



***St. Mary Catholic Parish in  
Littleton et al. v. Roy:  
A Guide for State Early  
Childhood System Leaders  
(and anyone else interested)***

**Elliot Regenstein**

**Andrea Johnson**

**Liz Zipp-Seng**

**May 1, 2026**

**FORESIGHT LAW + POLICY**

## Introduction

For decades, religious providers have been active participants in state-funded pre-k programs around the country. Now the Supreme Court has taken a case – *St. Mary Catholic Parish in Littleton et al. v. Roy* – that could upend the terms under which those providers participate in those pre-k programs. The case is a lawsuit challenging Colorado’s state preschool program, arguing that it improperly discriminates against religious providers. A decision will likely be issued by the end of June 2027.

This paper summarizes the issues in the case, both legally and politically. It provides a short background on state pre-k and its historic involvement of religious providers, and a summary analysis of the legal issues the Supreme Court will consider. Its goal is to be useful to preschool state system leaders, state leaders in adjacent systems (such as K-12 education and human services), and to First Amendment attorneys who may be unfamiliar with the context of state-funded preschool. If it turns out to be helpful to any of the attorneys involved in the case, or the justices themselves, so much the better.

This paper will not attempt to predict the outcome of the case, nor will it argue for one side or the other. It will simply attempt to sort through the facts and the legal argument to provide some insight into what might happen, and how different possible outcomes in the case might impact the operation of state early childhood systems. When the case is finally decided, Foresight Law + Policy will produce additional guidance for system leaders based on the Supreme Court’s decision.

Part I of this paper provides background on religious providers in state-funded preschool programs. Part II examines some key recent Supreme Court decisions focused on the inclusion of religious providers in government-funded services. Part III looks at the specific facts of the *Roy* case in light of recent Supreme Court doctrine. Part IV then looks at potential implications of the *Roy* case for state early childhood systems leaders.

## Table of Contents

Introduction .....	2
I. Background on Religious Providers in State-Funded Preschool .....	3
A. The National Landscape .....	3
B. Colorado’s Universal Pre-k Program .....	5
II. Recent and Relevant Supreme Court First Amendment Jurisprudence .....	6
III. The Legal Issues in <i>St. Mary Catholic Parish in Littleton v. Roy</i> .....	7
IV. Potential Implications for Early Childhood System Leaders.....	8

A. Potential Issues in the Supreme Court.....	9
B. Potential Implications for the Field.....	10
V. Conclusion.....	11
APPENDIX: State Funded Pre-K Faith-Based Provider Information .....	12

**I. Background on Religious Providers in State-Funded Preschool**

**A. The National Landscape**

State pre-k generally serves children who are 4 years old, and in some states it also serves children who are 3. The size and quality of state pre-k programs varies widely. The definitive resource for information about state pre-k programs is the annual yearbook produced by the National Institute for Early Education Research (NIEER); the NIEER yearbook includes a range of data about program enrollment and characteristics. According to NIEER, in the 2024-25 school year there were 1.8 million children enrolled in pre-k programs across the country.<sup>i</sup> Colorado ranks third in the nation in the percentage of its 4-year-olds enrolled in preschool, behind only the District of Columbia and Vermont (both of which are much smaller in both geography and population).<sup>ii</sup>

While some states have included preschool in the same funding formula they use to support K-12 schools, in many states that have a state pre-k program the funding is instead more akin to a grant program.<sup>iii</sup> States generally develop criteria for their state-funded pre-k program, including requirements for both enrollment procedures and service delivery. Providers can then apply for funding to be included in the program, and are typically funded to serve a certain number of classrooms or students. Each classroom will contain roughly 20 children, depending on the maximum allowed in a given state; in most state programs there is a maximum class size of 20 students (or fewer).<sup>iv</sup>

Other than Hawaii, every state with a publicly-funded preschool program administers that program through a “mixed delivery” system.<sup>v</sup> This means that both schools and private providers can offer state-funded preschool. In some states the money flows first to the school districts, who then are expected to subcontract with private providers; in other states, school districts and private providers both can be funded directly. Private providers in a mixed delivery system often also provide child care.

While debates over vouchers and private schools are some of the fiercest in K-12 schools, in early childhood the need for a mixed delivery system is widely accepted. Mixed delivery systems leverage existing capacity and are responsive to the needs of families, incorporating schools and a wide range of private providers. Some advocates may argue the relative merits of schools and

private providers, but there is little serious debate that the system could survive with only one and not the other. Indeed, in most states a huge part of the early care and education system is private child care paid for by parents (in some instances with the support of state subsidies).

In most states religious providers are explicitly authorized to participate in the preschool program, either as direct grantees or as subcontractors of school districts (or both, which is the case in Colorado). The Appendix of this paper includes a summary of each state's requirements for religious providers to participate in their state pre-k program. While there are some variations across the states, in general the requirements mandate that all providers must use the enrollment procedures dictated by the state, and that the content of what those providers deliver must also align with state standards. In some states the requirements explicitly provide that the content must be secular; Colorado is not one of those states.<sup>vi</sup>

Historically, then, the dynamic between states and religious providers in state-funded preschool programs has been relatively straightforward. States have defined the terms of participation in state-funded pre-k, and religious providers have had a choice: they could either take state money and abide by those terms, or they could choose to reject those terms and remain independent, operating without state preschool funds. Many religious providers have been longstanding participants in state-funded pre-k, and others have thrived despite not receiving public funds.

That independence comes at a cost, however. In general state pre-k programs are required to be free for enrolling students; the idea is that the state pays the full cost of attendance, and families can enroll their children with no expenses (much like in the public schools). Of course, some states do a better job than others of covering the actual cost – but from the standpoint of parents, the key factor is that the service is free. Some families choosing between free public preschool and tuition-based religious preschool will in fact choose the latter. But many families cannot afford that choice, and in some areas the expansion of free public preschool has caused significant enrollment drops at private providers – which in some cases has led to those private providers closing up shop.

There is no question that this dynamic is at play in the *Roy* case. Indeed, in arguing that the Supreme Court should take the case, the parish noted that two parish preschools closed during the case due to decreased enrollment.<sup>vii</sup> The challenges of maintaining enrollment are not unique to religious providers, and across Colorado a range of child care providers have struggled to maintain enrollment in the face of expanded publicly-funded preschool.<sup>viii</sup> In addition, the Archdiocese of Denver has in recent years closed multiple K-12 schools due to low enrollment.<sup>ix</sup>

## B. Colorado's Universal Pre-k Program

Colorado has offered state-funded preschool since 1988.<sup>x</sup> In 2022 new legislation established the Colorado Universal Preschool Program.<sup>xi</sup> The statute authorized the state's new Department of Early Childhood to establish rules for the program.<sup>xii</sup>

While in many respects the Colorado Universal Preschool Program is similar to other state preschool programs, one distinctive element of the program is a state-administered matching algorithm used to connect families with providers. In other states preschool funding is typically distributed to providers, and then the providers administer their own enrollment process. Those enrollment processes are often subject to specific state requirements, but are not directly managed by the state. In contrast, Colorado law directs the Department of Early Childhood to create a "unified application" for all of the programs under its control.<sup>xiii</sup>

In Colorado's enrollment process, a pre-registration process is available for children who are already enrolled in a Universal Preschool Program, who already have a sibling enrolled in a program, or whose parent works for a program.<sup>xiv</sup> Children eligible for special education also are able to register for direct placements.<sup>xv</sup>

For families seeking to enroll with a new provider, the state has implemented an algorithm that matches families with providers. From the outset families could express their preference -- and at the request of providers, the Department added a function to the algorithm allowing providers to indicate preferences in how they might match with students. [St. Mary Catholic Parish in Littleton v. Roy](#), 154 F.4<sup>th</sup> 752, 758 (10th Cir. 2025) Faith-based providers were allowed to express a preference for members of their congregations. *St. Mary v. Roy*, 154 F.4<sup>th</sup> at 760. Other provisions included preferences for children receiving services pursuant to the Individuals with Disabilities Education Act, low-income children receiving services pursuant to the Head Start Act, and a catch-all provision. *St. Mary v. Roy*, 154 F.4<sup>th</sup> at 758-59.

This centralized approach to enrollment means that family choice for preschool works differently than in other states – or in Colorado prior to the creation of the universal preschool program. In other states, families survey the landscape of available early education and care options and seek on their own to find a service that works for their needs. In Colorado, families are effectively guaranteed enrollment in some kind of service, and that guarantee is meant to benefit underserved families; the system is designed to include every family and a wide range of providers, although the number of hours of service provided per week is often limited. Colorado's matching process gives parents greater influence on the enrollment process, whereas in other states the providers have much more control over who enrolls in their programs.

## II. Recent and Relevant Supreme Court First Amendment Jurisprudence

The First Amendment of the United States Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;” states are subject to the same requirements. Over time the Court’s jurisprudence on the subject of what it means to “prohibit the free exercise” of religion has evolved considerably. At times the Court has construed the term more narrowly, giving government more flexibility to act even when its actions might be seen as infringing on religious practice; at other times, the Court has offered more robust protection for religious practices.

In recent years the Supreme Court has largely moved in the latter direction, striking down state actions that it has viewed as inhibiting free exercise. There are two primary strands of free exercise cases that are likely to be particularly relevant in the *Roy* case.

The first strand is a series of cases holding that public funding streams cannot discriminate against religious providers solely because they are religious. In [\*Trinity Lutheran Church of Columbia, Inc. v. Comer\*](#), 582 U.S. 449 (2017), the Court held that a state program to install playground surfaces could not exclude a church solely because it was a religious institution. The Court wrote that “A school, concerned about government involvement with its religious activities, might reasonably decide for itself not to participate in a government program.” *Trinity Lutheran* at 19. But the Court held squarely that the option must be with the school, and that the government could not exclude the school simply because of its religious nature.

Three years later, in [\*Espinoza v. Montana Department of Revenue\*](#), 591 U.S. \_\_\_\_ (2020), the Court held that a state tax credit program could not exclude religious schools. The Supreme Court’s opinion explicitly rejected the state’s reliance on its “Blaine Amendment,” a state constitutional provision prohibiting payments to sectarian schools. Two years after that, the Court decided [\*Carson v. Makin\*](#), 596 U.S. \_\_\_\_ (2022), holding that religious schools could not be excluded from a tuition assistance program that included secular private schools. In each of those cases the government had sought to altogether exclude religious providers from a funding opportunity, and the Court ruled that religion was not an appropriate basis for doing so.<sup>xvi</sup>

A second relevant strand of cases focuses on religious entities actually participating in government-funded services but objecting to particular terms of participation. In [\*Fulton v. City of Philadelphia\*](#), 593 U.S. 522 (2021), Catholic Social Services (CSS) was assisting Philadelphia in the provision of foster care services. Due to its religious beliefs CSS refused to provide placements with same-sex couples or unmarried couples; the city, citing a non-discrimination requirement in a city ordinance, cancelled the CSS contract. The Supreme Court ruled for CSS, holding that Philadelphia had violated its free exercise rights. One important factor in the case was that the city had a system of discretionary exceptions, meaning that its ordinance was not

truly a neutral law of general applicability. A few years later in *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 609 U.S. \_\_\_\_ (2025), the Supreme Court ruled that the state’s refusal to give Catholic Charities tax-exempt status under its unemployment compensation system effectively discriminated among religions on theological grounds – unanimously holding that to do so violates the free exercise clause.

Another prominent recent First Amendment decision is *Mahmoud v. Taylor*, 606 U.S. \_\_\_\_ (2025), in which a group of religious parents sought to opt out of a school district’s lessons focused on LGBTQ+ inclusivity. The Supreme Court held that because the district’s instruction conflicted with the parents’ religious beliefs, the district was required to offer them the option of opting their children out of those lessons.

Looming in the background of all of these cases is a 1990 decision called *Employment Division, Dep’t of Human Resources of Oregon, et al., v. Smith et al.*, 494 U.S. 972 (1990). In that case the Supreme Court held that the state did not violate the Free Exercise Clause when it prohibited sacramental peyote use. In that case the state denied unemployment benefits to two men fired because they used peyote in a church ceremony. The Court held that because the law was “neutral” and “generally applicable” it was not a burden on the free exercise of religion. This opinion – authored by then-Justice Antonin Scalia – has come to be viewed by some advocates and commentators as inadequately protecting religious practice from state interference. While some of the Supreme Court’s more recent rulings have appeared to strike a different balance between state prerogatives and religious rights, *Smith* has not been explicitly overruled.

### **III. The Legal Issues in *St. Mary Catholic Parish in Littleton v. Roy***

Colorado’s state pre-k program explicitly allows the participation of religious providers – but state statute required all providers to comply with a nondiscrimination requirement. Each preschool is required 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, as such characteristics and circumstances apply to the child or the child’s family.” *St. Mary v. Roy*, 154 F.4<sup>th</sup> at 757.

A group of parish preschools sought to participate in the preschool program but asked for exemptions from the nondiscrimination requirements in order to avoid enrolling children with same-sex or transgender parents. The state denied the exemption. The preschools then sued on three grounds:

- That religious entities were being denied generally available state benefits solely because of their religious nature;
- That the antidiscrimination requirement is not neutral and generally applicable because it has discretionary and categorical exemptions; and

- That the nondiscrimination requirement would force them to accept members who oppose their religious purposes.

In January 2024 a three-day trial ended with the judge ruling that the state had not violated the parish preschools’ First Amendment rights. *St. Mary v. Roy*, 154 F.4<sup>th</sup> at 761. The district court found that the congregation preference was an impermissible exception to the nondiscrimination law, but otherwise upheld the program. *St. Mary v. Roy*, 154 F.4<sup>th</sup> at 761-62.

On appeal, the U.S. Court of Appeals for the Tenth Circuit upheld the district court’s ruling. The court held that Colorado had not violated the *Carson* line of cases because it actually allowed religious providers to participate, and the nondiscrimination requirement was neutral and generally applicable. *St. Mary v. Roy*, 154 F.4<sup>th</sup> at 765-77. The court rejected the parish preschools’ argument that the existence of secular exemptions based on disability status or income meant that it also had to create a religious exemption. The court found that the nature of the exemptions in Colorado’s law was different than the discretionary exceptions that proved critical to the Supreme Court’s analysis in *Fulton*.

The parish preschools then asked the Supreme Court to take the case to answer three questions:

- i. “Whether proving a lack of general applicability under *Employment Division v. Smith* requires showing unfettered discretion or categorical exemptions for identical secular conduct.” – or, in layman’s terms, that the 10<sup>th</sup> Circuit incorrectly held that the existence of secular exemptions but no religious exemptions was not discrimination against religious entities.
- ii. “Whether *Carson v. Makin* displaces the rule of *Employment Division v. Smith* only when the government explicitly excludes religious people and institutions.” – or, said another way, that lower courts – including the 10<sup>th</sup> Circuit – are defying the prohibition in *Trinity Lutheran, Espinoza, and Carson* of discriminating against religious entities solely because of their religious nature.
- iii. “Whether *Employment Division v. Smith* should be overruled.”<sup>xvii</sup>

The Supreme Court took the case, but only with regard to the first two questions raised by the parish preschools.

#### **IV. Potential Implications for Early Childhood System Leaders**

It is important to start by saying that speculating about the outcome of Supreme Court cases – while potentially fun and interesting – is always to a large extent guesswork. While the justices’ past rulings and questions at oral argument may give some indication of where they are leaning, it is impossible to predict the actual rationale the justices will use to resolve any particular case.

Accordingly, this paper will identify a few major possible outcomes and discuss what those might mean for the field – with the strong caveat that none of these scenarios may in fact come to pass.

#### A. Potential Issues in the Supreme Court

When the parish preschools asked the Supreme Court to take the case, a whole host of other interested entities joined in. These entities – known in court as *amici curiae*, or “friends of the court” – filed briefs asking the Supreme Court to take up the case, on various grounds. Many of these amici were organizations focused on religious liberty, but the amicus briefs also included one filed by 22 state attorneys general.<sup>xviii</sup> Importantly, the United States filed a brief urging the Supreme Court to take the case, arguing that the 10<sup>th</sup> Circuit incorrectly held that Colorado’s actions were neutral and generally applicable.<sup>xix</sup>

The amicus briefs raise a wide range of issues, some of which are unlikely to be addressed by the Supreme Court – particularly those briefs urging the court to overrule *Smith*, a question it will not squarely address. But there are a few issues that are likely to be addressed in the Supreme Court arguments.

While multiple amicus briefs contend that the 10<sup>th</sup> Circuit is explicitly violating the *Trinity Lutheran-Espinoza-Carson* line of cases, that argument may be a stretch. In all of those cases the policy at issue explicitly excluded religious providers because of their religious nature; that is simply not the situation in this case. These amicus briefs cite numerous examples of states other than Colorado adopting policies that are explicitly designed as an end-run around *Carson*, but there is no evidence in this case that Colorado’s nondiscrimination clause was designed as a back-door way to avoid *Carson*’s impact.

That said, the question of whether the secular exemptions open the door to religious ones is likely to be a very interesting one for the Supreme Court. In particular the *Fulton* decision may prove to be critical, as it limited the ability of a government to hold its contractor to an antidiscrimination provision. In the 10<sup>th</sup> Circuit decision, the fact that some religious providers were participating in the program served as the basis for distinguishing this case from *Carson* – but some of the amicus briefs argue that what Colorado is actually doing is discriminating among religious providers, favoring those that are LGBTQ+-inclusive while excluding those that are not.<sup>xx</sup> The exemptions in Colorado’s law are in some ways different than the exceptions in Philadelphia’s ordinance in *Fulton*, but the Supreme Court may disagree with the 10<sup>th</sup> Circuit on whether those differences are legally meaningful.

At the heart of the matter will be the ability of states to control the actions of publicly-funded religious preschool providers – an issue that surely has implications for K-12 schools and other services.<sup>xxi</sup> Conservative scholars have argued that state pre-k programs have not been “neutral”

toward pre-k programs because of the requirements they seek to impose on those programs.<sup>xxii</sup> Their position is that if a state is funding private providers to offer preschool, it must fund religious providers to offer religious instruction.

This position is not directly stated in any of the *Trinity Lutheran-Espinoza-Carson* cases, and indeed *Trinity Lutheran* explicitly contemplates the possibility that states might reasonably impose neutral programmatic requirements that religious providers might find burdensome. But directionally this position is very much in line with where the Supreme Court appears to be headed – particularly in *Fulton* – and it may well be that this next case makes explicit that religious providers can participate in publicly funded programs on their terms, not the state’s.

### B. Potential Implications for the Field

If the Supreme Court rules for the state in *Roy*, existing preschool regulations relating to faith-based providers will remain constitutional. In this scenario, some states may choose to tweak some of their regulations, but in general it is likely that the status quo will prevail in many states. If the Supreme Court rules against Colorado, however, then other states will likely need to re-evaluate their statutory and regulatory framework for including religious providers.

The Supreme Court might issue a broad ruling that severely limits the ability of states to regulate faith-based preschool providers. In this scenario the Supreme Court rules categorically that if the state includes private providers it not only must include religious providers, it must allow those providers to enroll students on the providers’ terms and offer the kind of instruction they desire.

- If the Supreme Court issues a sweeping ruling against Colorado, an initial question for any state that offers state-funded preschool is whether it wants to fund religious instruction or not. Indeed, for years, many states were under the impression that they were not allowed to fund religious instruction in state preschool. For those states, a ruling for the parishes in *Roy* might clarify that funding religious preschool instruction is in fact permissible, and the state might choose to adopt new rules supporting the implementation of state-funded religious preschool. Indeed, the *Carson* ruling may already provide a sufficient basis for states to adopt a policy of providing public funds for religious preschools.
- If the ruling is broad then states that do not want to fund religious preschool may be able to do so by restricting state-funded preschool to public schools – which for now do not offer religious instructions – and eliminating private providers altogether. That action would, of course, surely spur additional lawsuits by private providers arguing that the decision to drop them from the program is religious discrimination; those lawsuits might be successful. Moreover, in the coming years there could be Supreme Court rulings explicitly authorizing religious instruction in public schools.

The Supreme Court might also rule in favor of the parishes with a narrower ruling on more limited grounds, and might even clarify that states can continue to regulate faith-based preschools in ways not specifically addressed in this case.

- For example, the Court could focus on the specific exemptions offered by Colorado. If the Supreme Court finds some specific deficiencies in Colorado’s nondiscrimination rules, states might be able to develop rules that do not have any of those specific deficiencies.
- Other states do not have the kind of matching algorithm that Colorado implemented for its enrollment process – or indeed, any kind of centralized enrollment processes – which might provide some basis for distinguishing the Colorado case. A narrow ruling focused on the Colorado’s unique matching process may leave states room to manage enrollment processes in different ways while still providing consistency across provider types.
- If the decision in *Roy* focuses exclusively on enrollment it might also leave states free to require preschool providers to focus on secular content, regardless of which children they enroll.

A consistent theme of those scenarios involving state responses to a narrow ruling against Colorado in *Roy* is that if states that want to dictate the terms by which religious providers participate in state-funded preschool programs, they will have two basic choices: (1) accept the Supreme Court’s ruling and develop regulations faithfully implementing its holding, or (2) look for distinctions at the margins, draft regulations reflecting the state’s best effort to preserve its values despite an adverse Supreme Court decision, and then take their chances in court (potentially unsuccessfully). Each state’s political leaders will have to determine which path makes the most sense in their context.<sup>xxiii</sup>

## **V. Conclusion**

Over the course of the next year the Supreme Court is expected to receive briefs, hear arguments, and issue a decision in *St. Mary Catholic Parish v. Roy*. Until a final decision is issued, the exact implications for state preschool programs will remain unclear. But state leaders are well advised to review their existing regulations governing the participation of religious providers in their state pre-k program, evaluating whether those regulations (a) are consistent with the state’s current values relating to religious instruction in state pre-k, and (b) might be rendered unconstitutional by the Supreme Court’s decision in *Roy*. If any of the regulations might be impacted by the Supreme Court’s ruling, the state should at the very least prepare to engage in a process of drafting new regulations, and begin considering how to demonstrate its values for its pre-k program in a manner that fully complies with the First Amendment.

**APPENDIX: State Funded Pre-K  
Faith-Based Provider Information  
April 2026**

State Programs that Allow Contracting or Subcontracting with Faith-Based Programs<sup>xxiv</sup>

“DIR”: Faith-based providers can be funded directly by the state; “SUB”: Contracted providers can subcontract with faith-based providers.

<b>Program</b>	<b>DIR</b>	<b>SUB</b>	<b>Program</b>	<b>DIR</b>	<b>SUB</b>
Alabama	X		Minnesota VPK/SRP		X
Arizona	X		Mississippi ELC	X	X
Arkansas	X		Missouri QPK	X	X
California CSPP	X	X	Nebraska		X
Colorado	X		Nevada	X	
Connecticut CDCC	X	X	New Jersey		X
Connecticut SR	X	X	New Mexico	X	
Connecticut Smart Start		X	New York	X <sup>xxv</sup>	X
Delaware	X		North Carolina		X
District of Columbia	X		North Dakota	X	
Florida	X	X	Ohio	X	X
Georgia	X		Oregon OPK	X	X
Illinois	X	X	Oregon Preschool Promise	X	X
Indiana	X		Pennsylvania HSSAP		X
Iowa Shared Visions	X	X	Pennsylvania K4 & SBPK		X
Iowa SWVPP		X	Pennsylvania PKC	X	X
Kansas	X	X	Rhode Island	X	X
Kentucky		X	South Carolina	X	
Louisiana NSECD	X		Tennessee		X
Maine		X	Texas		X
Maryland	X		Utah	X	
Massachusetts CPPI		X	Vermont	X	X
Massachusetts Chapter 70		X	Washington ECEAP	X	X
Michigan		X	West Virginia		X
Minnesota HdSt		X	Wisconsin		X

Pre-K Program	Policies/Guidelines Re: Use/Non-Use of Religious Content in Pre-K Programs
Alabama	<p>“Religious instruction or other religious activity is permitted during the 6.5-hour FCPK day except insofar as it would prevent compliance with other program guidelines.”</p> <p><a href="#">(Alabama First Class Pre-K Guidelines (2025-2026))</a> (see Guideline 2.2F Curriculum, page 19))</p>
Arizona	<p>“Quality First incentives are a type of financial support available to participants...Incentive funds may <b>not</b> be used for religious purposes or activities, such as faith-based curriculum, faith-based program accreditation, attendance at faith-based conferences, staff salaries for program time spent on religious instruction or worship, religious children’s books or bonuses for staff whose predominant or sole purpose is religious. Funds may be used for facility improvements to buildings or rooms used for religious purposes only if the improvements will not substantially benefit the religious uses of the building or room, as determined by Quality First. Participants will be required to repay any funds determined to have been used for religious purposes or activities.”</p> <p><a href="#">(Quality First Participant Guide – State Fiscal Year 2026)</a> (see Section 5 – Quality First Financial Incentives, page 43))</p> <p>Q&amp;A: Can funds be used for a holiday party for the children? A: . . . Additionally funds cannot be used to purchase any religious materials, including for holiday parties. <a href="#">(Quality First Participant Guide – State Fiscal Year 2026)</a> (see Section 5 – Quality First Financial Incentives, page 44))</p> <p>Q&amp;A: Can funds be used for staff bonuses? A: . . . Funding may not pay a bonus for a staff member whose main or sole purpose is religious. <a href="#">(Quality First Participant Guide – State Fiscal Year 2026)</a> (see Section 5 – Quality First Financial Incentives, page 45))</p> <p>Q&amp;A: Can I use funding to recognize staff through professional development conferences? A: Yes, as long as the conference is not religious in nature. <a href="#">(Quality First Participant Guide – State Fiscal Year 2026)</a> (see Section 5 – Quality First Financial Incentives, page 45))</p> <p>Scholarships allocated to a program that includes religious instruction or worship as part of the program’s activities will be transferable scholarships, meaning the family can choose to take their scholarship to another Quality First participant during the state fiscal year (July 1–June 30). Scholarships allocated</p>

Pre-K Program	Policies/Guidelines Re: Use/Non-Use of Religious Content in Pre-K Programs
	<p>to a program that does not include religious instruction or worship as part of the program’s activities will remain with the program for the entire state fiscal year, subject to available funding and reallocation for non-use.  <a href="#">(Quality First Participant Guide – State Fiscal Year 2026 (see Section 5 – Quality First Financial Incentives, page 46))</a></p>
Arkansas	<p>“<b>23.04.3</b> All ABC instruction and instruction materials must be secular and neutral with respect to religion.</p> <p><b>23.04.4</b> No religious activity may occur during any ABC day and no ABC funds may be used to support religious services, instruction or programming at any time.</p> <p><b>23.04.5</b> Each ABC provider must maintain documentation that it has provided parents and guardians with the following written notice:</p> <p>“To assure that no religious activity is paid or subsidized by public funds or occurs in any manner suggesting governmental endorsement of any religion or message:</p> <ul style="list-style-type: none"> <li>(a) ABC funds must be used exclusively to support allowable ABC program costs incurred to provide non-religious instruction and activities during the ABC day; and</li> <li>(b) No religious activity may occur during any ABC day regardless of the source of funds used to support the activity.” <p><a href="#">(Rules Governing the Arkansas Better Chance Program (Dec. 2024) (see Regulation 23.04 Conditions of Participation as an ABC Provider, page 8))</a></p> <p>“All applications submitted by sectarian or sectarian-affiliated programs must first be reviewed to assure that any approval of funding will not result in a violation of the First Amendment to the United States Constitution.”  <a href="#">(AR Code 6-45-106 Arkansas Better Chance Program: Application process – Allocation of funding)</a></p> </li></ul>
California State Preschool Program (CSPP)	<p>“The contractor shall maintain in its files the following records concerning each service provider...</p> <p>(b) A statement signed by the provider that the child care and development services being provided do not include religious instruction or worship.”  <a href="#">(5 CCR 18231 Records on File Concerning Service Providers)</a>  <b>(Note:</b> School districts may subcontract for operation of a California state preschool program)</p>
Colorado	<p>“This rule section does not affect an eligible preschool provider’s right to engage in privately funded, inherently religious activity...”  <a href="#">(8 CCR 1404, Section 4.111 Instructional Practice Requirements)</a></p>

Pre-K Program	Policies/Guidelines Re: Use/Non-Use of Religious Content in Pre-K Programs
<b>Connecticut School Readiness</b>	<p>“Based on the Agnostini case and the advice issued by the U.S. Department of Education based on the case, it is important for SRCs, Liaisons, and programs to be guided by the following rules concerning ‘nonsectarian’ programs when awarding School Readiness grants to secular programs.</p> <ul style="list-style-type: none"> <li>• The program must be open to all children, and cannot exclude a child based on the family’s religious creed or lack thereof;</li> <li>• The program cannot attempt to persuade or convert children or their families to a religion or a particular religious persuasion;</li> <li>• The program will not implement religious observances, such as prayer, grace, confession, church attendance, religious instruction, etc.;</li> <li>• The program may not require children, or their families enrolled in the School Readiness program to participate in faith-based or church sponsored activities or services;</li> <li>• Unless it is not practicable, classes should be conducted in rooms that are free of religious symbols and items.</li> </ul> <p>If state funds are being used to purchase spaces for eligible children in School Readiness program operated by faith-based organizations, these programs must be nonsectarian (must be nonsectarian within the meaning of [Connecticut Statute]) in order to avoid conflict with the requirements of the Establishment Clause. It is not enough to allow students or their families to ‘opt out’ of portions of the program which are religious in nature. To be eligible for funding, programs must comply with these requirements.”</p> <p><a href="#">(Connecticut Administered State-Funded Program, General Policy C-05 Nonsectarian Policy for School Readiness Programs)</a></p>
<b>Connecticut Smart Start</b>	<p>“Providers may include faith-based organizations, but program spaces awarded and paid for with state funds must be nonsectarian.”</p> <p><a href="#">(Connecticut Administered State-Funded Program General Policy A-09 Enabling Legislation for Smart Start)</a></p>
<b>Florida</b>	<p>VPK (Voluntary Prekindergarten Education Program):</p> <p>“ . . . None of the categories may limit or exclude a faith-based provider’s care and curriculum.</p> <p>(a) In cases in which a parent elects to use a child care certificate, such certificate:</p> <p>(4) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent.</p> <p>(5) May be expended by providers for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction.”</p> <p><a href="#">(Florida School Readiness Plan &amp; Guide (pp. 14-15))</a></p>

Pre-K Program	Policies/Guidelines Re: Use/Non-Use of Religious Content in Pre-K Programs
<b>Georgia</b>	<p>“No part of the Pre-K instructional day may be religious in nature. If an approved curriculum has both a secular and religious version, the secular version must be utilized in the Pre-K program. Programs may choose to offer religious instruction outside of the Pre-K instructional day. No Pre-K funding may be utilized for religious instruction.”</p> <p>(<a href="#">Georgia Pre-K Program, 2025-2026 School Year, Pre-K Providers’ Operating Guidelines</a> (see 4.5 Religious Instruction, page 17))</p>
<b>Illinois</b>	<p>“Grant funds may not be used to provide religious instruction, conduct worship services or engage in any form of proselytization.”</p> <p>(<a href="#">23 Illinois Admin. Code 235.70 Terms of the Grant</a>)</p>
<b>Iowa Statewide Voluntary Preschool Program (SWVPP)</b>	<p>“a) Yes, school districts may partner with a faith-based religious preschool for the provision of SWVPP as long as the faith-based agency meets the requirements of <a href="#">[Administrative Code]</a>, is located within the school district boundaries and as long as the SWVPP funding supports instruction that is ‘secular, neutral, and non-ideological.’ All faith-based partners must ensure that, from the time instruction supported by Statewide Voluntary Preschool Program funds start until the time such instruction ends, no religious instruction takes place. There is to be no interruption (no ‘sprinkling’) of such religious instructional time for any faith-based purpose.”</p> <p>(<a href="#">Statewide Voluntary Preschool Program Frequently Asked Questions</a> (see I. Collaborating with Community Partners, A. Faith-Based Partners, page 1))</p>
<b>Kentucky</b>	<p>“(4) State preschool funds may be used in a private program if a signed contract or cooperative agreement is on file in the district which documents that:</p> <p>(a) The program is separately incorporated from a religious institution;</p> <p>...</p> <p>(e) The program’s curriculum is not religious in nature.”</p> <p>(<a href="#">704 KAR 3:410 Preschool education program for four (4) year old children</a> (see Section 4. Interagency Agreements))<sup>xxvii</sup></p>
<b>Maryland</b>	<p>1.4 Days of Service. “. . . Religious-based programs may not provide religious activities during the 6.5-hour Pre-K day.” (p. 6)</p> <p>“No part of the Prekindergarten instructional day may be religious in nature and reasonable efforts should be made to ensure areas where children spend time during the Prekindergarten school day are as nonsectarian as possible. If an approved curriculum has both a secular and religious version, the secular version must be utilized in the Prekindergarten program. No Prekindergarten funding may be utilized for religious instruction. Prekindergarten programs may not engage in explicitly religious activities during school hours. Programs may choose to offer religious instruction outside of the Prekindergarten 6.5 hour instructional day.” [<a href="#">MD Education Code § 7-1A-04</a>]</p>

Pre-K Program	Policies/Guidelines Re: Use/Non-Use of Religious Content in Pre-K Programs
	<p>(<a href="#">FY26 Maryland Prekindergarten Programs Operating Manual</a> (see 4.1 Religious Instruction, page 13))</p>
<b>Michigan</b>	<p>“Faith-based programs are also eligible as long as prayers and religious instruction are kept separate from the GSRP [Great Start Readiness Program] classroom.”</p> <p>(<a href="#">Making the Vision a Reality: A Roadmap for Implementing PreK for All</a> (see Building on a Strong Foundation: Michigan’s Great Start Readiness Program, page 7))</p> <p>“Faith-based subrecipients keep prayers and religious instruction from being a part of a GSRP classroom. In space used for dual purposes, there is no need to remove or cover faith-based displays. These subrecipients do not restrict GSRP enrollment or staff hiring due to faith-based considerations.”</p> <p>(<a href="#">GSRP Implementation Manual (July 2024)</a> (see 15. Distribution of Funds, page 16))</p> <p><u>FAQ:</u></p> <ol style="list-style-type: none"> <li>1. A faith-based organization can offer a Great Start Readiness Program.</li> <li>2. Religious instruction, worship, or specific religious activities cannot take place during the GSRP program instruction time. These can be offered as an option before or after GSRP instruction.</li> </ol> <p>(<a href="#">Faith Based Partnerships Guidance</a> (additional details in the FAQ))</p>
<b>Minnesota Voluntary Prekindergarten (VPK) and School Readiness Plus (SRP)</b>	<p>“A school district may contract with a community preschool program with a church affiliation for a VPK/SRP site as long as the program meets the requirements listed on the signed Statement of Assurances and that only eligible 4-year-old children enrolled in and generating funds through VPK/SRP may not be charged for the time they are enrolled in the program... If a VPK/SRP program is offered in a sectarian building, the school district or charter school must take steps to maintain nonsectarian school facilities in compliance with Minnesota Statutes, section 124E.06, subdivision 3(b), such that there are no religious texts, symbols, quotations or subjects displayed in facilities on school days.”</p> <p>(<a href="#">Minnesota Department of Education, Voluntary Prekindergarten and School Readiness Plus: Application Q &amp; A for Fiscal Year 2025</a> (see page 28))</p> <ul style="list-style-type: none"> <li>- <i>Note:</i> the Statement of Assurances is part of the application – unable to locate most recent application</li> </ul>
<b>New Jersey</b>	<p><b>“6A:13A-9.1 Contract</b></p> <ol style="list-style-type: none"> <li>2. The district board of education may request modifications to the Department-approved preschool program... <ol style="list-style-type: none"> <li>i. The district board of education shall not request a modification of the provision in the Department-approved preschool program contract that</li> </ol> </li> </ol>

Pre-K Program	Policies/Guidelines Re: Use/Non-Use of Religious Content in Pre-K Programs
	<p>requires the school district to ensure that the educational program offered by the private provider or Head Start agency will comply with all Federal, State, and local laws, rules, and regulations regarding the secular nature of the programs receiving public funding.”</p> <p>(c) Each private provider or local Head Start agency entering into a contractual arrangement with a district board of education to provide a full-day preschool program pursuant to this chapter shall be willing and able to meet the following criteria to be eligible for a contract:  ...7. Agree that the educational program offered will comply with all Federal, State, and local laws and regulations regarding the secular nature of programs receiving public funding.”  (<a href="#">New Jersey Admin Code § 6A:13A-9.1 – Contract</a>)</p>
<b>New Mexico</b>	<p>“7.B.3 The program administrators must specify and ensure that PreK curriculum does not include any religious instruction or material.”  (<a href="#">The New Mexico Pre-K Program Standards</a> (see 7B: Curriculum, page 10))</p>
<b>New York</b>	<p>“As a provider of child-care and early education, a day care provider, early childhood program or center, or community-based organization, a non-public religion-based school are eligible to partner with a school district. Religious instruction could not be a part of the five hour prekindergarten instructional day.”  (<a href="#">Questions and Answers for GC 22-101a – Universal Prekindergarten Expansion Grant for New Full-Day and Half-Day to Full-Day Placements for Four-Year-Old Students</a> (Round 2) (see page 4))</p>
<b>North Carolina</b>	<p>“(a) During the NC Pre-K portion of the day, no subcontractor (service provider) may use its NC Pre-K funding to pay for any of the following:  (1) Religious worship, instruction or proselytization.  (2) Equipment or supplies to be used for any of the activities specified in paragraph (a)(1) of this section.”  (<a href="#">North Carolina Pre-Kindergarten (NC Pre-K) Program Requirements and Guidance (2025-2026)</a> (see G. Religious Activities, pages 4-8))</p> <p><i>Note: Kids can learn about religion, but they cannot practice religion (differentiates this in the guidance).</i></p>
<b>Oregon Pre-K (OPK)</b>	<p>“(11) “Nonsectarian” means that no aspect of Oregon Prenatal to Kindergarten services will include any religious orientation.”  (<a href="#">Oregon Dept of Early Learning and Care Admin Rules 414-460 Oregon Prenatal to Kindergarten, 414-460-000 Definitions</a>)</p>

Pre-K Program	Policies/Guidelines Re: Use/Non-Use of Religious Content in Pre-K Programs
<b>Oregon Preschool Promise</b>	<p>“Grantees may not advance any religion or religious beliefs during the instructional hours designated as Preschool Promise Program. Any religious symbols located in or around the classroom do not need to be removed; however, they may not be incorporated or used in the curriculum or teaching program.”</p> <p>(<a href="#">Preschool Promise Grant Manual</a> (see Supportive Environments and Ambitious Instruction: Program Environment and Curriculum, page 9); see also <a href="#">PSP Operations Manual</a>: Religious Instruction During Preschool Promise Hours (page 41))</p>
<b>Pennsylvania Pre-K Counts (PKC)</b>	<p>“Pennsylvania Pre-K Counts funds may only be used to support activities and for materials and program content that are secular in nature.” (p. 23; 53)</p> <p>(<a href="#">Pennsylvania Pre-K Counts Regulations</a>)</p>
<b>Washington Early Childhood Education and Assistance Program (ECEAP)</b>	<p>“(1) The materials and equipment must be inclusive and culturally responsive to: ... (i) Be free from religious representations.”</p> <p>(<a href="#">2025-26 Birth-5 ECEAP Performance Standards</a> (see ENV-2 Environment – Materials and Equipment, page 19))</p> <p>“(3) B-5 ECEAP providers must not plan religious activities in the curriculum. This does not preclude children or families from sharing their traditions.”</p> <p>(<a href="#">2025-26 Birth-5 ECEAP Performance Standards</a> (see IC-6 Developmentally Appropriate and Culturally Relevant, page 25))</p>
<b>West Virginia</b>	<p>“During the hours of operation in which the WV Pre-K program is operated, the providers must: (1) use the WV Pre-K Program approved curriculum; (2) refrain from teaching religious beliefs; and (3) avoid engaging in religious practices, including praying at mealtimes.”</p> <p>(<a href="#">West Virginia Department of Education, Letter to Superintendent Manny Arvon</a> (2014) re: interpretation of school law regarding the participation of faith-based childcare programs in the West Virginia pre-kindergarten program)</p> <p>West Virginia requires Pre-K programs to align instruction to established standards. (<a href="#">West Virginia Pre-K Standards, Ages 3-5</a>)</p>
<b>Wisconsin Four- Year-Old Kindergarten (4K)</b>	<p>Q: May community partnerships exist with faith-based programs?</p> <p>A: “When community sites are used, partnerships can occur with faith-based schools with certain assurances. . . . The district must ensure a non-sectarian environment, curriculum, and program for all students during the “4K” part of the day at the faith-based program. . . . Interagency agreements or contracts must define these assurances and define how the district will oversee the program to assurance compliance. . . . Funds received from the district by a</p>

Pre-K Program	Policies/Guidelines Re: Use/Non-Use of Religious Content in Pre-K Programs
	<p>faith-based partner cannot be used for any religious purpose and must only be for 4K purposes.” (pp. 16-17)</p> <p><a href="#">(Policy and Information Advisory 8.01: Four-Year Old-Kindergarten (State of Wisconsin Department of Public Instruction))</a></p> <p>The same guidance is stated on the DCF website under the heading: “What should be included in an interagency agreement for collaborative programs?”</p> <p><a href="#">(Wisconsin Department of Children and Families)</a></p>

Special thanks to Theresa Hawley, Sara Mead, Katie Morrison Reed, Sessy Nyman, and Nasha Patel for reviewing a draft of this paper. All of the opinions expressed herein are solely those of the authors.

---

<sup>i</sup> Allison H. Friedman-Krauss et al., *The State of Preschool 2025*, THE NATIONAL INSTITUTE FOR EARLY EDUCATION RESEARCH 6 (2026), <https://perma.cc/C9R5-XULK>.

<sup>ii</sup> *Id.*

<sup>iii</sup> Bonnie O’Keefe et al., *Splitting the Bill: How Do States Fund Pre-K?* BELLWETHER 6-7 (2025), <https://perma.cc/C3TN-4V44>.

<sup>iv</sup> Friedman-Krauss et al., *The State of Preschool 2025*, at 19.

<sup>v</sup> Elliot Regenstien, READINESS: PREPARING STATE EARLY CHILDHOOD SYSTEMS FOR A BRIGHTER FUTURE 18 (2026).

<sup>vi</sup> By contrast, in publicly subsidized child care providers are not restricted from providing religious content, although they are not allowed to discriminate on the basis of religion in enrolling children. Child Care Bureau, *What Congregations Should Know About Federal Funding for Child Care*, ADMINISTRATION FOR CHILDREN AND FAMILIES: U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (2012), <https://perma.cc/KB8Z-WAF2>.

<sup>vii</sup> St. Mary Catholic Parish in Littleton, et al., *Petition for Writ of Certiorari*, No. \_\_\_, at 12 (U.S. Nov. 12, 2025).

<sup>viii</sup> Ed Sealover, *Childcare Industry at “Crosroads”: Seek State Help or Ask it to Back Off?* THE SUM & SUBSTANCE (Feb. 18, 2026), <https://perma.cc/JA8Q-TFRN>.

<sup>ix</sup> Sarah Horbacewicz, *Colorado Families Push Back Against Planned Closure of St. Louis Catholic School*, CBS NEWS COLORADO (Dec. 5, 2025), <https://perma.cc/TP6F-J4T6>.

<sup>x</sup> W. Steven Barnett et al., *The State of Preschool: 2003 State Preschool Yearbook*, THE NATIONAL INSTITUTE FOR EARLY EDUCATION RESEARCH 60 (2003), <https://perma.cc/4THR-3YSB>.

<sup>xi</sup> H.B. 22-1295, 75th Gen. Assemb., 2nd Reg. Sess. (Colo. 2022).

<sup>xii</sup> C.R.S. § 26.5-4-201 et seq. (2024).

<sup>xiii</sup> C.R.S. § 26.5-1-110 (2024).

<sup>xiv</sup> *Colorado Universal Preschool Family Handbook*, COLORADO DEPARTMENT OF EARLY CHILDHOOD 16 (2025), <https://perma.cc/JQ9C-JNYA>.

<sup>xv</sup> *Id.*

<sup>xvi</sup> In the two years following the *Carson* decision multiple states explicitly added faith-based providers as an eligible provider of state preschool, including Massachusetts, Missouri, Nebraska, Pennsylvania (Pre-K Counts), and Vermont. Compare Allison H. Friedman-Krauss et al., *The State of Preschool 2022*, THE NATIONAL INSTITUTE FOR EARLY EDUCATION RESEARCH 316, 318 (2023), <https://perma.cc/TWA5-V3B2> with Allison H. Friedman-Krauss et al., *The State of Preschool 2024*, THE NATIONAL INSTITUTE FOR EARLY EDUCATION RESEARCH 330, 332 (2025), <https://perma.cc/VZG7-EEN9>.

<sup>xvii</sup> St. Mary Catholic Parish in Littleton, et al., *Petition for Writ of Certiorari*, No. \_\_\_, at 12 (U.S. Nov. 12, 2025).

<sup>xviii</sup> Brief for State of West Virginia and 21 Other States as Amicus Curiae Supporting Petitioners, *St. Mary Catholic Parish in Littleton, et al. v. Roy*, No. \_\_\_ (U.S. 2025). Interestingly, not all of the states joining this brief sponsor a state preschool program, but the issues raised in the case have potential implications for a wide range of government-funded services.

<sup>xix</sup> St. Mary Catholic Parish in Littleton, et al., *Petition for Writ of Certiorari*, No. \_\_\_, at 12 (U.S. Nov. 12, 2025).

<sup>xx</sup> Brief for Colorado Association of Private Schools as Amicus Curiae Supporting Petitioners, *St. Mary Catholic Parish in Littleton, et al. v. Roy*, No. \_\_\_ at 14-19 (U.S. 2025). See also Brief for United States Conference of Catholic Bishops as Amicus Curiae Supporting Petitioners, *St. Mary Catholic Parish in Littleton, et al. v. Roy*, No. \_\_\_ at 6 (U.S. 2025).

<sup>xxi</sup> In 2025 the Supreme Court took a case that could have addressed the issue of whether publicly-funded charter schools could offer religious instruction, but with one justice recused the remaining eight justices divided 4-4 and ended up not issuing an opinion. *Oklahoma Statewide Charter School Board, et al. v. Drummond*, 605 U.S. 165 (2025).

<sup>xxii</sup> Nicole Stelle Garnett et al., *The Persistence of Religious Discrimination in Publicly Funded Pre-K Programs*, MANHATTAN INSTITUTE (Jan. 21, 2025), <https://perma.cc/ZD8L-B7D3>.

---

<sup>xxiii</sup> There have certainly been instances in which elected officials across the ideological spectrum have found it to their benefit to take popular but unconstitutional actions, and then use each stage in a lawsuit as an opportunity to remind the public that they are fighting on behalf of their constituents despite the intervention of unelected judges. Indeed, one of the major purposes of the First Amendment is to ensure that certain fundamental rights are protected even when it is politically beneficial for elected officials to limit them. Whether that is what is occurring in this instance will be for the Supreme Court to say.

<sup>xxiv</sup> Data in this table is drawn from Friedman-Krauss et al., *The State of Preschool 2024*, at 330, 332. Not all state preschool programs allow contracting or subcontracting; programs that do not allow contracting or subcontracting were not included in this table. The following programs allow subcontracting with private agencies, but not faith-based centers, according to the NIEER report: Louisiana LA 4, Pennsylvania RTL, Utah, Virginia VPI, and Virginia Mixed Delivery. This approach may not be consistent with *Carson*.

<sup>xxv</sup> Only New York's Statewide Universal Full-Day Prekindergarten program.

<sup>xxvi</sup> States that do not appear to have specific guidance for faith-based providers in their preschool regulations include Delaware, the District of Columbia, Indiana, Iowa Shared Visions, Kansas, Louisiana (Nonpublic Schools Early Childhood Development Program), Maine, Massachusetts, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Pennsylvania (Head Start Supplemental Assistance Program and Kindergarten for Four-Year-Olds and School-Based Pre-K), Rhode Island, South Carolina, Tennessee, Texas, Utah, and Vermont.

<sup>xxvii</sup> While this language is current, a proposed version of 704 KAR 3:410 modifies the language pertaining to religious curriculum. The proposed version is linked [here](#).