No. 24-539

IN THE

Supreme Court of the United States

KALEY CHILES,
Petitioner,

v.

PATTY SALAZAR, in her official capacity as Executive Director of the Department of Regulatory Agencies, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF OF *AMICUS CURIAE* FOUNDATION FOR MORAL LAW IN SUPPORT OF PETITIONER

John A. Eidsmoe*
**Counsel of Record*
Talmadge Butts
FOUNDATION FOR MORAL LAW
P.O. Box 148
Gallant, AL 35972
(334) 262-1245
eidsmoeja@juno.com
talmadge@morallaw.org

June 12th, 2025 Counsel for *Amicus Curiae*

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Foundation for Moral Law ("the Foundation") is a 501(c)(3) non-profit, national public interest organization based in Alabama, dedicated to defending religious liberty, God's moral foundation upon which this country was founded, and the strict interpretation of the Constitution as intended by its Framers who sought to enshrine both. To those ends, the Foundation directly assists or files *amicus* briefs in cases concerning religious freedom, the sanctity of life, and other issues that implicate the God-given freedoms enshrined in our Bill of Rights.

The Foundation has an interest in this case because the Foundation believes that sex is determined at conception, cannot be changed by social or medical intervention, and that it is unconstitutional for States to censor talk therapy that seeks to help individuals reconcile their biological sex with their self-perception.

SUMMARY OF THE ARGUMENT

Over the past decade, transgenderism and gender identity ideology—the belief that the biological sex binary is false and that gender is fluid and completely self-determined—have become quasi-religions within secular America. What used

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[1] Pursuant to Rule 37.6, *amicus curiae* certifies that no party or party's counsel authored this brief in whole or in part, or contributed money that was intended to fund its preparation or submission; and no person other than the *amicus curiae,* its members, or its counsel, contributed money that was intended to fund the preparation or submission of this brief.

to be merely a rare medical condition, gender identity disorder, has turned into a multimillion dollar industry of social programming (under the guise of "representation") and medical mutilation (under the misnomers of "gender affirming care" and "sex reassignment surgery"). Millions upon millions of dollars have been poured into this growing dystopian industry of pain, and states like Colorado, blinded to the poorer health outcomes, are doing everything in their power to protect it.

In this case, Colorado's state action comes in the form of banning any talk therapy—so-called "conversion therapy"—that might so much as suggest that the prevailing orthodoxy of gender identity ideology is incorrect and that there are safer alternatives for individuals struggling with their self-perception. This brief will argue that Colorado's action is unconstitutional because the State's power to regulate medical treatments does not include the power to regulate speech. Both the history of medical regulation and of conversion therapy show that modern talk therapy like that practiced by the petitioner is totally outside the scope of regulation as speech rather than conduct.

This brief will also provide sources supporting the position that gender identity ideology is incorrect as a matter of fact and is harmful in application and practice. This includes an overview of the basis for biological sex, the inescapable harms of so-called "gender affirming care," and evidence that talk therapy like that of petitioners is what actually saves lives and helps people.

Additionally, it will explain that the Founders' understanding of free speech never contemplated carve-outs such as "professional speech" and suggest that the Court should consider the rights of the minors and parents who wish to obtain the kind of talk therapy that Chiles offers.

ARGUMENT

I. The states' power to regulate medical treatments does not include the power to regulate speech.

The power to regulate medical treatments is reserved to the states by the Tenth Amendment, but only to the extent that the state police power does not infringe upon rights guaranteed by the U.S. Constitution, e.g., in this case by the First and Fourteenth Amendments. Colorado asserts that its ban on counseling conversations that do not endorse gender identity ideology is a valid exercise of state power to regulate conduct in medical practice. Petitioner Chiles' argument that Colorado's action is an unconstitutional regulation of her speech rather than any conduct is correct. However, to the extent that Colorado argues that this kind of speech regulation is appropriate within its power to regulate medical treatments, this argument fails as well. The state power to regulate health and medicine has historically been tied to physical conduct, and the type of talk-therapy practiced by Petitioner is not within the ambit of state power to regulate.

A. Medical regulation has historically been tied to the prevention of physical harm.

Dent v. West Virginia, 129 U.S. 114 (1889), in which the Supreme Court ruled in 1889 that states have the right to require medical practitioners to be licensed, is the seminal case of medical regulation in the United States.[2] With *Dent*, the Supreme Court affirmed not only the common understanding that the Tenth Amendment reserved the power to regulate medicine and public health to the states, but also the states' right to regulate the practice of medicine as a whole. In doing so, the practice of medicine shifted from being an occupation that anyone could engage in, to a state licensed profession.[3] This was a seismic shift.

Until *Dent*, anyone could introduce themselves as a doctor and engage in the practice of medicine, no matter whether their favorite medical intervention was bloodletting, a "heroic" dose of snake oil, or a simple cup of tea and bedrest. At this time, there were a handful of competing medical traditions. Prior to the Civil War, between two-thirds and three-quarters of doctors considered themselves "Regulars" whose practice was historically based on the ancient concepts of balance and regularity as expressed by the human body's four "humors"—blood, black bile, yellow bile, and phlegm.[4] The rest of doctors generally belonged to one of a few other

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[2] James C. Mohr, Licensed to Practice: The Supreme Court Defines the Medical Profession, The Johns Hopkins Univ. Press (2013).
[3] Id. at 10
[4] Id. at 11.

influential groups, including the Thomsonians, the Botanics, the Hydropaths, the Homeopaths, and the Eclectics. Each of these groups practiced varying degrees of less invasive natural and herbal remedies.[5]

Shortly after the Civil War, an influential faction of Regulars began advocating for state licensing requirements for physicians, with a primary motivation being to restrict any non-Regular doctors from the practice of medicine.[6] Dr. James E. Reeves, the founder of the Medical Society of West Virginia (MSWV), was the leading proponent of the legislation at issue in *Dent*. In 1867, Reeves gave the opening address at the American Medical Association's annual convention in which he gave a "fire-and-brimstone" speech against all forms of non-Regular healing.[7]

In 1872, James M. Lazzelle, MSWV President and close associate of Reeves, publicly called for licensing laws to be instituted in order to protect the public from unqualified medical practitioners that "tamper with the health and lives of the afflicted" for "base and selfish purposes," making them "criminal offenders against public policy."[8] After years of significant effort, overcoming opposition both within the Regular community and outside of it, Dr. Reeves and the Regulars reached their goal when West Virginia passed a board of health bill in 1881 that

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[5] Id. 13-14.
[6] Id. at 20-21.
[7] Id. at 33.
[8] Mohr, *supra* note 2 at 40.

gave the board authority to license physicians to practice medicine.

When Governor Jacob Jackson signed and implemented the law, he appointed Reeves to one of the six seats on the newly created board. Reeves would report to the MSWV that, "I am sure it is a source of pride to every member of this Society, and likewise to all regular physicians in the state, that the members of the State Board of Health, without an exception, belong to the 'True Church in Medicine.'"[9] Reeves would then quickly begin his mission to "separate well-educated physicians from ignorant, dangerous pretenders, who cannot be otherwise regarded than as public enemies."[10]

One of these so-called public enemies would be Dr. Frank M. Dent, a physician who was arrested and convicted of practicing medicine without a license under the new law because the state board did not accept his diploma from the American Eclectic Medical College in Cincinnati, Ohio. *Dent*, 129 U.S. 114 (1889). Ultimately, the Supreme Court would decide that West Virginia's state board of health licensing procedure did not violate Dent's due process rights under the Fourteenth Amendment. The Court affirmed that citizens have the right to pursue any vocation, but that likewise that "the power of the state to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure or tend to secure them against the consequences of ignorance

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[9] Id. at 80.
[10] Id. at 82.

and incapacity, as well as of deception and fraud." *Id.* at 122.

The Court emphasized that, because the profession of medicine deals with

> all those subtle and mysterious influences upon which health and life depend, and requires not only a knowledge of the properties of vegetable and mineral substances, but of the human body in all its complicated parts, and their relation to each other, as well as their influence upon the mind. The physician must be able to detect readily the presence of disease, and prescribe appropriate remedies for its removal. Every one may have occasion to consult him, but comparatively few can judge of the qualifications of learning and skill which he possesses. Reliance must be placed upon the assurance given by his license, issued by an authority competent to judge in that respect, that he possesses the requisite qualifications. Due consideration, therefore, for the protection of society may well induce the state to exclude from practice those who have not such a license, or who are found upon examination not to be fully qualified.

Id. at 122-123. As to the qualifications themselves, the Court noted that

> the nature and extent of the qualifications required must depend primarily upon the judgment of the state as to their necessity. If they are appropriate to the calling or

> profession, and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such calling or profession, or are unattainable by such reasonable study and application, that they can operate to deprive one of his right to pursue a lawful vocation.

Id. at 124.

From the MSWV's initial advocacy for state licensing and regulation, to the Supreme Court's ultimate decision in *Dent* recognizing the states' right to do so, the regulation of medical treatment has been centered on preventing physical harm. In the present case, however, Colorado's law that regulates how state-licensed counselors may communicate with their clients regarding gender dysphoria does not aim to prevent physical harm to patients, but rather to censor speech.

B. While some forms of so-called "conversion therapy" may include conduct, talk therapy is pure speech.

Now that we have reviewed the historical beginnings of medical regulation, we can better address the regulation at issue in this case. Colorado's law is essentially a "conversion therapy" ban with a gender identity ideology twist. Conversion therapy has a long history, and, until recently, has primarily been connected with

reducing or eliminating same-sex attraction. [11] Today, however, therapy connected with reconciling gender identity and biological sex is more common, as transgenderism has increased in prevalence.[12]

Historically, conversion therapy included physical components. These included surgical interventions such as lobotomies, castrations, clitoridectomies, and cauterization of the spinal cord. Electric shock therapy, hormone injections, and behavioral modification methods such aversive conditioning were also used. [13] However, after homosexuality was removed from the Diagnostic and Statistical Manual (DSM) in 1973, these types of physical treatments were condemned.

Talk therapy as practiced by the Petitioner, however, bears no relation or resemblance to physical treatments. Indeed, talk therapy relies solely on mere conversation—to such an extent, in fact, that it is called the "talking cure." [14] While speech regulations in other fields such as medicine and law do not have a significant impact on the actual practice of those professions in most cases, regulating speech in talk therapy is essentially a direct censorship of speech—"for talk therapists, the

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[11] Marie-Amelie George, Expressive Ends: Understanding Conversion Therapy Bans, 68 Ala. L. Rev. 793, 794-5 (2017), https://law.ua.edu/wp-content/uploads/2011/07/Expressive-Ends-Understanding-Conversion-Therapy-Bans.pdf.
[12] Id. at 845-6.
[13] Id. at 802.
[14] Warren Geoffrey Tucker, It's Not Called Conduct Therapy; Talk Therapy as a Protected Form of Speech Under the First Amendment, 23 Wm. & Mary Bill Rts. J. 885, 906 (2015), https://scholarship.law.wm.edu/wmborj/vol23/iss3/9

only 'conduct' they are engaged in is *speaking* with their clients."[15]

From the moment that a client walks into the office, a talk therapist is communicating through body language without even opening their mouth. In the field of psychology, "countertransference" is a concept which suggests that therapists cannot avoid having some kind of personal reaction to the client, which means that therapists will inevitably bring some of their own personal beliefs, thoughts, and feelings into sessions.[16]

To proscribe talk therapists from discussing anything other than Colorado's official state dogma of gender identity ideology, is to regulate the very core of speech within talk therapy. Therapists like petitioner who do not believe in gender identity ideology would be potentially subject to penalty from the very moment that a client mentions anything related to the subject should the therapist respond in any way other than a full endorsement of gender transition.

> Especially if the client is aware of the fact that the therapist is holding back, the client-therapist relationship is likely to be inhibited

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[15] Id.

[16] The Therapist As A Person: Life Crises, Life Choices, Life Experiences, And Their Effects On Treatment xiiixxi (Barbara Gerson ed., 1996) (Each [therapist's] work is unique, affected by the [therapist's] values, assumptions, and psychological idiosyncrasies, by their own dynamics, passions, ideas and general subjectivity, and by their experiences and personal development. (citations omitted) (internal quotation marks omitted)).

> and treatment may be less effective. If a client has a number of goals he or she wishes to achieve through talk therapy, the relationship may be damaged with the knowledge that the therapist may not be able to work towards one or more of those treatment objectives.[17]

Colorado's intrusion doesn't only violate the rights of the therapist, but it also inhibits the conversation around one of the most contentious issues of our time—the debate between gender identity ideology and biological sex. Colorado's action seeks to overthrow all conventional knowledge and understanding of human sexuality and install gender identity ideology as the new standard of both belief *and practice*. By controlling what therapists may and may not discuss with their minor clients, Colorado is attempting to control how parents raise their children. When one looks at the facts of gender identity ideology, the insidious nature of Colorado's actions becomes clear.

C. Because of the Framers' high view of free speech, they would have regarded a "professional speech" exception to the First Amendment foreign and repulsive.

The Framers of our Constitution and Bill of Rights held a very high view of free speech, as this Court has recognized in *Tinker v. Des Moines,* 303 U.S. 503 (1969), *New York Times v. Sullivan,* 376 U.S. 254 (1964), *Near v. Minnesota,* 283 U.S. 697 (1931), and many other cases. They considered it a

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[17] Tucker, *supra* note 14 (internal citations omitted).

God-given right, essential for the advancement of one's ideas and for the development of one's personal creativity, and an important check on government power.

The Foundation can find no trace whatsoever in the Framers' writings of any indication that they considered some forms of protected speech to be less worthy of protection than others. Obscenity, defamation, sedition, criminal solicitation, and fraud were outside the protection of the First Amendment. But different levels of scrutiny for "pure" speech versus commercial speech and other forms of speech was foreign to their thought.

The Framers saw the value of commerce and wanted to ensure that commerce flowed freely and unimpeded through the states. They knew that speech was essential to promote commerce, and they would have looked askance upon attempts to regulate commercial speech. And they would have been puzzled by attempts to differentiate between commercial speech and "pure" speech. Consider, for example, a bookseller who advertised Thomas Paine's pamphlet *Common Sense*. If he advertised Paine's pamphlet to promote Paine's advocacy of independence, would that have been "pure" speech? If he did so only to make money, would that speech have been less entitled to protection? Are the seller's motives even a fit subject for judicial inquiry?

The question becomes even more complicated when we consider "professional speech," that is, speech uttered in the pursuit of one's profession that are for that reason supposedly entitled to less than the full protection of the First Amendment. This

Court has never recognized "professional speech," although some lower courts have done so.

Some professions, more than others, involve extensive verbal communication. Some may involve elements of rock-hard science on which there is little room for debate or discussion. Others may involve more disputed areas of ideas and assumptions about human nature, morality, and ultimate reality.

Few if any professions are more ideologically-driven than psychology. The mental health professions are inextricably involved, even driven, by ideas and ideology. The mental health practitioner's way of practice is driven by his or her worldview; as he counsels patients on what is right and what is wrong (and if the practitioner tells his patient there is no right or wrong, that too is a worldview), how to deal with guilt, he is following his own religious and moral views. Sigmund Freud believed psychoanalysis was not a specialized branch of medicine; rather, he described it as within the realm of religion:

> [T]he words, "secular pastoral worker," might well serve as a general formula for describing the function [of] the analyst … We do not seek to bring [the patient] relief by bringing him into the catholic, protestant or socialist community. We seek rather to enrich him from his own internal sources. … Such activity as this is pastoral work in the best sense of the words.[18]

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[18] Sigmund Freud, quoted by Dr. Thomas S. Szasz, *The*

And Carl Jung, whose influence on the mental health professions rivaled that of Freud although their views differed greatly wrote:

> …patients force the psycho-therapist into the role of a priest, and expect and demand of him that he shall free them from their distress. That is why we psycho-therapists must occupy ourselves with problems which, strictly speaking, belong to the theologian.[19]

This is especially true of mental health professionals who deal with conversion therapy. In the mental health profession, the legal and political community, and the public as a whole, one's views on this issue are driven by one's world view one's religious, moral, medical, and scientific beliefs. Chiles desires to engage in conversion therapy because she believes it is right. She believes the LGBTQ lifestyle is wrong, that its adherents are engaging in conduct that is morally wrong and that will lead to unhealthy and unfortunate consequences. She cannot be expected to set her beliefs aside as she practices her profession. To do so

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Theology of Therapy: The Breach of the First Amendment Through the Medicalization of Morals, New York University Review of Law and Social Change, Vol. V, No. 2 (1975), 127, 133-35.

[19] Carl Jung, quoted by Samuel E. Ericsson, *Clergy Malpractice: Constitutional and Political Issues* (Oak Park, Illinois: Center for Law and Religious Freedom, May 1981), 6-8' see also, Dr. Paul Vitz, *Psychology as Religion: The Cult of Self-Worship,* Eerdmans 1977.

would be to do a grave disservice to her patients, to her profession, to herself, and to her God.

If Chiles were employed by a religious ministry, she would be allowed to engage in conversion therapy. The State has granted an exemption for therapists who work for religious ministries; the exemption permits them to practice conversion therapy but denies the same right to those who do not work for religious ministries. The State seems to assume that ordinary businesses cannot be "religious" and that those who do not work for religious ministries have no right to protection for the free exercise of their religious beliefs.

But this Court has elsewhere rejected that position. In *Burwell v. Hobby Lobby Stores, Inc.,* 573 U.S. 682 (2014), this Court held that closely-held corporations could be considered "persons" under the federal Religious Freedom Restoration Act (RFRA), and therefore, Hobby Lobby and Conestoga Wood Specialties could deny their employees certain types of contraception coverage in their health plans, because such coverage violated the owners' religious beliefs. Just as the owners of Hobby Lobby and Conestoga were entitled to the protection of the First Amendment, so Chiles is entitled to the protection of the First Amendment as she engages in her profession in accordance with her deeply held religious, moral, and scientific beliefs.

Furthermore, the Colorado Legislature adopted this Prohibit Conversion Therapy for Minors Bill (HB 19-1129) for the purpose of advancing the LGBTQ ideology and suppressing opposition to it. The bill was passed on largely partisan lines; only

two Republicans in each House supported the bill; and Governor Jared Polis, the nation's first openly gay elected governor, signed it into law, saying, "What a great way to kick off pride month for 2019." It was passed with the support of One Colorado, which describes itself as the state's leading LGBTQ advocacy organization [20] By defining conversion therapy as any attempt to "change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex,"[21] the law clearly bans treatment intended to change homosexuals into heterosexuals but does not ban treatment intended to change heterosexuals into homosexuals. Likewise, transitioning children from boys into girls or girls into boys is legal in Colorado. Colorado's conversion therapy statute is viewpoint discrimination, which is highly disfavored by this Court. *See Rosenberger v. Rector and Visitors of the University of Virginia,* 515 U.S. 819 (1995).

As the Fourth Circuit recognized in *Greater Baltimore Center for Pregnancy Concerns, Inc. v.*

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[20] Colorado's Conversion Therapy Ban Goes Into Effect Today," August 2, 2019, https://www.one-colorado.org/latest/colorados-conversion-therapy-ban-goes-into-effect-today; Candice Norwood, "LGBT Conversion Therapy for Minors Banned in Colorado," June 3, 2019, https://www.governing.com/archive/tns-colorado-bans-conversion-therapy.html

[21] Colorado House Bill 19-1129, available at: https://leg.colorado.gov/sites/default/files/2019a_1129_signed.pdf

Mayor and City Council of Baltimore, 879 F.3d 101 (4th Cir. 2018), invalidating a Baltimore ordinance requiring pregnancy centers that do not offer or refer for abortions to disclose that fact through signs posted in their waiting rooms. The Court stated:

> Weaponizing the means of government against ideological foes risks a grave violation of our nation's dearest principles: "that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Barnette,* 319 U.S. at 642. It may be too much to hope that despite their disagreement, pro-choice and pro-life advocates can respect each other's dedication and principle. But, at least in this case, as in *Stuart,* it is not too much to ask that they lay down the arms of compelled speech and wield only the tools of persuasion. The First Amendment requires it.

Id. at 113.

In *National Institute of Family and Life Advocates dba NIFLA v. Becerra* 138 U.S. 2361, 2371-72 (2018), which involved a fact situation similar to that in *Baltimore,* this Court stated that "speech is not unprotected just because it is uttered by 'professionals.'" This Court stated further, "This Court's precedents do not recognize such a tradition for a category called 'professional speech.'" *Id.* at 2372. The Court acknowledged that the "commercial speech" exception might apply to professionals when they advertise, requiring them to "disclose factual, noncontroversial information," and that "the States

may regulate professional conduct, even though the conduct incidentally involves speech." *Id.* But the Court refused to apply either of these exceptions to the fact situation in *NIFLA,* in which California required pro-life crisis pregnancy centers to post signs in their waiting rooms telling patients how to obtain state-funded abortions. The Court warned that

> The dangers associated with content-based regulations of speech are also present in the context of professional speech. As with other kinds of speech, regulating the content of professionals' speech "pose[s] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information."

Id. at 2374 (internal citations omitted).

The Court noted that throughout history, governments have tried to interfere with doctor/patient relations for political purposes, and that such regulation can suppress debate on controversial medial ideas and can "fail to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." *Id.* (internal citations omitted)[22]

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[22] Writing in *Wake Forest Law Review*, Caroline Wilcox concludes that the doctrine of professional speech is much narrower than the doctrine of commercial speech, and if it is accepted at all, it should be strictly limited to the inclusion of purely factual and uncontroversial information in advertising by professionals and to conduct regulations that incidentally burden speech. "*NIFLA* and the Argument Against

The Court's warnings about politically and ideologically motivated manipulation of professional speech certainly apply to the case at hand, in which Colorado seeks to suppress conversion therapy because certain Colorado officials are hostile toward anyone who opposes the LGBTQ agenda. As she practices conversion therapy, Chiles's talk therapy is not advertising, and her conversion therapy is purely talk therapy, not involving any hands-on treatment, surgery, or drugs.

Concurring in NIFLA, Justice Kennedy said that the California requirement was ideologically motivated and constituted viewpoint discrimination. *Id.* at 2379. He noted that the California Legislature included in its official history that the Act was part of California's legacy of "forward thinking," but he warned that "it is not forward thinking to force individuals to 'be an instrument for fostering public adherence to an ideological point of view [they] fin[d] unacceptable." *Id.* (internal citation omitted).

'Professional Speech," https://www.wakeforestlawreview.com/2024/05/nifla-and-the-argument-against-professional-speech/. Two articles published prior to *NIFLA* warned of the danger that a professional speech exception could pose to freedom of expression: Paul Sherman, "Occupational Speech and the First Amendment," *Harvard Law Review* Vol.128 Issue 5 March 2015 https://harvardlawreview.org/forum/vol-128/occupational-speech-and-the-first-amendment/ ; and Professor Rodney A. Smolla, "Professional Speech and the First Amendment," *West Virginia Law Review* (2016) https://wvlawreview.wvu.edu/files/d/334f2689-85bb-450f-ad94-3094f1f39cc3/post-pp-smolla-monteleone.pdf.

The Court will recall that in *Masterpiece Cakeshop Ltd. v Colorado Civil Rights Commission,* (a case involving a Colorado baker who refused on religious grounds to bake a cake for a same-sex wedding), Justice Kennedy ruled that Colorado had shown "animus" toward Masterpiece Cakeshop and its owner Jack Phillips. 138 S. Ct. 1719, 1740. Members of the Colorado Civil Rights Commission had spoken disparagingly of Phillips's religion, and one called it "one of the most despicable pieces of rhetoric that people can use," comparing it to defenses of slavery and the Holocaust. *Id.* at 1729. This is further evidence that at least some Colorado officials are hostile toward Chiles's religious and moral views. In the case at hand, Colorado continues to show this hostility toward those who hold religious, moral, or medical objections to the LGBTQ lifestyle.

D. Colorado's prohibition against conversion therapy violates the rights of minors who want conversion therapy and the rights of parents to choose conversion therapy for their children.

But another person's rights are at stake here—the young person who wants conversion therapy, who is experiencing homosexual and/or transgender tendencies but doesn't want to be homosexual or transgender (his/her reasons are irrelevant), and who wants conversion therapy to overcome these tendencies and to become the heterosexual person he/she wants to be. The young person may be a devout Christian or Muslim who believes homosexuality and transgenderism is wrong and

wants help in dealing with homosexual and transgender desires. But the State of Colorado has chosen to deny this person the right to pursue therapy that could enable this person to alter his/her life, under the elitist notion that it and it only knows what is best for people. State officials like those responsible in this case frequently argue that minors may choose abortions (with parental notification but without parental consent); may change their birth certificates and other ID documents to reflect their preferred names and gender markers; access "gender affirming care" including hormones and surgery; and be addressed by their "preferred names" in school without parental consent or knowledge. Yet this same class of officials insist that minors may not have conversion therapy, even with parental consent.

Likewise, the parents of minor children have an interest in their children's welfare. As this Court said in *Pierce v. Society of Sisters,* "The child is not the mere creature of the stat; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." 268 U.S. 510, 535 (1925). Many parents join their children in wanting them to have conversion therapy, but the State of Colorado has placed itself above parents.

In the ongoing "culture war" over LGBTQ issues, the State of Colorado has clearly taken sides in favor of the LGBTQ position, and it seeks to enshrine its view of LGBTQ issues as the official position of the State to enforce its views by law, and to suppress the

free exercise and free speech of those who believe otherwise.

Although no such minors or parents have joined this lawsuit as parties, the Court should consider the impact this decision will have upon their interests, desires, and constitutional rights.

II. Gender identity ideology is incorrect as a matter of fact and the practice of gender transitioning is harmful in practice.

Gender identity ideology and the practice of gender transitioning are topics central to moral and religious beliefs, norms, and practices that parents have the ultimate right of control and direction for the upbringing of their children. The main beliefs of gender identity ideology are that the biological sex binary of male and female is not real, that there are innumerable genders beyond male and female, that a person's "gender" is different from their "sex assigned at birth."[23]

Twenty-five states, the District of Columbia, Puerto Rico, and dozens of municipalities currently have bans on conversion therapy for minors,[24] and three states ban the use of state or federal funds for

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[23] See Sex and Gender Identity, Planned Parenthood, https://www.plannedparenthood.org/learn/gender-identity/sex-gender-identity (last visited June 12, 2025).

[24] The Trevor Project, A Report on Practitioners of So-Called Conversion "Therapy" in the U.S., 23 (2023). The States are California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, and Washington.

conversion therapy.[25] These governments have essentially decreed that their official state dogma is that parents should not raise their children on the facts of biological sex—no state-licensed therapist is permitted to acknowledge the reality of biological sex should a parent desire to obtain treatment for their child.

These laws are premised on a falsehood because gender identity is an ideological belief system, not a matter of scientific truth. The basic reality of biological sex is that there are only two sexes, male and female, and that anything else is mutation. T.W. Sadler, Langdon's Medical Embryology 40 (Philadelphia: Lippencott Williams & Wilkins) (2004); William J. Larsen, Human Embryology 519 (New York: Churchill Livingstone) (2001); Keith L. Moore & T.V.N. Persaud, The Developing Human: Clinically Oriented Embryology 35 (Philadelphia: Saunders/Elsevier) (2003). Biological sex is not "assigned;" it is determined at the exact moment of fertilization whereby a sperm cell that carries an X chromosome produces a female (XX) embryo, while a sperm cell that carries a Y chromosome produces a male (XY) embryo. Id.

While there are some people that do experience a discordance between their body's biological sex and their mental perception of what their gender is, this is a medical condition that needs compassionate treatment based in reality, not to be exacerbated by a rejection of it. The distress this discordance causes is now called "gender dysphoria." Am. Psychiatric

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[25] Id. These states are Arizona, North Carolina, and Wisconsin.

Ass'n, Gender Dysphoria, in Diagnostic and Statistical Manuel of Mental Disorders 432 (Am. Psychiatric Publ'g., 5th ed. 2013). The Diagnostic and Statistical Manuel of Mental Disorders (DSM-5) defines gender dysphoria as "incongruence between one's experienced/expressed gender and assigned gender" that causes "clinically significant distress or impairment in social, occupational, or other important areas of functioning." Id. However, in the past, the DSM listed "gender identity disorder" instead and defined it as incongruence between a person's experienced gender and their biological sex itself, without any mention of "assigned gender." Am. Psychiatric Ass'n, Gender Identity Disorder, in Diagnostic and Statistical Manuel of Mental Disorders 435 (Am. Psychiatric Publ'g., 4th ed. text rev. 2000). The very fact that they speak of this incongruence between experienced gender and biological sex, demonstrates that they consider biological sex to be an established scientific reality which one's perception is powerless to alter.

Dr. Paul McHugh, former director of Johns Hopkins University's Department of Psychiatry and psychiatrist-in-chief of Johns Hopkins Hospital, has explained that gender identity disorder is the proper clinical conception of the condition because it emphasizes the patient's discordance with the reality of their natural body. Ryan T. Anderson, When Harry Became Sally: Responding to the Transgender Movement 95 (Encounter Books, paperback ed.) (2019). However, advocates for gender identity ideology reject biological sex entirely and seek only to affirm the feelings of those suffering distress from gender dysphoria. Far from being

compassionate, this kind of response is like agreeing with a person suffering from Anorexia Nervosa when they assert that they are overweight.

The World Professional Association for Transgender Health (WPATH) is one of the major advocates for gender identity ideology and gender transitioning. WPATH regularly publishes a Standards of Care report which WPATH states in the eighth edition (SOC-8) has the purpose of providing "clinical guidance to health care professionals to assist transgender and gender diverse (TGD) people." World Professional Association for Transgender Health, Standards of Care for the Health of Transgender and Gender Diverse People, Version 8, Int'l J. of Transgender Health, S5 (2022). WPATH includes "social transitioning" as a clinical treatment for health care professionals to discuss with families considering it. Id. at S75-79. The SOC-8 specifically details that social transitioning is clinical treatment that should be "individualized based on both a child's wishes and other psychosocial considerations, and is a decision for which possible benefits and challenges should be weighted and discussed." Id. at S77 (internal citations omitted).

Michelle Cretella, executive director of the American College of Pediatricians, has explained that this psychological treatment frequently leads to further medical intervention including puberty blockers, cross-sex hormones, and physical amputations.[26] These medical interventions carry

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[26] I'm a Pediatrician. How Transgender Ideology Has

significant known risks for adults and do not ultimately aid mental health outcomes. Id. The risks are even worse for children who are unable to consent to such irreversible life-altering procedures and is tantamount to child abuse. Id.

A recent fifteen year study conducted in the Netherlands indicates that adolescent discontent with one's biological sex has a high likelihood of subsistence in early adulthood without any medical intervention.[27] Another recent study from Finland indicates that gender transition treatments such as drugs or surgeries among adolescents and young adults do not decrease suicidal ideation.[28] This is an important reality because one of the primary driving arguments of gender transitions for children is that it is necessary to prevent them from committing suicide.

Another element to transgenderism that is particularly harmful is its potential to be a "social

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Infiltrated My Field and Produced Large-Scale Child Abuse., DAILY SIGNAL (July 3, 2017), https://www.dailysignal.com/2017/07/03/im-pediatrician-transgender-ideology-infiltrated-field-produced-large-scale-child-abuse/.

[27] Pien Rawee, Judith G.M. Rosmalen, Luuk Kalverdijk, & Sarah M. Burke, Development of Gender Non-Contentedness During Adolescence and Early Adulthood, PubMed, Feb. 27, 2024, https://pubmed.ncbi.nlm.nih.gov/38413534/.

[28] Sami-Matti Ruuska, Katinka Tuisku, Timo Holttinen, & Riittakerttu Kaltiala, All-cause and suicide mortalities among adolescents and young adults who contacted specialised gender identity services in Finland in 1996–2019: a register study, BMJ Mental Health, Jan. 25, 2024, https://mentalhealth.bmj.com/content/ebmental/27/1/e300940.full.pdf

contagion," e.g., "the spread of affect or behaviors through a population," as well as "peer contagion," e.g., "the process where an individual and peer mutually influence each other in a way that promotes emotions and behaviors that can potentially undermine their own development and harm others."[29] As explained by Dr. Lisa Littman, transgenderism among students has all the same hallmarks of social and peer contagion as eating disorders, including deceiving parents, engaging in online environments where the "best" anorexics are idolized while those who seek recovery are demonized. Id.

When this social contagion element is combined with state policies that mandate encouragement of transgenderism by state-licensed therapists, the reality is that we are looking at what is effectively state-mandated transgenderism. Grooming is a commonplace practice within the LGBT community, easily verified both anecdotally and by research.[30] As reported by Lynda S. Doll in her study, "Self-Reported Childhood and Adolescent Sexual Abuse among Adult Homosexual and Bisexual Men," of 1001 participants, "37% reported that they had been encouraged or forced to have sexual contact with an older or more powerful partner before age 19. Median age at first contact was 10."[31] Out of all the

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[29] Lisa Littman, Rapid-onset gender dysphoria in adolescents and young adults: A study of parental reports, PLOS ONE, Aug. 16, 2018, https://doi.org/10.1371/journal.pone.0202330.
[30] Scott Howard, The Transgender-Industrial Complex 20-21 (Margaret Bauer ed., Antelope Hill Publishing, 2nd ed. 2022).
[31] Lynda S. Doll, Dan Joy, Brad N. Bartholow, Janey S. Harrison, Gail Bolan, John M. Douglas, Linda E. Saltzman,

participants, "using developmentally based criteria to define sexual abuse, 93% of participants were classified as sexually abused." Id. For victims of abuse that have developed gender dysphoria as a result of such grooming and abuse, Colorado has effectively mandated that state-licensed therapists must continue grooming these victims to pursue gender transition.

Indeed, in states like Colorado, abuse victims struggling with gender dysphoria who seek treatment from a state-licensed therapist will not be provided with the compassionate reality that their body is enough. Instead of being comforted with the fact that it is possible to reconcile their perceptions with reality and learn to feel comfortable in the body they were born with, Colorado mandates that therapists catapult them on a path of lifelong medical intervention to chemically and surgically remake their bodies to conform to their mental distress.

That is evil. And talk therapists are free under the First Amendment to say so to their clients.

CONCLUSION

Colorado has clearly taken sides in the culture war over LGBTQ values by adopting a viewpoint-based statute that prohibits professional therapists from exercising their rights to free speech and free

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Patricia M. Mossab, & Wanda Delgadoab, Self-Reported Childhood and Adolescent Sexual Abuse among Adult Homosexual and Bisexual Men, Child Abuse & Neglect 16, no. 6, Nov.-Dec. 1992, at 855-864. Available at: https://doi.org/10.1016/0145-2134(92)90087-8.

exercise of religion in practicing purely talk therapy that does not involve advertising, surgery, or hands-on treatment and likewise prohibiting minors and their parents from choosing this kind of therapy in accord with their religious, moral, or scientific convictions.

The Foundation urges this Court to reverse the lower court ruling, strike this law down as unconstitutional, and set a landmark precedent for free speech, free exercise of religion, and freedom to choose a traditional lifestyle.

Respectfully submitted,

John A. Eidsmoe*
**Counsel of Record*
Talmadge Butts
FOUNDATION FOR MORAL LAW
P.O. Box 148
Gallant, AL 35972
(334) 262-1245
eidsmoeja@juno.com
talmadge@morallaw.org

Counsel for *Amicus Curiae*

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