News



This is an undated photo of the Alfred A. Arraj U.S. Courthouse in Denver. A federal judge ruled June 4, 2024, that Colorado violated the law by excluding Catholic preschools from participating in the state's universal preschool program. (OSV News/courtesy GSA)

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In a case involving parental preferences, a "congregation preference" and hiring decisions at two Catholic preschools, a federal judge in Denver ruled June 4 that Colorado's government violated state law by excluding those preschools from participating in the state's universal preschool program.

The program, in its first year of operation, offers 15 hours per week of free preschool to more than 40,000 families. Private, public, and faith-based preschools across the state were able to participate in the program but Catholic preschools were excluded because they ask families to share their beliefs.

The Colorado plaintiffs were St. Mary Parish in Littleton and St. Bernadette Parish in Lakewood — both schools of the Denver Archdiocese — and parents Daniel and Lisa Sheley. The St. Mary and St. Bernadette parishes operate Catholic schools that include preschools.

The program is administered by the Colorado Department of Early Childhood, using what the ruling describes as "a combination of school- and community-based preschool providers ... funded by a combination of public and private money." Parents apply online.

In a 101-page opinion, U.S. District Judge John Kane ruled that Colorado "created an unworkable scheme that breaches the appropriate limits on state power" by both allowing "faith-based providers to effectively discriminate on the basis of religious affiliation in their admission of preschoolers" while at the same time denying them "an explicit exemption from the related aspect of the equal-opportunity requirement." Further, he noted state education officials "provided no compelling interest for their course of conduct" — conduct which led to the exclusion of Catholic preschools that consider religious affiliation in their enrollment and operations decisions.

The plaintiffs were represented by Becket, a public-interest religious liberty law firm based in Washington. In a statement, Becket lawyer Nick Reaves said, "Of course a Catholic school shouldn't be punished for caring about its students' religion. Colorado richly deserves this injunction, as it did the earlier one."

The program's "congregation preference" allows faith-based providers to reserve for members of their church community all or a portion of the seats for which they are licensed.

The plaintiffs claimed that a paragraph in the program rules would "inappropriately permit the Department (of Early Childhood) to dictate the hiring decisions of faith-based providers."

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Becket's lawsuit filed in 2023 singled out the requirement that preschool providers "accept any applicant without regard to a student or family's religion, sexual orientation, or gender identity, and to prohibit schools from 'discriminat(ing) against any person' on the same bases."

But the suit said "these requirements directly conflict with St. Mary's, St. Bernadette's, and the Archdiocese's religious beliefs and their religious obligations as entities that carry out the Catholic Church's mission of Catholic education in

northern Colorado."

In accordance with their Catholic beliefs, Becket's suit argued, the two parish schools "give priority to Catholic families seeking to ensure their children receive a Catholic education," including families from their own congregations as well as Catholic families active in other local parishes and Catholic families who recently moved to the Denver area.

Becket's suit contended the equal-opportunity requirement demands that participating preschools "provide eligible children an equal opportunity to enroll and receive preschool services regardless of ... religious affiliation, sexual orientation, (or) gender identity ... as such characteristics and circumstances apply to the child or the child's family."

In his June 4 opinion, Kane stated the Catholic preschools "contend this requirement prevents them from making enrollment decisions in accordance with their religious beliefs, as it prohibits them from preferencing Catholic families in enrollment and from considering whether a child or family is supportive of the Catholic Church's teachings, in particular its teachings on human sexuality."

The Denver Archdiocese "did not regard the congregation exception permitted by the (state) as a sufficient accommodation because of how the Archdiocese defines and prioritizes parishioners and because all families — Catholic and non-Catholic — enrolling students in Archdiocesan preschools must sign the Statement of Community Beliefs."

The district judge further ruled that state officials "did not present any evidence of the harm the Department or the public would experience if Plaintiff Preschools are not obligated to comply with the religious-affiliation aspect of the equal-opportunity requirement."

"The constitutional violation found here involves unelected government employees misconstruing a generally applicable statute," he wrote.

Both sides in the case are able to appeal the decision to the 10th U.S. Circuit Court of Appeals.