



Thursday, July 6, 2023

In June, a Christian school in Buena vista filed a federal constitutional suit against the problematic anti-discrimination provisions in Colorado’s new Universal Preschool Program (UPK). We expect other challenges to follow.

The Colorado Association of Private Schools (CAPS) and a broad coalition of private school associations, scholarship-granting organizations, and policy organizations have worked in recent months with Governor Jared Polis’s office and the new Colorado Department of Early Childhood to address concerns with UPK’s provider requirements. We had hoped to find a policy solution that would ensure maximum provider choice for Colorado parents while respecting and upholding the rights of private schools to exercise their sincerely held religious beliefs.

Unfortunately, these efforts to find reasonable, commonsense policy solutions in keeping with current caselaw on the subject failed to coalesce into actionable solutions. Faced with the possibility of being excluded from this important new program, faith-based private schools have been forced to seek help from the courts.

The recently filed federal suit challenges the requirement that UPK providers comply with broad anti-discrimination provisions as a condition of participation in the program—requirements that go far beyond those already found in federal law, many of which private schools already must follow. In broad terms, the plaintiffs argue that these requirements create an unconstitutional restriction on the ability of faith-based providers to practice their sincerely held religious beliefs under the First Amendment of the Constitution of the United States.

This is not a uniquely Christian problem. Catholic, Protestant, Jewish, Muslim, nondenominational—faith-based private schools of all stripes will be impacted by UPK’s overreaching provider requirements. Exemptions or other protections for faith-based providers are common in other areas of law, but the state has signaled that no such concessions will be made under UPK. This decision makes UPK’s departure from established jurisprudence all the more concerning.

The broad impact of UPK's provider requirements has had the effect of chilling participation in UPK by many faith-based providers, including many that already operate highly successful preschool programs. And because these providers make up a large portion of the overall early-childhood ecosystem, this chilling effect has substantively harmed the ability of families to access high-quality private preschool options and thereby undermined the entire purpose of UPK. Furthermore, private providers effectively excluded from the program have also been harmed by a weakened position in a highly competitive market.

The U.S. Supreme Court has, in recent years, taken up various cases related to the religious liberty of education providers in parental choice programs like UPK. Time and time again, the Court has held that these programs may not exclude faith-based providers and may not impose restrictions on their ability to exercise their First Amendment religious rights.

CAPS and a majority of Colorado's vibrant private school community strongly supports the implementation of the UPK Program. We look forward to being able to serve more children statewide in the coming months and years. And we hope to find a way forward that will protect our constitutional cornerstones while providing varied, high-quality choices to parents.

For now, while we are disappointed that no solutions could be found short of litigation, we support the plaintiffs in this important case and hope to once again see the religious liberty guaranteed by Constitution of the United States prevail.

Sincerely,

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