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The Supreme Court is pictured Monday, Oct. 5, 2026, in Washington. (AP/Mariam Zuhaib)

Lindsay Whitehurst

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The Trump administration joined the Archdiocese of Denver on Tuesday in urging the Supreme Court to overturn a ruling allowing a state-funded preschool program in Colorado to exclude Roman Catholic schools that don't comply with equal-opportunity requirements — the latest religious-rights case before the conservative-majority court.

A win for the Catholic preschools could further narrow a landmark 1990 Supreme Court decision that found religious practices don't create exemptions from laws that otherwise apply broadly. Written by conservative icon Justice Antonin Scalia in a case over the spiritual use of peyote, a cactus containing mescaline that's sacred to many Indigenous people, the decision has nevertheless long been a target of the conservative legal movement.

Related: Supreme Court takes up religious liberty, LGBTQ rights in Catholic preschool case

The Denver archdiocese argues that it's unconstitutional to exclude Catholic preschools from the state's program over their admissions policy for LGBTQ+ families. The Supreme Court heard arguments Tuesday on the archdiocese's request to overturn a 10th Circuit decision in the state's favor.

Colorado, meanwhile, says the refusal to admit kids from those families would violate the state's anti-discrimination law.

But St. Mary Catholic Parish and the Archdiocese of Denver argue that the policy is based on religious teachings about same-sex marriage and that excluding them violates their free-exercise rights.

Nicholas Reaves, an attorney for the archdiocese and two parish preschools, said allowing Catholic schools to participate in Colorado's publicly funded preschools program "will create more seats for everyone, even for families who disagree with Catholic teachings."

"This is not a zero-sum game," Reaves said. "Letting families use universal preschool funding at Catholic schools won't take away a single seat from the over 2,000 preschools already participating in the program."

President Donald Trump's administration is supporting the Catholic institutions. Justice Elena Kagan, who was nominated to the court by Democratic President Barack Obama, said the administration seems to be arguing that children of same-sex marriage can be excluded because "exposing" them to other students "creates a problem."

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"We have a clear line now and you want us to just upend it in one particular area of law," Kagan told Justice Department attorney Sarah Harris.

"No, I think the court currently has a mess," Harris said.

In the Colorado case, the high court could be sympathetic to the schools. The justices have sided with religious schools in similar disputes before, ruling in recent years that they can't be excluded from programs in Maine and Montana that provide public aid to private schools. In 2025, though, the court deadlocked over a plan to establish a publicly funded Catholic charter school after Justice Amy Coney Barrett recused herself.

The Colorado universal preschool program was created by a 2020 ballot measure. It provides public funding for preschool at schools chosen by parents.

The plaintiffs, represented by the group Becket Fund for Religious Liberty, say the state has allowed other preschools to prioritize children with disabilities or those from low-income families, so admission based on religious beliefs about gender and same-sex marriage should be allowed, too. The Catholic preschools say their enrollment has dropped 20% since the program started.

Colorado argues that the other admissions decisions are in line with the state's anti-discrimination rules.

Justice Sonia Sotomayor, who was nominated to the court by Democratic President Barack Obama, asked Reaves if the Catholic school can reject a child simply because

their parents are a same-sex couple.

"Is that the bottom line?" she asked.

"If it's the sincere religious exercise of the petitioner, then I think that would be permitted," Reaves said.

Helen Norton, an attorney for the state, said Colorado is "neutral toward religion" and welcomes religious preschools to participate in the program — provided that they comply with the same conditions that every publicly funded preschool must meet.

"Under this program, faith-based preschools remain free to teach their religious beliefs, including their beliefs about sex or gender or marriage," Norton said. "But families have no right to change a school's curriculum."

Justice Brett Kavanaugh, who was nominated to the court by Trump, a Republican, suggested Colorado's law has created an unnecessary "clash of rights" between LGBTQ+ families and "religious believers."

"Just trying to figure out why we're here," Kavanaugh told Norton. "Why has this been provoked when there's an ability for everyone to go to the school, a good school that's a fit for them, and respect religious rights?"

Norton said preschools aren't "interchangeable" for parents and children.

"Families are harmed when they're turned away from the publicly funded school that makes their lives work because of the protected class status," she said.