No. 25-581

In the

Supreme Court of the United States

ST. MARY CATHOLIC PARISH IN LITTLETON, ET AL.,
Petitioners,

v.

LISA ROY, IN HER OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF EARLY CHILDHOOD, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Brief of *Amici Curiae* Children's Rights; The Interfaith Coalition for Children's Rights: Professor C. Colt Anderson, Episcopal Divinity School, Hon. Ruth Messinger, Union Theological Seminary; American Humanist Association; Barton Child Law & Policy Center, Emory Law School; Center for the Study of Social Policy; Center for Children & Youth Justice; Children's Action Alliance; Children & Family Justice Center; Defender Association of Philadelphia, Child Advocacy Unit; Juvenile Law Center; Harvard Law School Youth Advocacy & Policy Lab; Lawyers For Children; The Legal Aid Society; National Center for Youth Law; Nebraska Appleseed Center for Law in the Public Interest; Pegasus Legal Services for Children; South Carolina Appleseed Legal Justice Center; University of Miami Children & Youth Law Clinic; Professor Josh Gupta-Kagan; Professor Randi Mandelbaum; and Professor Sarah Katz in Support of Respondents

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, *amici curiae* certify, to the extent disclosure is required, that none of the *amici* has a parent corporation and there is no publicly held corporation that holds 10 percent or more of their stock or membership interests.

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INTEREST OF *AMICI CURIAE*[1]

Amici are legal, religious, policy, and academic organizations and scholars who share an interest in ensuring that, consistent with Supreme Court precedent, the rights and well-being of children are considered first and foremost as the Court reviews the constitutionality of Respondents' state preschool program.[2] The program requires that participating entities meet statutory equal opportunity requirements for eligible children, including enrolling children "regardless of . . . sexual orientation [and] gender identity." Petitioners would like to receive state funding while refusing to admit the children of LGBTQ+ parents. *Amici* submit this brief in support of Respondents, and write separately to address the profound and well-documented harms Petitioners' exclusionary policy would inflict on children, harms that independently support affirmance under this Court's Equal Protection Clause jurisprudence, regardless of how the Court resolves the religious liberty questions briefed by the parties.

SUMMARY OF ARGUMENT

It is well established that the United States Constitution forbids discrimination against children in contravention of the Fourteenth Amendment. Yet

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[1] Pursuant to Supreme Court Rule 37.6, *amici* affirm that no counsel for a party authored this brief in any part, and that no person or entity, other than *amici* and their counsel, made a monetary contribution to fund its preparation and submission.

[2] *Amici* join on their own behalf and not as representatives of the universities, if any, with which *amici* are affiliated.

Petitioners St. Mary Catholic Parish in Littleton and St. Bernadette Catholic Parish in Lakewood argue that they should be permitted to refuse admission to certain four-year-old children to their preschools, solely on the basis of the parents' sexual orientation or gender identity. In doing so, Petitioners would subject these children to profound harm and stigmatization, telling them that the schoolhouse door is closed to them because of who their parents are and whom they love. Colorado, unwilling to use taxpayer dollars to fund discrimination against children and indeed unable to do so without violating children's constitutional rights, rightfully insists that Petitioners abide by the nondiscrimination provisions that apply to all preschools, secular and religious, that participate in the State's Universal Preschool Program ("UPK").

Petitioners' exclusionary policy would inflict dignitary harm on these children by conveying the message that they and their families are inferior to their peers. It also subjects these children to social stigma, singling them out as undeserving of the education that Petitioners offer to other children. Empirical studies establish that these harms have long-term, concrete consequences for children's success and well-being.

A ruling for Petitioners would grant a taxpayer-funded license to discriminate against some of the youngest and most vulnerable members of society.

ARGUMENT

I. COLORADO IS OBLIGATED TO ENSURE THAT CHILDREN RECEIVE EQUAL PROTECTION OF THE LAWS UNDER THE FOURTEENTH AMENDMENT

Petitioners ask this Court to mandate that Colorado's taxpayers fund preschool programs that would discriminate against the children of LGBTQ+ parents. In addition to imposing the dignitary and stigmatizing harms detailed below, such state-sponsored discrimination would infringe upon children's right to equal protection under the law. Because this Court has recognized the importance of shielding children from discrimination on the basis of their parents' actions or immutable characteristics, Colorado should not be required to violate children's rights.

A. Petitioners' Participation in a State-Funded Program Triggers Equal Protection Analysis

Section 1 of the Fourteenth Amendment guarantees that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. In landmark cases going back decades, this Court has interpreted this language to support the central purpose of eliminating state-sponsored discrimination. *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954); *see also Loving v. Virginia*, 388 U.S. 1, 10 (1967); *McLaughlin v. Florida*, 379 U.S. 184, 191–92 (1964); *Palmer v. Thompson*, 403 U.S. 217, 220 (1971). This Court has also held that the Constitution's protections

indisputably extend to children. *See In re Gault*, 387 U.S. 1, 13 (1967) ("[W]hatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."); *see also Schall v. Martin*, 467 U.S. 253, 263 (1984) ("There is no doubt that . . . basic constitutional protections," including those of the Fourteenth Amendment, apply to juveniles) (citation omitted).[3]

Governmental facilitation of private discrimination constitutes state action that implicates the Fourteenth Amendment. *See Shelley v. Kraemer*, 334 U.S. 1, 20 (1948) ("Nor is the [Fourteenth] Amendment ineffective simply because the particular pattern of discrimination, which the State has enforced, was defined initially by the terms of a private agreement. State action, as that phrase is understood for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms."). Indeed, a "State's constitutional obligation requires it to steer clear . . . of giving significant aid to institutions that practice racial or other invidious discrimination." *Norwood v. Harrison*, 413 U.S. 455, 467 (1973). The State of Colorado is expressly prohibited from financially supporting discrimination. *See id.* at 464–65 ("[I]f [a] school engages in discriminatory practices, the State by tangible aid . . . thereby gives support to such discrimination.").

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[3] Given that this Court has recognized that constitutional protections extend to juvenile offenders in *Schall*, there can be no question that constitutional protections extend to young children who have committed no crime.

B. Forcing Respondents to Further Petitioners' Policy Would Constitute Unconstitutional Discrimination Against Children Based on Their Parents' Identity

This Court has long recognized that children should not be penalized for who their parents are or what they do. For example, the Court has repeatedly rejected state laws that denied, or conditionally limited, benefits and opportunities to the children of unmarried parents. *See, e.g.*, *Clark v. Jeter*, 486 U.S. 456, 461 (1988) (striking down a law requiring proof of paternity for the children of unmarried parents to receive child support, while not requiring such a test for the children of married parents). This Court has described depriving a child of otherwise available benefits and opportunities due to their parents' identity, status, or conduct as "ineffectual" and "unjust." *See, e.g.*, *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972) (striking down a Louisiana law that denied "illegitimate" children equal rights to workmen's compensation death benefits); *Jimenez v. Weinberger*, 417 U.S. 628, 632 (1974) (striking down a provision of the Social Security Act that denied "illegitimate" children equal rights to disability benefits); *Trimble v. Gordon*, 430 U.S. 762, 770 (1977) (striking down an Illinois law that denied "illegitimate" children the right to inherit by intestate succession from their fathers); *New Jersey Welfare Rights Org. v. Cahill*, 411 U.S. 619, 619–20 (1973) (per curiam) (striking down a New Jersey program that "discriminate[d] against

illegitimate children in the provision of financial assistance and other services").[4]

As the Court has explained, our legal system rests on the bedrock principle that "burdens should bear some relationship to individual responsibility or wrongdoing." *Weber*, 406 U.S. at 175. This standard is not met when preschoolers are denied a benefit because of their parents' identity. *See id.*

The Due Process Clause of the Fourteenth Amendment similarly protects families from government action to dictate acceptable family composition. In *Moore v. City of E. Cleveland*, the Court opined, "Our decisions establish that the Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition." 431 U.S. 494, 503, 506 (1977) (holding that a housing ordinance that limited a "family" to only a few categories of related individuals, thereby "standardizing its children and its adults by forcing all to live in certain narrowly defined family patterns," violated the Fourteenth Amendment).

The throughline across this Court's jurisprudence is clear: children are unjustifiably harmed when they are penalized based on their parents' identity, status, or conduct. So too here. Petitioners would implement an exclusionary policy that harms and stigmatizes children because Petitioners object to the parents' sexual orientation

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[4] *Amici* use the term "illegitimate" to conform to the Court's language. *Amici* believe all children are legitimate.

and gender identity, a fact their children are powerless to affect. Whatever Petitioners feel or believe about the parents, "visiting . . . [their] condemnation on the head of an infant is illogical and unjust." *Trimble*, 430 U.S. at 769.

Moreover, as this Court has recognized, when the state discriminates against children because of the identity of their parents, "children suffer the stigma of knowing their families are somehow lesser." *Obergefell v. Hodges*, 576 U.S. 644, 646 (2015). In other words, Petitioners' exclusionary policy would "harm and humiliate the [affected] children" for a reason that is entirely beyond their control. *Id.* A policy that deprives children of equal access to education based on their parents' identity is thus "unjust." *Weber*, 406 U.S. at 175. If this Court finds for Petitioners, it would essentially force Colorado to grant an unconstitutional taxpayer-funded license to discriminate against four-year-olds.

II. THIS COURT'S FINDING IN FAVOR OF PETITIONERS' DISCRIMINATORY POLICY WOULD IMPOSE LONG-LASTING HARM ON FOUR-YEAR-OLD CHILDREN

The Court has repeatedly held that a violation of a constitutional right is a grievous injury. *See, e.g.*, *Uzuegbunam v. Preczewski*, 592 U.S. 279, 293 (2021) (internal quotations omitted) ("[E]very violation [of a right] imports damage.") (quoting *Webb v. Portland Mfg. Co.*, 29 F. Cas. 506, 507 (C.C.D. Me. 1838) (Story, J.)); *Heckler v. Mathews*, 465 U.S. 728, 729 (1984) ("[D]iscrimination itself, . . . can cause serious

noneconomic injuries to those persons who are denied equal treatment solely because of their membership in a disfavored group."). As shown above, that alone is justification enough for Respondents to reject Petitioners' exclusionary policy.

Further still, the exclusionary policy would subject children and their families to public shunning. The infliction of this type of harm early in childhood can have a material adverse impact on children's long-term well-being and life prospects. In addition, Petitioners' exclusionary policy would materially narrow affected children's access to preschool education, and in some cases, prohibit these children from attending preschool altogether. Colorado's nondiscrimination provisions prevent the infliction of profound harm on children, and should be upheld.

A. Petitioners' Exclusionary Policy Would Inflict Dignitary Harm on Children

By conditioning participation in UPK on certain nondiscrimination provisions, Respondents enhance children's ability to thrive. In contrast, Petitioners' exclusionary policy would cause children dignitary harm and stigmatization that is real, personal, and enduring.

The Court recognized this with particular force when it held that laws prohibiting same-sex marriage "harm and humiliate the children of same-sex couples." *Obergefell*, 576 U.S. at 646. By signaling to children that their families are not deserving of equal treatment, Petitioners would cause children to suffer a dignitary injury, which is itself a constitutional

harm. *Id.* at 667–68. As the Court recognized in *Heart of Atlanta Motel, Inc. v. United States*:

> [D]iscrimination is not simply dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public because of his race or color. It is equally the inability to explain to a child that regardless of education, civility, courtesy, and morality he will be denied the right to enjoy equal treatment.

379 U.S. 241, 292 (1964) (Goldberg, J., concurring).

Petitioners' exclusionary policy would announce to children of LGBTQ+ parents that they are different, that they are unwelcome, and that their families are unworthy.

The children who would be subject to Petitioners' discrimination are particularly vulnerable. Empirical research demonstrates that children as young as four years old can understand, internalize, and reproduce bias. *See* Allison L. Skinner et al., *"Catching" Social Bias: Exposure to Biased Nonverbal Signals Creates Social Biases in Preschool Children*, 28 PSYCH. SCI. 216, 221 (2017) ("We found that following exposure to biased nonverbal signals, preschool children showed social biases that were consistent with the nonverbal messages they received. We also found evidence that the children generalized these biases to other individuals."). Exclusion at such an early

developmental stage produces lasting negative effects on children's social and emotional development. *See* Frode Stenseng et al., *Preschool Social Exclusion, Aggression, and Cooperation: A Longitudinal Evaluation of the Need-to-Belong and the Social-Reconnection Hypotheses,* 40 PERSONALITY & SOC. PSYCH. BULL. 1637, 1645 (2014) ("[T]he present study derives from a large community sample of young children, and reveals that social exclusion in preschool predicts increased aggressive tendencies, but not increased cooperation, at least according to parent reports of child behavior. The results accord well with the need-to-belong theory.").

B. Petitioners' Exclusionary Policy Would Harm Children by Limiting Access to Education

Petitioners' exclusionary policy would also limit many children's access to preschool education, compounding the dignitary harm with concrete, material consequences. Colorado deliberately created a mixed-delivery system so families could choose among public, private, community-based, and faith-based preschool providers. Colo. Rev. Stat. § 26.5–4–204(2). Shrinking, or even eliminating, the pool for one class of children would deny them the benefit of the program as designed, and would risk depriving them of the profound benefits of early childhood education.

Petitioners' proposed discrimination would deny enrollment to a child of LGBTQ+ parents and would discontinue enrollment for a child who later identifies as gender-diverse. JA 145. At a minimum, that policy would narrow the set of publicly funded

preschool options available to those children and families, depriving them of the same range of educational opportunities afforded to others.[5] Those consequences are especially severe in rural Colorado, where a "disproportionate number of LGBTQ parents" live and where "sometimes the only option available for early childhood education is a religious provider." *St. Mary Catholic Parish v. Roy*, 736 F. Supp. 3d 956, 981 (D. Colo. 2024) (quoting Trial Tr. (Goldberg) 287:4–9, 325:9–14). For these families, Petitioners' exclusionary policy would not only deny children access to one preschool among many, but also threaten to deny them access to a preschool education altogether. *See* Resps.' Br. at 54. This can have long-term negative impacts on children and result in precisely the opposite of what Respondents' preschool program is designed to achieve.[6] Furthermore, many

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[5] The goal of UPK is not merely to provide children with access to a preschool; it is designed to ensure that children receive a high-quality preschool education without their options being limited by their parents' identity. *See* Resps.' Br. at 52, 54, 56. It is thus no answer that Respondents could revamp UPK's funding structure. As designed, the statute promotes equal access to preschool education and ensures that all children have the same range of available options. A purely public alternative would require Colorado to abandon equality for universality. The state need not abandon one policy goal to pursue another. *See Norwood*, 413 U.S. at 463 ("[A] State's special interest in elevating the quality of education in both public and private schools does not mean that the State must grant aid to private schools without regard to constitutionally mandated standards forbidding state-supported discrimination.").

[6] Empirical research has shown that the children of LGBTQ+ individuals already experience marginalization and stigmatization within school settings, which Petitioners' exclusionary policy would exacerbate. *See* Abbie E. Goldberg &

LGBTQ+ adults are religious and may seek religious education for their children.[7] *See id*. Their children would be materially harmed by Petitioners' decision to deny them equal access to a preschool education.

This is so because a high-quality early childhood education has been shown to have lasting benefits for the development of children's cognitive, social, and behavioral skills. *See* Annie D. Schoch et al., *Children's Learning and Development Benefits from High-Quality Early Care and Education: A Summary of the Evidence*, OPRE Report #2023-226, (Aug. 2023), at 1, 3. A 2024 study by Georgetown University researchers found that children who attended public preschool had significantly better impulse control and working memory—core executive functioning skills essential to learning, self-regulation, and long-term success—by the third grade, compared to children who did not attend preschool. *See* Anna D. Johnson et al., *Much Hypothesized, Rarely Tested: Public Preschool Attendance Predicts Executive Functioning Skills in 3rd Grade*, 29 APPLIED DEVELOPMENTAL SCI. 345 (2025).

JuliAnna Z. Smith, *LGBTQ Parents' Accounts of Their Children's Experiences With Heterosexism in Schools*, 13 PSYCH. OF SEXUAL ORIENTATION & GENDER DIVERSITY 84, 92–93 (2026).

[7] A study from the Williams Institute at UCLA Law School found that 46.7% of LGBTQ+ adults in the U.S. identify as religious, 19.7% identify as highly religious, and 24% of religious LGBTQ+ adults identify as Roman Catholic. Kerith J. Conron et al., Religiosity Among LGBT Adults in the US (Oct. 2020), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Religiosity-Oct-2020.pdf.

Exclusion from education can have devastating lifelong effects. *See generally* Katherine M. Zinsser et al., *A Systemic Review of Early Childhood Exclusionary Discipline*, 92 REV. OF EDUC. RSCH. 743, 745–47 (2022) (explaining that excluding children from education programs is correlated with, *inter alia*, depressed academic achievement, loss of affinity for school, and incarceration and substance abuse later in life). Expert testimony at trial in this case established that, for children denied access to quality preschool, "it's detrimental in that . . . they are held behind, more likely to be in special education, and less likely to succeed academically and socially and emotionally as well." *St. Mary Catholic Parish*, 736 F. Supp. 3d at 981 (citing Trial Tr. (Holguín) 430:25–431:5). In short, preschool "is a key element for children to be able to succeed, and an equalizer for many children [who] don't have the opportunity to be in a place where they can acquire those skills." *Id.* (citing Trial Tr. (Holguín) 430:15–18). As the district court found, attending preschool also has a multiplying effect as "the children of the children [who] attend preschool are also benefitting." *Id.* (citing Trial Tr. (Holguín) 430:11–15).

For more than a hundred years, this Court has recognized children's interest in access to a high-quality education and the profound negative impact that inadequate access has on children. The school is a "most vital civic institution for the preservation of a democratic system of government," *School District of Abington v. Schempp,* 374 U.S. 203, 230 (1963), and thus the provision of education is a "matter[] of supreme importance." *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923). As a unanimous Court explained in *Brown*, "[e]ducation is perhaps the most important

function of state and local governments." 347 U.S. at 493. "Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Id.*

Here, Petitioners' requested exemption would harm children by producing exactly the unequal access to education that the Court has warned against. By excluding the children of LGBTQ+ parents, the policy would at best narrow, and at worst summarily deny, access to preschool education. Colorado seeks to advance the educational development of *all* children by enacting statutory nondiscrimination provisions. Respondents should not be obliged to subordinate this goal, long venerated by this Court, to Petitioners' request for a legal stamp of approval on discrimination supported by public dollars.

CONCLUSION

The judgment below should be affirmed.

Dated: Aug. 24, 2026
New York, NY

Respectfully submitted,

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No. 25-581

In the Supreme Court of the United States

ST. MARY CATHOLIC PARISH IN LITTLETON, ET AL., *Petitioners*,

v.

LISA ROY, IN HER OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE COLORADO DEPARTMENT OF EARLY CHILDHOOD, ET AL., *Respondents*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

CERTIFICATE OF COMPLIANCE

IT IS HEREBY CERTIFIED, as required by Supreme Court Rule 33.1(h), that this Brief of *Amici Curiae* Children's Rights; The Interfaith Coalition for Children's Rights: Professor C. Colt Anderson, Episcopal Divinity School, Hon. Ruth Messinger, Union Theological Seminary; American Humanist Association; Barton Child Law & Policy Center, Emory Law School; Center for the Study of Social Policy; Center for Children & Youth Justice; Children's Action Alliance; Children & Family Justice Center; Defender Association of Philadelphia, Child Advocacy Unit; Juvenile Law Center; Harvard Law School Youth Advocacy & Policy Lab; Lawyers For Children; The Legal Aid Society; National Center for Youth Law; Nebraska Appleseed Center for Law in the Public Interest; Pegasus Legal Services for Children; South Carolina Appleseed Legal Justice Center; University of Miami Children & Youth Law Clinic; Professor Josh Gupta-Kagan; Professor Randi Mandelbaum; and Professor Sarah Katz in Support of Respondents contains 3,164 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 24, 2026.

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Case No. 25-581

----------X

St. Mary Catholic Parish, Littleton, Colorado, et al.,

Petitioners,

v.

Lisa Roy, in Her Official Capacity as Executive Director of the Colorado Department of Early Childhood, et al.,

Respondents.

----------X

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, Noel Reyes, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

I am retained by Counsel of Record for of *Amici Curiae*.

That on the 24th day of August 2026, I served the within *Brief of Amici Curiae Children's Rights; The Interfaith Coalition for Children's Rights: Professor C. Colt Anderson, Episcopal Divinity School, Hon. Ruth Messinger, Union Theological Seminary; American Humanist Association; Barton Child Law & Policy Center, Emory Law School; Center for the Study of Social Policy; Center for Children & Youth Justice; Children's Action Alliance; Children & Family Justice Center; Defender Association of Philadelphia, Child Advocacy Unit; Juvenile Law Center; Harvard Law School Youth Advocacy & Policy Lab; Lawyers For Children; The Legal Aid Society; National Center for Youth Law; Nebraska Appleseed Center for Law in the Public Interest; Pegasus Legal Services for Children; South Carolina Appleseed Legal Justice Center; University of Miami Children & Youth Law Clinic; Professor Josh Gupta-Kagan; Professor Randi Mandelbaum; and Professor Sarah Katz in Support of Respondents* in the above-captioned matter upon:

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by sending three copies of same, addressed to each individual respectively, through FedEx Overnight Mail. An electronic version was also served by email to each individual.

That on the same date as above, I sent to this Court forty copies of the within *Brief of Amici Curiae Children's Rights; The Interfaith Coalition for Children's Rights: Professor C. Colt Anderson, Episcopal Divinity School, The Interfaith Center of New York, Hon. Ruth Messinger, Rabbi Philip Rice, Union Theological Seminary; American Humanist Association; Barton Child Law & Policy Center, Emory Law School; Center for the Study of Social Policy; Center for Children & Youth Justice; Children's Action Alliance; Children & Family Justice Center; Defender Association of Philadelphia, Child Advocacy Unit; Juvenile Law Center; Harvard Law School Youth Advocacy & Policy Lab; Lawyers For Children; Legal Aid Society; Legal Services for Children; National Center for Youth Law; Nebraska Appleseed Center for Law in the Public Interest; Pegasus Legal Services for Children; South Carolina Appleseed Legal Justice Center; University of Miami Children & Youth Law Clinic; Professor Josh Gupta-Kagan; Professor Randi Mandelbaum; Professor Sarah Katz in Support of Respondents* via Overnight Next Day Federal Express, postage prepaid. In addition, the brief has been submitted through the Court's electronic filing system.

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of August 2026.

Noel Reyes

Sworn to and subscribed before me on the 24th day of August 2026.

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2030

CP# 132345