. Rev. Stat. § 26.5-4-205(2)(b) 2

Declaration on Christian Education, *Gravissimum Educationis*, October 28, 1965 5

INTEREST OF *AMICI CURIAE*[1]

THE CONSCIENCE PROJECT advances freedom of conscience and the right to practice one's faith free from interference by the government through public education that includes insightful commentary and legal analysis and in filing *amicus* briefs in key religious freedom and free speech cases.

Amici CATHOLIC FAMILIES are Catholic parents residing in Colorado who seek to enroll their children in Catholic preschools that have been excluded from Colorado's Universal Preschool Program ("UPK Colorado") because these schools cannot participate without violating their religious beliefs. They support Darren Patterson Christian Academy's challenge to Colorado's nondiscrimination policy because Darren Patterson holds sincerely held religious beliefs about marriage as being between a man and a woman and the unchangeable biological reality that humans are created male and female.

Amici attest to the crucial role of faith in their exercise of their role as primary educators of their children, their desire to enroll their children in faith-based preschools that adhere to these fundamental religious truths, and the benefit -

[1] *Amici* state that no counsel for a party authored this brief in whole or in part and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief. All statements made by *amici* families are on file with counsel for *amici curiae*.

- both financial and spiritual -- in participating in UPK Colorado while adhering to their religious beliefs.

STATEMENT OF THE CASE

In 2022, Colorado's Department of Early Childhood established a universal preschool program to provide all preschoolers with 15 hours of free education per week at a private or public school of their parents' choice in the year before kindergarten. Colo. Rev. Stat. §§ 26.5-4-201, et seq. Colorado's Universal Preschool Program ("UPK Colorado") uses a "mixed-delivery system of preschool providers" combining school and community-based preschool providers and is funded using both public and private money. Colo. Rev. Stat. § 26.5-4-203(12).

Schools that wish to participate in the program must agree to "provide eligible children an equal opportunity to enroll and receive services regardless of race, ethnicity, religious affiliation, sexual orientation, gender identity, lack of housing, income level, or disability, as such characteristics and circumstances apply to the child or the child's family." Id. § 26.5-4-205(2)(b).

Appellee Darren Patterson Christian Academy is a private Christian preschool that seeks to participate in UPK Colorado while adhering to its religious beliefs regarding human sexuality and gender. Critically, Darren Patterson does not seek to deny admission or enrollment to any child based on the sexual orientation or gender identity of the child or the child's family. Rather, Darren Patterson's

doors are open to all students, and it seeks only to maintain internal policies regarding bathrooms, dress codes, and pronouns that align with its sincere religious beliefs about biological sex and God's design for male and female.

The district court correctly granted Darren Patterson's motion for summary judgment, finding that Colorado's nondiscrimination requirement is not neutral and generally applicable because it permits numerous exceptions that undercut the State's interest while refusing to accommodate religious exercise. *Darren Patterson Christian Academy v. Roy*, No. 1:23-cv-01557-DDD-STV, 2025 WL 700268 (D. Colo. Feb. 24, 2025). The district court permanently enjoined Colorado from enforcing the nondiscrimination requirement against Darren Patterson. The state now appeals that decision to this Court.

This case differs from a recent decision from this Court, *St. Mary Catholic Parish v. Roy*, 2025 U.S. App. LEXIS 25393 (10th Cir. Sept. 30, 2025), in which the panel upheld Colorado's "nondiscrimination policy" against First Amendment challenges brought by Catholic parishes and preschools. The Catholic schools in *St. Mary* sought the ability to consider sexual orientation and gender identity in making admissions decisions. *Amici* Catholic Families filed with this Court an *amicus* brief in support of those Catholic schools. The schools are now seeking review by the United States Supreme Court, and *amici* will be submitting an *amicus* brief in support of that petition for *certiorari*.

SUMMARY OF ARGUMENT

Amici Catholic Families are representative of the many parents of faith with preschool-aged children in Colorado who have taken up their rights and responsibilities as primary educators of their children. While Darren Patterson Christian Academy is not a Catholic institution, *amici* support its challenge to Colorado's exclusionary policies because Darren Patterson adheres to the same essential religious truths that Catholic teaching affirms: that marriage is a union between one man and one woman, and that God created human beings as male and female.

Darren Patterson maintains internal policies -- regarding bathrooms, dress codes, and the use of pronouns -- that reflect its religious understanding of biological sex and God's creation of male and female. These are policies that govern the school's operations and speech. Colorado's attempt to control these internal aspects of a religious school's operations represents an intrusive burden on religious exercise and autonomy.

The stories that follow illustrate the profound impact of Colorado's exclusionary policy on real families. These families have made extraordinary sacrifices to provide their children with faith-based education that aligns with their deepest convictions about human nature and God's design. Colorado's policy forces

them to choose between their faith and equal participation in a taxpayer-funded program -- a choice the Constitution forbids.

ARGUMENT

I. *AMICI* CATHOLIC FAMILIES RECOGNIZE THEIR ROLE AS THE PRIMARY EDUCATORS OF THEIR CHILDREN AND THEIR RIGHT TO SELECT THE BEST EDUCATIONAL FIT.

"Train up a child in the way he should go, and when he is old he will not depart from it." *Proverbs* 22:6. For many Catholic parents, *Proverbs* is powerful guidance for the weighty task of parenting. They are keenly aware that even as their child grows, parents remain the lens through which their child views what she learns, especially as she ponders the meaning and significance of the education she receives.

The Catholic Church has long taught that parents are both the first and the primary educators of their children, a role that must be recognized and respected in society. Pope Paul VI, in his 1965 Declaration on Christian Education, explained this teaching: "Since parents have given children their life, they are bound by the most serious obligation to educate their offspring and therefore must be recognized as the primary and principal educators." Declaration on Christian Education, *Gravissimum Educationis*, October 28, 1965.

The Catechism of the Catholic Church affirms: "Parents have the first responsibility for the education of their children." Catechism of the Catholic Church, 539. The Catechism continues: "As those first responsible for the

education of their children, parents have the right to choose a school for them which corresponds to their own convictions. This right is fundamental." Id. at 540.

Consistent with their obligation and right to live out their authority as primary educators of their children, *amici* families desire to send their young children to preschools -- whether Catholic or Protestant -- that share their fundamental religious beliefs about marriage, human sexuality and biological sex. Darren Patterson is a Christian preschool that adheres to religious truths that are fully consistent with these teachings: that marriage is a union between one man and one woman, as ordained by God from the beginning of creation, and that God immutably created human beings male and female. These are not merely denominational preferences but foundational truths about human nature that transcend any single Christian tradition.

Critically, Darren Patterson's religious convictions inform how it operates internally -- how it structures intimate facilities, what standards of dress it maintains, and what language it uses to describe biological reality. *Amici* recognize that Catholic schools may face similar demands from Colorado to compromise their religious beliefs in their day-to-day operations, their policies regarding intimate student facilities, and their teachings about human sexuality. If Colorado can compel Darren Patterson to abandon its religious beliefs and practices in these core operational areas, Catholic schools will face the same coercion.

The stories of these families illustrate the profound impact of Colorado's exclusionary policy and demonstrate the real-world harm inflicted when government conditions generally available benefits on the abandonment of religious exercise -- including Christian schools' internal operations.

A. The Abols Family

Andy and Gina Abols are parents of five children ranging in age from two years to eleven years old. Andy works as an account executive for a software company in the drone business, while Gina is a stay-at-home mother. Andy has been in sales his "entire career." The family carefully budgets every month with military precision: "First comes our tithe, then the mortgage, then it's food/bills and education for the kids. Anything left we use for fun or extracurriculars, but that's not a lot." The Abols are a family that lives their faith intentionally, making financial sacrifices that reflect their deepest values.

The Abols' nine-year-old daughter, Reese, has spina bifida. Andy says Reese is "very much a centerpiece of our family." The family's entire life has been shaped by Reese's needs. Having to pay out of pocket for their four-year-old to attend preschool at their Catholic parish is a worrying drain on the family's finances, creating stress that Andy describes with palpable frustration: "While I pay for other children to go to preschool for free with my taxes, I'm also paying for preschool for my own daughter instead of saving that money. I'm moving backwards to protect

our children's minds and instill virtue. Which I'm glad to do, but I shouldn't have to." Andy adds that he believes that forming children in virtue and love is "a good" for society -- not just for his own family, but for everyone.

Andy is thankful for the community of support they have found in their faith community -- a community that has become essential to the Abols' family life. When discussing the education of his children, Andy says "our faith is critical." He "absolutely trusts" the faith-based school some of his children attend, explaining that "they're just a lot more tender with the kids" than the other schools his older children attend and "they have the compassion that our family appreciates." For a family navigating the challenges of raising a child with spina bifida alongside four other children, this compassion and tenderness makes all the difference.

Andy and Gina would love to send all their children to private religious schools, but it's too expensive. Two of the Abols children are enrolled in a charter school that "doesn't dabble in the realm of politics or anything along those lines." Their eleven-year-old son attends a hybrid school where he homeschools with Gina a few days a week. The family has had to make careful, sometimes painful choices about where each child attends school based on both their needs and the family's financial constraints.

The Abols are thankful that religious preschool his younger children attend "integrates stories from the Bible" as part of classroom teaching. Andy emphasizes

that the school "prioritizes virtue and faith" and attributes this to "a clear difference in our children who have gone to that preschool versus our children who have gone elsewhere."

Andy values a religious education because "our faith teaches us to love everyone because we're all children of God." He explains that faith-based schools teach "there is objective truth given to us by God, that we were created a certain way to be beautiful in his eyes, and for the world." Thanks to the faith-based preschool, Andy says "our kids came home well-rounded, beautiful little people, understanding what God teaches about loving everyone."

If UPK Colorado funded their preschool education, Andy would use the savings for his family's needs -- he would likely use that money to help us with the costs incurred from the numerous surgeries and travel expenses required for our daughter. Even if Andy only had an extra $2,500, he says, "that gets me halfway to Florida for her orthopedic surgeon to improve my daughter's life and get her closer to walking independently."

B. The Ramirez Family

Karina and Rogelio Ramirez are parents of six children in Longmont, Colorado. They married in their early twenties. Although both were baptized in the Catholic Church, neither grew up particularly connected to their faith. After 10 years of marriage and with two young children, their marriage hit a rough patch.

"My husband was an alcoholic at the time, and we ended up separating," Karina explains.

The separation was hard for Rogelio. He reached out to the local Catholic church, started attending services and, according to Karina, "had a very fast, profound conversion." After almost three years of being separated, Rogelio convinced Karina to start going to church with him. The couple eventually reconciled, both Karina and Rogelio were fully confirmed in the Catholic faith, and seven years ago they were married in a religious ceremony. Today, they are deeply involved at St. John's Catholic Church in Longmont.

Growing in their Catholic faith changed how Karina and Rogelio think about parenting. "After learning about Catholicism and what it implies, we had to change a lot of the things that we were currently doing." Living their faith more seriously has meant that they have become "open to life" and now have four more children.

Living their faith more fully drew Karina and Rogelio to take a closer look at Catholic education. They pulled their older children out of the public school and enrolled them in their parish school. "It has been the best thing we've done," says Karina. Their three younger children attended their parish preschool and their three-year-old is currently attending. Karina hopes their youngest, now almost two years old, will attend next year.

Karina works full-time for a lumber company. Rogelio is self-employed as a house painter. "We're not able to travel or take family vacations," she says. "Our cars are pretty old and beat up, but they get us around." During the long Colorado winters, Rogelio's work slows down significantly. "That's where we start to struggle financially," says Karina. At first, the idea of enrolling their children in their parish school seemed out of reach. Karina recalls thinking: "Oh my gosh, I can't afford that, I can't do that. And that's for rich people."

Karina is thankful that St. John's teaches consistently with Catholic faith, especially given that preschoolers are "at an age where they absorb everything." She did not want her small children exposed to confusing ideas about human sexuality. This, Karina says, "definitely inclined me to invest in Catholic education for them." The decision wasn't just about academics—it was about protecting her children's innocence and forming them in a coherent worldview consistent with the family's deepest beliefs.

Given their financial needs, the Ramirez family has qualified for a government-sponsored tuition assistance program that helps cover the cost of sending two of their younger children to St. John's preschool. "We didn't know this was an option for us, the non-wealthy families," says Karina. Many lower-income families, however, are ineligible for that program and need assistance from the UPK Colorado program in order to afford the school.

Karina has seen how their Catholic preschool reinforces in her younger children the Catholic faith she holds dear. "They're taking them to Mass at least once a month. They're teaching them about Mary and Jesus, and all these extra things that reinforce your faith, plus your basics that you would learn in any other school. I have a five-year-old who says he wants to be a priest already."

For the past seven years Karina and Rogelio have led marriage preparation classes for Spanish speakers at their parish. They often encourage other Hispanic families to consider enrolling their children in the parish preschool. "I know we have some families who have grown in their faith because they're able to access this Catholic education again, because as parents, they get us involved," reflects Karina. She believes removing discrimination from access to the UPK Colorado program will encourage other lower-income Hispanic families to enroll their children in Catholic preschool.

C. The Skinner-Meier Family

Ana Karen Meier and Franklin Skinner have six children in Aurora, Colorado. Franklin works as a loan processor; Ana Karen is a stay-at-home mother. Their youngest was born last fall.

Ana Karen's four older children attend Catholic schools in Aurora. Their eldest daughter suffered intense bullying when she attended their local public school. As Ana Karen recalls, "My daughter started hating school. She didn't want

to get up. She would cry, she would throw fits, she would make us be late. She would not do her classwork or homework. She just hated school." Despite reaching out to school administrators and teachers, the bullying continued. Ana Karen was indignant. "I took her out and then I said to myself, 'It doesn't matter from now on how much I have to sacrifice. I'm not putting her through that another year.'"

When they chose to send their daughter to St. Therese Catholic Classical School, Ana Karen and Franklin also decided to enroll their son in preschool there. "I couldn't afford the whole day. I had to do a half day for him. And it was a struggle because I had to find time to pick him up or find somebody to pick him up at 12:00," Ana Karen recalls. The results were impressive: "When you compare [him] to my other kiddos that couldn't attend preschool, he right now is testing two grades higher."

Franklin was "very skeptical" about paying for private schooling, says Ana Karen. "I know how stressful it could have been on him, because he's the one in charge of paying every bill, home bills, groceries, rent, car payment, moving back and forth." But after that year, attending school meetings, and seeing how happy the children were, Franklin changed his mind.

For the past seven years, Ana Karen and Franklin have sacrificed in order to send their children to Catholic school. "We have struggles. We can't have fancy dinners, we can't go out to restaurants. We can't go to the theaters every time we

see a movie we want, because we need to put that money aside for the school, let alone for preschool." But the sacrifice has been worth it. The school community at St. Therese's has "been amazing" for Ana Karen and her family. "It's just more than the school. It's like a family with the teachers, the students." This sense of genuine community -- not just an institution, but a family -- has made the financial struggle meaningful and worthwhile.

Ana Karen and Franklin couldn't afford the cost of tuition when it came time for their now-nine-year-old to attend preschool. "I think he would've benefited a lot more," says Ana Karen with regret in her voice. "We probably would've saved so much time in that pre-K. Him getting used to coloring, writing, speaking, numbers, letters -- it would've helped him a lot." She can see the difference between the child who attended preschool and the one who couldn't. Fortunately, using COVID subsidies they were able to send their now seven-year-old daughter to preschool at St. Therese. "She was fortunate," says Ana Karen. "There was no way we could afford it."

Now their four-year-old daughter is currently being tested for speech delay, and the family is unable to enroll her in the preschool at St. Therese's because of the anticipated cost of therapies. "Things would be different if we could afford St. Therese," Ana Karen says.

Unlike other preschools in Aurora, students at St. Therese's attend Mass with the other school children and have "prayer partners" in older grades. Ana Karen thinks the preschoolers at St. Therese's are more polite and respectful than their peers at other schools.

Ana Karen trusts the teachers and staff at her children's school. When asked whether she would consider another preschool for her younger daughter, she was resolute: "I don't feel safe to the point that I would take her to a public school. I want to leave her somewhere where I can call a community, a home where I know where she's going to be. I know she's taken care of."

Ana Karen considers placing unfair conditions on the operation of religious schools in order to participate in UPK Colorado as a form of "discrimination, like a personal attack, like trying to hold you back."

D. The Hall Family

Jill and Brian Hall were married in 2006 and have five children. The couple struggled with infertility for several years at the beginning of their marriage. On their way to New Zealand to help with earthquake recovery, they learned that Jill was pregnant. "We were thrilled," recalls Jill. Another child was born while they were out of the country, "but we really missed home and we missed Colorado so we said, 'Let's move back home.'"

"Moving back home was a shock," says Jill. Housing prices in Colorado had skyrocketed. They lived in Jill's parents' basement for over a year, saving for a down payment. During that year Jill and Brian tried to save up to buy their own home. "We really didn't have a ton of money after that, but we just kept saying, 'Well, if we were renting someplace right now, there would be no way that we could afford anything in the Denver area.' So we kind of took it on the chin and kept going."

To cover the costs of preschool, Jill started a business of her own as a florist. "I hoped that would help supplement the education [costs] and all of the fees and everything that goes with it." Starting a business while raising five young children required extraordinary commitment, but Jill was determined to give her children the Catholic education she valued.

Today, the Halls' three oldest attend Our Lady of Lourdes full-time but they are unable to afford to send their three-year-old to preschool. Jill says with evident disappointment: "I get really frustrated because I know that my other kids at this age were able to go to preschool and were ready for kindergarten. They knew what to expect, they were excited, they were probably better students because they knew how to listen." The inequality among her own children -- with some able to attend preschool and others not -- creates a burden no parent wants to bear.

Preschool at Our Lady of Lourdes helped Jill's three eldest children "learn about how to go to Mass and Adoration and the big things." The teachers and administrators at the preschool tell parents something that resonates deeply with Jill: "You are the first educator of your children. We are here to supplement." This philosophy aligns perfectly with the Church's teaching on parental rights and recognizes parents' irreplaceable role in their children's formation.

The Halls' oldest son has several learning disorders and the preschool teachers often consulted Jill and Brian. "That was a huge benefit for his learning long-term. We could look at those things and zero in on them pretty quickly. It was a huge stepping stone for us in our learning process of how to help our child."

Our Lady of Lourdes school, remarks Jill, is "authentically Catholic." "When you first come into any part of the school, they let you know the mission of the school is to have a personal relationship with Jesus Christ and to nurture that."

Jill says she is sad and disappointed that Our Lady of Lourdes is unable to participate in the UPK Colorado program. "I feel like we've been excluded from something that should be for every kid." She adds: "I'm not choosing something so extreme. I'm choosing just a faith, and here I'm being punished for that."

E. The De La Cruz Family

Melissa and Antonio De La Cruz have been together for 14 years. Today they are the proud parents of four children ages 13, 11, 6, and 5.

Melissa attended Catholic high school. Antonio attended the local public schools. Both she and Antonio were raised Catholic. All the children attend Notre Dame Parish school. “It's been wonderful to be at Notre Dame,” says Melissa. "My kids are thriving. They're happy. They love the school culture. They love their teachers. I love it here."

Several years ago, Melissa worked for Catholic Charities as an early education specialist. "I would hear a lot of different stories about what happens in public school systems." She adds, "I love knowing that my kids are safe, I don't agree with [security resource officers] that are in public schools. I don't want my kids policed. I want them to feel secure, at Notre Dame they take security very seriously and ensure that all children are safe without adding police to the school. I chose to keep my kids in a private school setting, where I have more teacher-to-parent interaction." The stories she heard in her professional work reinforced her desire to choose differently for her own children.

Melissa chose Catholic schools so her children would "have the same faith that I have, to know that if they do have a problem, they can turn to God, turn to their religion, turn to the church. Within the school, I know that they're also learning morals and values and how to treat others, how to have respect, how to communicate." She knows that Notre Dame teaches its students very traditional Catholic teachings. "I am completely OK with that." For Melissa, passing on the

faith she received as a child is not negotiable -- it's the heart of her responsibility as a parent.

Sending all their children to private school involves enormous financial commitment. "With the times right now, groceries are so expensive. Gas is so expensive. Anything you do is basically expensive," says Melissa. "This year has also been very tough on us." The sacrifice extends beyond mere luxuries -- it affects the family's quality of life and ability to create memories together.

Melissa thinks excluding Notre Dame from UPK Colorado "isn't fair." The simple injustice of the situation is plain to her. And she feels the same about schools like Darren Patterson. "If they're opening their doors to everyone, why punish them for wanting to have bathroom policies that match their faith?" she asks. "We believe the same things about boys and girls. They should have the same rights we want."

To lower tuition expenses, Melissa decided to work as the Registrar and Tuition Officer at Notre Dame Parish School. "What I make at the school is not what I could possibly be making at another employer. But it means giving me a discount on my tuition and allows me to be close to my children." She has essentially traded career advancement and higher income for the ability to afford Catholic education for her children -- a trade-off that reflects her priorities but also highlights the financial barriers families face. She is thankful for the chance to

send her youngest to preschool, but says "a lot of families out there would love to have their kids go to a school like the ones that we have here and that aren't able to because they aren't able to pay. I know that a lot of families have left because of the cost of pre-K." Melissa sees firsthand how cost barriers prevent families from accessing the education they desire for their children.

II. THE CONSEQUENCES OF COLORADO'S EXCLUSIONARY POLICY FALL HEAVILY ON FAMILIES.

Amici Catholic families seek only what the Constitution guarantees: the right to participate in generally available government programs without being forced to choose between their faith and public benefits. Colorado's policy forces exactly this unconstitutional choice. Parents at Darren Patterson would be facing the same financial and discriminatory hardships but for the fact that the school obtained a preliminary injunction in the fall of 2023 and then a permanent injunction in early 2025.

As Andy Abols explained, he is "moving backwards" financially "to protect our children's minds and instill virtue." The choice between medical care for his disabled daughter and religious education for his younger siblings is a choice no family should have to make. Yet Colorado's policy forces exactly this impossible decision.

Jill Hall feels "excluded from something that should be for every kid." After starting a florist business to afford preschool costs and successfully sending three

children through Our Lady of Lourdes preschool, she now watches her three-year-old miss out on the same opportunities her siblings enjoyed. "I'm not choosing something so extreme," she says. "I'm choosing just a faith, and here I'm being punished for that."

Ana Karen Meier considers the exclusion "discrimination, like a personal attack, like trying to hold you back." For families who have made extraordinary sacrifices to provide Catholic education -- canceling vacations, driving old cars, forgoing restaurants -- the exclusion feels personal because it is personal. It targets their deepest convictions about how to raise their children and dismisses those convictions as unworthy of equal treatment.

The Ramirez family qualified for government assistance for preschool costs, yet many similarly situated Hispanic families remain shut out from UPK Colorado, unable to afford the Catholic education that has been "the best thing we've done," as Karina says. She has seen families "who have grown in their faith because they're able to access this Catholic education again." But too many families remain excluded by cost barriers that UPK Colorado could remove -- if only it didn't discriminate against religious schools.

The De La Cruz family has sacrificed vacations and other opportunities, with Melissa accepting lower wages to work at Wellspring for the tuition discount.

She knows "a lot of families have left because of the cost of pre-K" -- families who want what she has found but cannot afford it without UPK Colorado assistance.

These Catholic families understand that if Colorado can exclude faith-based schools for holding traditional religious beliefs about marriage, human sexuality, and biological sex, then no family's religious exercise is safe. They recognize that Darren Patterson's case similarly impacts Christian families who desire to attend that school for reasons similar to theirs in wanting to send their children to Catholic schools. They believe that Darren Patterson simply seeks to maintain internal policies about bathrooms, dress codes, and pronouns that reflect its religious understanding of biological sex and are concerned if Colorado can force Darren Patterson to abandon these beliefs in its day-to-day operations.

The families' stories reveal the true cost of Colorado's exclusion policies: children denied educational opportunities; medical expenses competing with tuition bills; vacations canceled and businesses started in desperation; and faithful parents forced to choose between their constitutional rights and equal participation in government programs. These are not abstract legal claims -- they are the real-life experiences of families whose faith compels them to believe that God created human beings as male and female, and that this truth matters in how they educate their children.

III. COLORADO'S POLICY UNLAWFULLY DISCRIMINATES BASED ON RELIGIOUS EXERCISE.

A. The Policy is Subject to Strict Scrutiny.

1. Colorado's Policy Lacks Neutrality and General Applicability

The district court correctly found that Colorado's nondiscrimination requirement is not a neutral law of general applicability and therefore triggers strict scrutiny under the Free Exercise Clause. *Darren Patterson Christian Academy* 2025 WL at *4-5.

Colorado's statute empowers the Department of Early Childhood to grant individualized exemptions from quality standards if "necessary to ensure the availability of a mixed delivery system within a community." Colo. Rev. Stat. § 26.5-4-205(1)(b)(II). Such discretionary authority defeats general applicability. *Fulton v. City of Philadelphia*, 593 U.S. 522, 535 (2021) (law granting "sole discretion" to grant exemptions is not generally applicable even where never exercised). Furthermore, the fact that Colorado will exempt schools for secular reasons while refusing religious accommodations similarly triggers strict scrutiny. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021).

2. Colorado's Policy includes unconstitutional preferences.

UPK's "congregation exception" explicitly allows faith-based providers to reserve some or all of their seats for members of their congregation. A law is not neutral or generally applicable if it "discriminates against *some* or all religious

beliefs." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993) (emphasis added). State cannot "grant exemptions for some religions, but not others, because of differences in their religious doctrines." *Does 1-11 v. Bd. of Regents of Univ. of Colo.*, 100 F.4th 1251 (10th Cir. 2024).

Additionally, UPK's denominational favoritism violates fundamental constitutional principles. In *Cath. Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238 (2025), the Supreme Court this past term unanimously reaffirmed that "[t]he clearest command of the Establishment Clause" is that government may not "officially prefe[r]" one religious denomination over another. Id. at 247. The Court held that "a law that differentiates between religions along theological lines is textbook denominational discrimination." Id. at 248.

Colorado's policy creates precisely this forbidden preference. Religious schools that do not adhere to traditional religious teaching regarding sexual orientation and gender identity and so do not maintain sex-specific bathroom policies or traditional dress codes face no conflict with UPK requirements. But schools adhering to religious teachings requiring recognition of biological sex -- like Darren Patterson and Catholic schools -- are effectively excluded unless they abandon core religious convictions.

This different treatment based on theological choices regarding human sexuality and identity constitutes the sort of denominational preference that

Catholic Charities condemns. As the Supreme Court emphasized, "such official differentiation on theological lines is fundamentally foreign to our constitutional order, for '[t]he law knows no heresy, and is committed to the support of no dogma.'" Id. at 249 (quoting *Watson v. Jones*, 13 Wall. 679, 728 (1872)). Yet Colorado's policy effectively declares that certain religious views about biological sex -- views grounded in millennia of Christian teaching -- are unworthy of accommodation.

B. Colorado Cannot Satisfy Strict Scrutiny.

Once strict scrutiny applies, Colorado must demonstrate both a compelling interest and narrow tailoring. The district court correctly found Colorado failed this burden. As noted by the Court in *Fulton*, "broadly formulated interests" do not suffice. 593 U.S. at 541. The State must show why it has a compelling interest in "denying an exception" to religiously motivated conduct. Id.

Colorado's asserted interests are particularly weak here because Darren Patterson admits all students. Its policies regarding bathrooms, dress codes, and pronouns affect only internal operations -- they deny no child access to education. Colorado cannot demonstrate a compelling interest in controlling these intimate details of religious school operations when the school's doors remain open to all. See *Our Lady of Guadalupe Sch. V. Morrissey-Berru*, 591, U.S. 732, 737 (2020) (“The First Amendment protects the right of religious institutions to decide for

themselves, free from state interference, matters of church government as well as those of faith and doctrine.").

Moreover, the exemptions Colorado grants for other reasons undermine its claim of compelling necessity. As the district court recognized, "the fact that Defendants permit exemptions from the Program's anti-discrimination rules undermines their contention that this interest is constitutionally compelling." *Darren Patterson*, 2025 WL 700268, at *5.

IV. COLORADO'S POLICY UNLAWFULLY COMPELS SPEECH.

Darren Patterson also raises an independent compelled speech claim, a claim not raised in *St. Mary*. Colorado's requirement that the school use pronouns contradicting biological sex compels expression of an ideological message -- that gender identity rather than biological sex determines whether someone is male or female -- that directly contradicts Darren Patterson's religious beliefs.

The First Amendment "includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). By compelling Darren Patterson to use pronouns inconsistent with its religious understanding of biological sex, Colorado forces the school to "confess by word or act" its endorsement of an ideology it rejects. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

The Supreme Court's recent decision in *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023), reinforces this principle. There, the Court held that Colorado's public accommodations law violated the First Amendment by compelling a website designer to create expression contradicting her religious beliefs about marriage, emphasizing that "the First Amendment prohibits Colorado from forcing a website designer to create expressive designs speaking messages with which the designer disagrees." *Id.* at 577.

Colorado was the defendant in *303 Creative*, just as it is here. Despite the Supreme Court's rebuke, Colorado continues to compel speech under the guise of specious claims of advancing nondiscrimination policies, with scant showing of how such sweeping and authoritarian policies are actually needed. Just as Colorado sought to force expression celebrating same-sex marriage, it now seeks to force a religious school to use pronouns affirming gender ideology. The compelled speech here is intrusive: Darren Patterson cannot opt out of using pronouns in daily educational interactions.

Amici Catholic families support Darren Patterson's position that it cannot speak at odds with the sincerely-held religious beliefs it holds to be true, nor do they want faith-based schools forced by the state to promote ideas to young and impressionable children that contradict their own religious beliefs about human sexuality and identity. Colorado's mandate requires continuous affirmation of

gender ideology, transforming the school into an unwilling mouthpiece for the state's preferred orthodoxy.

V. THIS CASE IS DISTINGUISHABLE FROM *ST. MARY*.

The Tenth Circuit's decision in *St. Mary Catholic Parish v. Roy* addressed Catholic schools seeking to consider sexual orientation and gender identity in admissions decisions. The panel concluded that when "a school takes money from the state that is meant to ensure universal education, then its doors must be open to all." *St. Mary*, at *49. Catholic parents believe that the panel erred in its resolution of *St. Mary* and support the petition for review by the Supreme Court. Nonetheless, there are sufficiently distinct facts and claims made by Darren Patterson that differentiate this case from St. Mary and warrant review by the court. Darren Patterson's complaint, by contrast, was in defense of its right to maintain religiously motivated internal policies governing operations after students enroll. Colorado's attempt to dictate how a school manages intimate facilities, what dress standards they maintain, and what words teachers must speak is particularly intrusive. These intrusions into religious schools' internal affairs and expressive activities represent different burdens on religious exercise than those addressed by the panel in *St. Mary*.

VI. CONCLUSION

Amici Catholic families whose stories fill this brief have made extraordinary sacrifices to provide their children with education grounded in fundamental truths about human nature and God's design. They tithe faithfully while struggling to pay for preschool. They start businesses, accept lower-paying jobs, and cancel vacations. They watch some children benefit from preschool while younger siblings go without.

These families do not ask for special treatment. They ask only for equal treatment -- the right to participate in a government program without abandoning their religious beliefs. They ask that Colorado recognize that maintaining religiously informed internal policies is faithful stewardship of religious conviction.

For the sake of countless families who seek to fulfill their sacred duty as primary educators of their children, and to vindicate the fundamental First Amendment rights of all religious institutions, *amici* respectfully request this Court affirm the district court's decision.

Respectfully submitted,

November 17, 2025

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 32(a)(7)(B). This brief contains 6,502 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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Date: November 17, 2025

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CERTIFICATE OF DIGITAL SUBMISSION

Counsel for *Amici Curiae* The Conscience Project and Catholic Families, hereby certifies that all required privacy redactions have been made, which complies with the requirements of Federal Rule of Appellate Procedure 25(a)(5).

Counsel also certifies that any and all hard copies submitted to the Court are exact copies of the ECF filing from November 17, 2025.

Counsel further certifies that the ECF submission was scanned for viruses with the most recent version of a commercial virus scanning program (SentinelOne software version 24.2.3.471 [November 17, 2025]), and, according to the program, is free of viruses.

Dated: November 17, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2025, I electronically filed the foregoing with the United States Court of Appeals for the Tenth Circuit using the CM/ECF system, which automatically will send notification of such filing to counsel of record.

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