Appeal No. 25-1187

In the United States Court of Appeals for the Tenth Circuit

DARREN PATTERSON CHRISTIAN ACADEMY,

Plaintiff-Appellee,

v.

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

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Colorado
Case No. 1:23-CV-01557-DDD-STV / Hon. Daniel D. Domenico

BRIEF OF AMICUS CURIAE THE CENTER FOR AMERICAN LIBERTY IN SUPPORT OF APPELLEE AND AFFIRMANCE

Josh Dixon
Courtney Corbello
Center for American Liberty
2145 14th Avenue, Suite 8
Vero Beach, FL 32960
(703) 687-6212
jdixon@libertycenter.org
ccorbello@libertycenter.org
Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

CORPORATE DISCLOSURE STATEMENT

The Center for American Liberty (CAL) is a non-profit corporation with no parent companies, subsidiaries, or affiliates.

STATEMENT OF INTEREST

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); *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); *Antonucci v. Winter*, 767 F. Supp. 3d 122 (D. Vt. 2025), *appeal docketed* No. 25-514 (2nd Cir. Mar. 4, 2025). CAL has an interest in ensuring that courts apply the correct legal standard in cases involving the First Amendment and parental rights.

FRAP 29(a)(2) STATEMENT

Pursuant to Fed. R. App. P. 29(a)(2), all parties have consented to the filing of this amicus brief.

FRAP 29(a)(4)(E) STATEMENT

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—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief.

INTRODUCTION

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 surrender their religious identity concerning day-to-day operations with respect to things like 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 or neutrality. It is the product of an impermissible effort to standardize children.

The Constitution does not tolerate such efforts. The Supreme 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 the Supreme 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 one Christian preschool 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. CAL urges this Court to affirm the district court's ruling and restore the constitutional balance—protecting both religious liberty and the parental right to choose diverse educational paths for their children.

SUMMARY OF THE ARGUMENT

First, although it claims to offer broad parental choice, the Program effectively excludes religious schools, undermining parental rights and true educational diversity. The Program was designed to expand educational opportunity through a "mixed delivery system" involving public and private schools that empowers parents to choose the preschool best suited for their child. Yet by excluding faith-based schools that cannot comply with its quality standards provision[1] without

[1] Consistent with the district court's usage, this brief refers to the challenged rules as the "quality standards provision." As the district court explained, Colorado

compromising their beliefs, Colorado has turned a promise of inclusion into a system of exclusion. The Constitution recognizes parents—not the state—as the primary decisionmakers in their children's upbringing, and honoring that right means safeguarding diverse educational options. When the government effectively narrows participation to only secular private schools, it erodes family autonomy, limits choice, and undermines the pluralism that strengthens communities. Ensuring that all schools, including religious ones, can participate on equal terms advances—not threatens—the program's goals, benefiting every family by fostering a truly inclusive and diverse educational landscape.

Second, the quality standards provision is not generally applicable. Under Supreme Court precedent, laws that permit secular exceptions while denying religious exceptions trigger strict scrutiny. The Program does precisely that: it grants waivers and embeds secular carve-outs for low-income families, employees' children, multilingual learners, and community ties, while refusing comparable flexibility on religious grounds. That unevenness not only violates the Free Exercise Clause but also denies parents the full panoply of faith-based options.

---

enforces "quality standards" that schools must meet to remain eligible for state funding. Colo. Rev. Stat. § 26.5-4-205(1). Those standards require schools to "provide eligible children an equal opportunity to enroll and receive preschool services regardless of race, ethnicity, religious affiliation, sexual orientation, gender identity, lack of housing, income level, or disability." Colo. Rev. Stat. § 26.5-4-205(2).

Third, the quality standards provision is not neutral. In practice, it privileges secular preferences while disfavoring religious conviction, thus undermining both parental rights and educational pluralism. Although framed as evenhanded, the quality standards provision allows countless secular carve-outs yet categorically denies religious accommodations. That disparity is fatal under Supreme Court precedent, which forbids laws that covertly suppress religion or permit secular conduct while burdening comparable faith-based conduct. By giving secular rationales deference while branding faith-based ones as illegitimate, Colorado stigmatizes religious families and narrows the range of educational options available to them. True neutrality demands more than facial uniformity; it requires respect for religion in practice. Only then can parents fully claim the benefit of their constitutional right to direct their children's education within a genuinely pluralistic system.

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 programs 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. Affirming would 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*, the Supreme Court held unconstitutional a prohibition on the teaching of foreign languages to young 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*, the Supreme Court struck down an Oregon statute mandating public schooling, 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.

The Supreme 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.); *see also Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1203 (10th Cir. 2003) (quoting *Troxel*, 530 U.S. at 65). And most recently, in *Mahmoud*, the Supreme 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 even "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 the Supreme 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); *see also* 9.App.1820—Colorado elevates uniformity over diversity, substituting bureaucratic judgment for parental discretion and eroding the constitutional commitment to family autonomy.

Appellants and their amici argue that Colorado's quality standards provision advances child welfare by ensuring "equal opportunity" and protecting against dignitary harms. *See, e.g.*, SACCR Amicus Br. at 18–20 (alleging psychological and familial harms from discrimination). 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, Colorado was preliminarily enjoined from enforcing those rules against Darren Patterson Christian Academy ("Darren Patterson") for eight months, yet it produced no evidence of resulting injury to anyone. *See* 3.App.605. 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 include religious options, thereby honoring schools' free exercise rights and empowering families. In *Zelman v. Simmons-Harris*, the Supreme 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.

Espinoza v. Montana Department of Revenue went further. There, 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). The Court struck down that prohibition, holding that once the state chooses to fund private education, "it cannot disqualify some private schools solely because they are religious." *Id*. at 487. As the Court explained, it has "long recognized the rights of parents to direct 'the religious upbringing' of their children[,]" which parents commonly exercise "by sending their children to religious schools, a choice protected by the Constitution." *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*. As the 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, the Supreme Court reaffirmed and extended *Espinoza*. In *Carson v. Makin*, 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). The Court held that the prohibition was unconstitutional because it discriminated against

schools based on the religious use of funds, not just 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 instead 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.

Appellants contend that the Program's requirements are neutral and generally applicable, thereby preserving the Program's integrity without favoring or disfavoring religion. *See* Appellants' Br. at 32–38. 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 neutrality 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 preschool schools—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. Statewide, there are over 2,000 preschools participating in the Program, only 40 of which are religious. 9.App.2008. 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 fully participate in the Program 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.

2.App.509. 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, more 4-year-olds participated (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 in both lower-income and higher-income families. This not only limits parental choice but perpetuates inequality, as low-income and rural families lose affordable, community-rooted options.[2]

[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

Appellants' amicus the Children's Rights' focus on uniform protections overlooks this reality, assuming, without evidence, that inclusion of religious schools inherently harms LGBTQ+ children. *See* SACCR Amicus Br. at 18–20. This 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. But respecting parental rights enhances child welfare because families, not states, are best positioned to choose "safe and welcoming" environments, 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 Darren Patterson 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. Upholding the district court's ruling ensures the Program fulfills its purpose: to expand opportunities for all families by affirming

---

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.

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 v. City of Phila.*, 593 U.S. 522, 533 (2021) (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 the Supreme 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 merely 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.369. Appellants' refrain that "the equal-opportunity requirements are not subject to waiver," Appellants' Br. at 38, misses *Tandon's* point: 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 or employer/community ties. 3.App.615, 4.App.998, 9.App.1820. 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").

Appellants and their amici try 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 side. Appellants' Br. at 33–37, 57; Religious and Civil Rights Org. ("RCRO") Amicus Br. at 9–13. 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, among other things, 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 Appellants and their amici do, Oregon argued other provisions in the statute did not operate as exemptions and were not relevant to the antidiscrimination statute's general applicability analysis. *See Bates Appellees' Br.* (Doc. 62) at 18–21. 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 Appellants' amici Professors Tebbe and Sager's "equal

regard" framing, Prof. Amicus Br. at 25, and Religious/Civil-Rights' claim that these are not "real" exemptions, RCRO Amicus Br. at 9-13, the practical effect of these 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 supra* at Section I.A. Colorado's approach narrows the mixed-delivery marketplace by permitting myriad secular exceptions while denying comparable religious accommodations, skewing the marketplace toward less suitable secular alternatives. This is impermissible: Colorado is effectively conditioning public benefits on the abandonment of religion, which not only burdens Darren Patterson's religious exercise but also the opportunities of 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 Supreme Court 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 QUALITY STANDARDS PROVISION IS NOT NEUTRAL AND NEGATIVELY IMPACTS PARENTAL CHOICE AND EDUCATIONAL PLURALISM.

Neutrality under the Free Exercise Clause is not an abstraction. It protects families' real-world ability to select schools consistent with their convictions. Parents have the right—and the duty—to direct and control their children's education, and neutrality ensures that a government that allows private entities to participate in the provision of education cannot tip the scales by favoring secular entities while disfavoring religious ones.

The Program fails that standard. The Free Exercise Clause prohibits more than just facial discrimination against religion. It also forbids even "subtle departures from neutrality" and laws that amount to the "covert suppression of particular religious beliefs." *Lukumi*, 508 U.S. at 534 (citation omitted). As the Supreme Court explained in *Lukumi*, a law is not neutral if it targets religious conduct for less favorable treatment, whether through its text, operation, or enforcement. *Id*. at 534–35. The Program fails this requirement.

Colorado insists that its quality standards provision applies evenhandedly to all schools, but the record shows otherwise. Officials have tolerated and even facilitated deviations from the standards for secular reasons—allowing preferences for income, gender, language, disability, employment, and neighborhood ties, *see* 3.App.594-95, 3.App.615—while categorically denying religiously motivated

deviations. This disparate treatment is fatal to the neutrality inquiry. After all, in assessing whether a policy is neutral towards religion, courts must consider the totality of the circumstances surrounding its application, including "the effect of [the] law in its real operation," which "is strong evidence of its object." *Lukumi*, 508 U.S. at 535; *see also id*. at 540. Here, while the statute never mentions religion outright, its administration, in practice, draws an unmistakable line: secular reasons regularly justify departures from the rule, but religious reasons never do.

Appellants and their amici try to reframe the Program as neutral by claiming that the permitted carve-outs advance programmatic goals rather than exempt schools from nondiscrimination. Appellants' Br. at 51–57; Prof. Amicus Br. at 19–20, 22–23. But families experience these carve-outs as what they are: permissions for secular values to override the "nondiscrimination" rule, while religious values are categorically dismissed. As *Lukumi* made plain, "a law targeting religious beliefs as such is never permissible." 508 U.S. at 533. Moreover, that asymmetry does more than offend doctrinal neutrality; it also undermines parental rights. It tells families who seek faith-based schools that their convictions are less legitimate than secular ones. In effect, it shrinks the pluralism that the Supreme Court's precedent promises, replacing a system of diverse educational choices with one that systematically disfavors religious options.

When the government insists that secular considerations justify exceptions, but religious convictions never can, it communicates that faith-based reasons are inherently less worthy of respect. That stigmatizes religious families, branding them as second-class participants in the very program designed to empower parents to choose the education best suited for their children. The dignitary harm is real: it mirrors the very concern Appellants' amici highlight for LGBTQ+ families, *see* ACCR Br. at 18–26, except here Colorado *itself* is excluding and discriminating against religious families.

Finally, neutrality is not satisfied by Colorado's lip service that it is paying "equal regard" to all schools. *See* Prof. Amicus Br. at 25; *see also* Appellants' Br. at 74–75 (arguing the equal-opportunity provisions are neutral because they apply to all schools). Instead, Colorado must treat religious and secular reasons with equal regard *in practice*, so that parents may truly direct their children's upbringing within a diverse educational marketplace. By tolerating secular carve-outs and forcing parents into unconstitutional choices, Colorado has violated both neutrality and the broader constitutional principle of parental autonomy. Upholding the district court's ruling is thus necessary to preserve the pluralism in education that the Constitution promises to every family.

CONCLUSION

For the foregoing reasons, this Court should affirm.

Dated: November 17, 2025

s/Josh Dixon
Josh Dixon
Courtney Corbello
Center for American Liberty
2145 14th Avenue, Suite 8
Vero Beach, FL 32960
(703) 687-6212
jdixon@libertycenter.org
ccorbello@libertycenter.org
Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

I certify that:

1. This document complies with the word limit of Fed. R. App. P. 29(a)(4)(G) because, excluding the parts of the document exempted under Fed. R. App. P. 32(f), this document contains 5,078 words, as calculated by Microsoft Word and in compliance with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5); and

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in size 14-point Times New Roman, a proportionally spaced font, using Microsoft Word.

s/Josh Dixon
Josh Dixon