

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*

---

**BRIEF AMICI CURIAE OF THE UNITED  
STATES CONFERENCE OF CATHOLIC  
BISHOPS, THE COLORADO CATHOLIC  
CONFERENCE, AND THE CATHOLIC  
UNIVERSITY OF AMERICA  
IN SUPPORT OF PETITIONER**

Nicholas J. Nelson  
*Counsel of Record*  
CROSSCASTLE PLLC  
2140 4<sup>th</sup> Avenue North  
Anoka, MN 55303  
(612) 887-4360  
nicholas.nelson@  
crosscastle.com

*Counsel for  
Amici Curiae*

---

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
IDENTITY AND INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	5
I.    Seeking Counsel To Live Virtuously Is A Profound Human Concern .....	5
II.   Sexual Morality And Virtue Are Matters Of Intense Contemporary Discussion .....	8
III.  The First Amendment Must Certainly Protect The Ability To Seek And Give Counsel On Such Fundamental Matters.....	13
CONCLUSION .....	16

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Nat’l Inst. of Fam. &amp; Life Advoc. v. Becerra</i> , 585 U.S. 755 (2018) .....	14, 15
<i>Texas v. Johnson</i> , 491 U.S. 397 (1989) .....	14
<i>W. Va. Bd. Of Educ. v. Barnette</i> , 319 U.S. 624 (1943) .....	14
<b>Rules</b>	
Supreme Court Rule 37.6.....	1
<b>Other Authorities</b>	
Apostolic Exhortation <i>Amoris Laetitia</i> , No.56 (Mar. 19, 2016), <a href="https://www.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf">https://www.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf</a> .....	6
<i>Catechism of the Catholic Church</i> §369.....	9
<i>Catechism of the Catholic Church</i> §2342.....	10
<i>Catechism of the Catholic Church</i> §2361.....	9, 10
<i>Catechism of the Catholic Church</i> §2515.....	6
<i>Catechism of the Catholic Church</i> §2516.....	6
Congregation for Catholic Education, <i>Male and Female He Created Them</i> , No.4 (Feb. 2, 2019), <a href="https://press.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20190202_maschio-e-femmina_en.pdf">https://press.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20190202_maschio-e-femmina_en.pdf</a> .....	9

Congregation for Catholic Education, <i>Educational Guidance in Human Love</i> , No. 103 (Nov. 1, 1983), <a href="https://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_19831101_sexual-education_en.html">https://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_19831101_sexual-education_en.html</a> .....	12
Congregation for the Doctrine of the Faith, <i>Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons</i> No. 16 (Oct. 1, 1986), <a href="https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html">https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html</a> .....	7
Congregation for the Doctrine of the Faith, <i>On the Collaboration of Men and Women in the Church and in the World</i> , No.8 (May 31, 2004), <a href="https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20040731_collaboration_en.html">https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20040731_collaboration_en.html</a> .....	9
Genesis 1:27 (NAB) .....	8
<i>Man and Woman He Created Them: A Theology of the Body</i> (tr. Michael Waldstein, 2006) §9:3 .....	9
Pontifical Council for the Family, <i>The Truth and Meaning of Human Sexuality</i> , No.18 (Dec. 8, 1995), <a href="https://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_08121995_human-sexuality_en.html">https://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_08121995_human-sexuality_en.html</a> .....	10, 12

- U.S. Conference of Catholic Bishops,  
*Ministry to Persons with a Homosexual  
 Inclination: Guidelines for Pastoral Care*  
 (Nov. 14, 2006),  
[https://www.usccb.org/issues-and-  
 action/human-life-and-  
 dignity/homosexuality/upload/ministry-  
 persons-homosexual-inclination-2006.pdf](https://www.usccb.org/issues-and-action/human-life-and-dignity/homosexuality/upload/ministry-persons-homosexual-inclination-2006.pdf).... 7, 10, 13
- USCCB Committee on Doctrine,  
*Doctrinal Note on the Moral Limits to  
 Technological Manipulation of the Human  
 Body*, No.2 (Mar. 20, 2023),  
[https://www.usccb.org/resources/Doctrinal%20  
 Note%202023-03-20.pdf](https://www.usccb.org/resources/Doctrinal%20Note%202023-03-20.pdf) ..... 5
- USCCB, *Create in Me a Clean Heart: A Pastoral  
 Response to Pornography* (2015),  
[https://www.usccb.org/resources/Create-in-  
 Me-a-Clean-Heart-Statement-on-  
 Pornography.pdf](https://www.usccb.org/resources/Create-in-Me-a-Clean-Heart-Statement-on-Pornography.pdf)..... 10

## IDENTITY AND INTEREST OF *AMICI CURIAE*<sup>1</sup>

The United States Conference of Catholic Bishops is a nonprofit corporation whose members are the active Catholic Bishops in the United States. The USCCB provides a framework and a forum for the Bishops to teach Catholic doctrine, set pastoral directions, and develop policy positions on contemporary social issues. The USCCB advocates and promotes the pastoral teaching of the U.S. Catholic Bishops in such diverse areas of the Nation's life as the free expression of ideas, fair employment and equal opportunity for the underprivileged, immigration, protection of the rights of parents and children, the sanctity of life, religious liberty, and the importance of education. When cases before this Court touch upon important tenets of Catholic teaching, the USCCB has filed *amicus curiae* briefs to assert its view. In so doing, the USCCB seeks to further the common good for the benefit of all.

The Colorado Catholic Conference (CCC) is the united voice of the Catholic bishops of Colorado, and serves to uphold the dignity of human life and the common good in public policy. Basing its mission on the Gospel of Jesus Christ, as expressed in Catholic social teaching and the consistent life ethic, the CCC works to ensure a dignified and productive life for all Coloradans and provide opportunities for Catholics in

---

<sup>1</sup> Pursuant to Rule 37.6 of this Court, *amici* certify that no counsel for any party to this case authored this brief in whole or in part; no party to this case and no counsel for any party made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than the *amici*, their members and their counsel made such a monetary contribution.

Colorado to carry out their moral responsibility to participate in political life. The CCC advances policy at all levels of government, local, state and federal, on issues that impact the Catholic Church and its teachings.

The Catholic University of America is a religious research institution of higher education in Washington, D.C. It is the national university of the Catholic Church in the United States of America and of the Catholic Bishops in the United States, and is committed to being a comprehensive Catholic institution of higher education that is faithful to the religious and moral teachings of the Church. This includes the command imperative that all people are created in the image and likeness of God and thus possess an innate human dignity that must be acknowledged and respected. As the only pontifical university in the United States, Catholic University has three ecclesiastical faculties subject to direct oversight by the Holy See; and pursuant to its Bylaws, the Fellows, who are mostly Cardinals and Bishops, hold certain reserved powers designed to preserve in perpetuity the essential character of the University as a Catholic institution of higher learning.

## SUMMARY OF ARGUMENT

This case implicates fundamental and enduring questions about human existence: What is the right way to live, and how can individuals move toward that ideal? Throughout history, people have engaged with these questions by seeking guidance and conversation from trusted sources. The question in this case is whether, when individuals seek advice and counsel on these questions, the First Amendment permits the state to regulate the viewpoints they may hear in response.

The speech at issue in this case concerns sexuality and sexual morality—topics that have been heavily debated in recent decades. Until recently, nearly all people have understood that bodily manhood and womanhood are intrinsic elements of human nature, aligned toward each other, and that people should act in accordance with this natural alignment. The Christian faith and the Catholic Church affirm these convictions. Both historically and today, many millions of people have grappled with these beliefs and sought to uphold them in their own lives—and have sought the advice and counsel of others in doing so.

In recent decades, however, influential voices have argued for redefining or discarding notions of natural sexual morality, suggesting instead that personal desires and self-conception should guide individuals' actions.

Everyone in contemporary society must engage with this debate as they determine how to live. Some decide quickly on their views regarding sexual morality, while others deliberate extensively, sometimes even changing their perspectives over time. Many



continually reassess their beliefs based on their experience and advice from others. And regardless of what their individual convictions on this topic may be, people frequently seek professional counseling to clarify their views and to help align their lives accordingly.

If the freedom of speech guaranteed by the First Amendment protects anything, it surely must protect the right to seek and provide advice on these critical questions of human existence. It is hard to think of anything that could implicate the freedom of speech more centrally and urgently than these conversations about essential questions of human life. Consequently, the government may not restrict this dialogue, either through professional regulations or otherwise. The courts below erred in holding to the contrary, and their judgment should be reversed.

## ARGUMENT

### I. Seeking Counsel To Live Virtuously Is A Profound Human Concern.

The specifics of this case involve contentious political issues of the present day. More fundamentally, however, this case addresses a timeless and a nearly universal human experience: seeking counsel from a trusted advisor to discern right from wrong in confusing or complex situations.

1. What we *should* do is not necessarily the same as what we *want* to do. Right and wrong are not subjective preferences but fundamental aspects of reality and human nature. Christianity, and Catholicism in particular, has constantly affirmed this principle. “A fundamental tenet of the Christian faith is that there is an order in the natural world that was designed by its Creator and that this created order is good.”<sup>2</sup> Human actions are morally right when they respect this natural order and morally wrong when they conflict with it.

Catholics also believe that “[w]hat is true of creation as a whole is true of human nature in particular: there is an order in human nature that we are called to respect.... To find fulfillment as human persons, to find true happiness, we must respect that order.”<sup>3</sup>

---

<sup>2</sup> USCCB Committee on Doctrine, *Doctrinal Note on the Moral Limits to Technological Manipulation of the Human Body*, No.2 (Mar. 20, 2023), <https://www.usccb.org/resources/Doctrinal%20Note%202023-03-20.pdf>

<sup>3</sup> *Id.*, No.3.

Thus, it follows from the nature of human beings that there are right and wrong ways to act toward other people, and toward ourselves. As Pope Francis put it, “Creation is prior to us and must be received as a gift... [W]e are called to protect our humanity, and this means, in the first place, accepting it and respecting it as it was created.”<sup>4</sup> For instance, then, most people would agree—and Christian and Catholic thought affirm—that lying, cheating, stealing, assault, and the like are wrong not just because other people dislike them, but because they are intrinsically wrong.

2. Of course, people often *want* to do things that are wrong—that do not reflect the moral order of creation, and therefore do not lead to human fulfillment or happiness. Christians have always understood this difficulty with reference to original sin. “[T]he disobedience of the first sin” has “unsettled” our “moral faculties,”<sup>5</sup> which leads to wrongdoing of every manner.

The result is that it often requires effort—sometimes great effort—for any person to discern how to live rightly and virtuously, and to progress toward doing so. This struggle “is part of the daily experience of the spiritual battle.”<sup>6</sup> And these “problems and difficulties” of striving to live rightly are faced, in different

---

<sup>4</sup> Apostolic Exhortation *Amoris Laetitia*, No.56 (Mar. 19, 2016), [https://www.vatican.va/content/dam/francesco/pdf/apost\\_exhortations/documents/papa-francesco\\_esortazione-ap\\_20160319\\_amoris-laetitia\\_en.pdf](https://www.vatican.va/content/dam/francesco/pdf/apost_exhortations/documents/papa-francesco_esortazione-ap_20160319_amoris-laetitia_en.pdf)

<sup>5</sup> *Catechism of the Catholic Church* (“CCC”) §2515 (2d ed. 2019).

<sup>6</sup> *Id.* §2516.

ways, by “[e]veryone living on the face of the earth.”<sup>7</sup> Different people face different kinds of temptations and weaknesses. But the challenge to grow in virtue is common to us all.

In this regard, Catholic thought has long reiterated that virtue is a habit that can be strengthened or weakened through one’s choices. “By avoiding bad actions and by repeating good actions one can train one’s passions so that they become more spontaneously disposed toward good action.”<sup>8</sup> While “[i]t may not always be possible to reach the point where one’s passions are so well ordered that one is always spontaneously moved to act rightly,” still “through persistent effort we can at least reduce the resistance of our passion to acting well.”<sup>9</sup>

3. In seeking thus to discern the good and to grow in habits of virtue, Catholics, like countless other people throughout history, rely on the advice and counsel of others who share their convictions. For Catholics, this can take many different forms that are familiar to churchgoers across our country. It can be as simple as talking about our personal challenges with fellow

---

<sup>7</sup> Congregation for the Doctrine of the Faith, *Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons* No. 16 (Oct. 1, 1986), [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19861001\\_homosexual-persons\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html)

<sup>8</sup> U.S. Conference of Catholic Bishops, *Ministry to Persons with a Homosexual Inclination: Guidelines for Pastoral Care* (“*Pastoral Guidelines*”), at 9 (Nov. 14, 2006), <https://www.usccb.org/issues-and-action/human-life-and-dignity/homosexuality/upload/ministry-persons-homosexual-inclination-2006.pdf>

<sup>9</sup> *Ibid.*

parishioners over donuts and coffee after Sunday Mass. It can take the form of participating in a small group of fellow churchgoers who meet for weekly or monthly discussions. It can involve spiritual reading, podcasts, or streaming videos; or seeking out spiritual direction from one's pastor or a trusted fellow believer. And when the need arises, it can include seeking counseling or psychotherapy from a trusted professional who shares one's faith or convictions about virtuous living. In each of these contexts, believers are doing what human beings have always done: asking their companions and authority figures for help in discerning what is right and what is wrong, and how to live in accord with the former.

## **II. Sexual Morality And Virtue Are Matters Of Intense Contemporary Discussion.**

Across our entire culture and indeed the entire world, one of the most widely and deeply debated topics of modern times is the application of these long-held objective moral principles to matters of human sexuality.

1. The Catholic Church, in common with most people throughout history, teaches that part of our given identity as human beings is the bodily characteristics that make each of us a man or a woman, male or female. This is affirmed in the very first chapter of the Bible: "God created mankind in his image ... male and female he created them."<sup>10</sup> Catholic teaching therefore reiterates that "[m]an and woman have been ... *willed* by God" specifically "in their respective beings as man

---

<sup>10</sup> Genesis 1:27 (NAB).

and woman.”<sup>11</sup> Thus, “[s]exuality ... is not something simply biological, but concerns the innermost being of the human person as such,”<sup>12</sup> and “[t]he Christian vision of anthropology sees sexuality as a fundamental component of one’s personhood.”<sup>13</sup> A person’s very “capacity to love—reflection and image of God who is Love—is disclosed in the spousal character of the body, in which the masculinity or femininity of the person is expressed.”<sup>14</sup> This was the central thesis of Pope St. John Paul II’s lengthy teachings on the “Theology of the Body,” which have been tremendously influential in the thought of many Catholics: “man became the image of God ... through the communion of persons[] which man and woman form from the very beginning.”<sup>15</sup>

For these reasons, the Catholic Church discerns both from human nature and from divine revelation that sexuality “is realized in a truly human way only if it is an integral part of the love by which a man and

---

<sup>11</sup> CCC §369.

<sup>12</sup> *Id.* §2361.

<sup>13</sup> Congregation for Catholic Education, *Male and Female He Created Them*, No.4 (Feb. 2, 2019), [https://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_20190202\\_maschio-e-femmina\\_en.pdf](https://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20190202_maschio-e-femmina_en.pdf)

<sup>14</sup> Congregation for the Doctrine of the Faith, *On the Collaboration of Men and Women in the Church and in the World*, No.8 (May 31, 2004), [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20040731\\_collaboration\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20040731_collaboration_en.html)

<sup>15</sup> *Man and Woman He Created Them: A Theology of the Body* (tr. Michael Waldstein, 2006) §9:3.

woman commit themselves totally to one another until death.”<sup>16</sup> Sexual virtue—which the Church calls “chastity”—consists in living in accord with that reality.

The Church recognizes, however, that fallen human nature makes living sexual virtue no easier than living any other virtue. Indeed, it requires “[s]elf-mastery” that “is a *long and exacting work*,” and it “presupposes renewed effort at all stages of life.”<sup>17</sup> “Every person needs training in the virtues,” and in particular in chastity, to “express[] one’s sexual desires in harmony with God’s will.”<sup>18</sup> For every human being, “[s]uch self-mastery involves both avoiding occasions which might provoke or encourage sin as well as knowing how to overcome one’s own natural instinctive impulses.”<sup>19</sup> For instance, the USCCB has stated that avoiding pornography use “is a lifelong task and a daily choice,” and that Catholics struggling to do so should “seek ongoing support.”<sup>20</sup>

2. For the past several decades, this Christian vision of sexual ethics has been the subject of broad and sustained public discussion both nationwide and

---

<sup>16</sup> CCC §2361.

<sup>17</sup> *Id.* §2342.

<sup>18</sup> *Pastoral Guidelines, supra*, at 8.

<sup>19</sup> Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality* (“*Truth and Meaning*”), No.18 (Dec. 8, 1995), [https://www.vatican.va/roman\\_curia/pontifical\\_councils/family/documents/rc\\_pc\\_family\\_doc\\_08121995\\_human-sexuality\\_en.html](https://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_08121995_human-sexuality_en.html)

<sup>20</sup> USCCB, *Create in Me a Clean Heart: A Pastoral Response to Pornography*, at 17 (2015), <https://www.usccb.org/resources/Create-in-Me-a-Clean-Heart-Statement-on-Pornography.pdf>

worldwide. Through several waves of the phenomenon known as the “sexual revolution,” many people have argued that a natural-law vision of sexual morality is largely misguided, and that human fulfillment typically is better served by expressing one’s sexual inclinations, rather than seeking to restrain or channel them. Many people have accepted these critiques in whole or in part, which has led to a host of important social phenomena that have themselves been widely debated and frequently addressed by this Court’s opinions: matters such as an increasing prevalence and cultural acceptance of divorce, single parenting, abortion, pornography, and same-sex romantic relationships. Many millions of Americans have had direct and deeply personal experiences with these phenomena. Many people celebrate those experiences; many others lament them; and many others yet have mixed views. But few of us are unaffected by the debate over sexual morality and its sequelae.

3. Living after the sexual revolution, therefore, almost inevitably requires a person to grapple with and take a position on this age-old, worldwide, and yet pressing discussion about human nature, right and wrong, and human happiness. Almost all of us experience sexual instincts of different kinds and intensities. All of us, therefore, must decide: Which of these are conducive to the happiness of myself and others, and which are inconsistent with the way that I and others are made? Which should I be willing to act on, and which should I seek to contain or redirect? And once I decide about these things, how can I best seek to act in accordance with my convictions? As with any other potentially complex and momentous decision, many of



us naturally seek the input and advice of others in discerning these issues.

In this respect, the leadership of the Catholic Church has repeatedly recognized the importance of “appropriate therapy” for Catholics—especially young Catholics—who experience gender dysphoria or attraction to the people of the same sex.<sup>21</sup> This is not in any way for purposes of coercion, but for “welcoming with understanding, creating a climate of hope, encouraging the emancipation of the individual and his or her growth in self control, [and] promoting an authentic moral force towards conversion to the love of God and neighbour.”<sup>22</sup> To that end, the Holy See has directed “all possible assistance” of “appropriate therapy” for such Catholics,<sup>23</sup> and “medical-psychological assistance from persons attentive to and respectful of the teaching of the Church.”<sup>24</sup>

*Amicus* the USCCB has similarly stated that “[p]astoral and psychological care for adolescents who struggle with sexual attraction issues is of particular importance,” and that “[e]very effort should be made to ensure that adolescents have access to age-appropriate professional counseling services that respect

---

<sup>21</sup> *Truth and Meaning, supra*, No.104.

<sup>22</sup> Congregation for Catholic Education, *Educational Guidance in Human Love* (“*Educational Guidance*”), No. 103 (Nov. 1, 1983), [https://www.vatican.va/roman\\_curia/congregations/ccatheduc/documents/rc\\_con\\_ccatheduc\\_doc\\_19831101\\_sexual-education\\_en.html](https://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_19831101_sexual-education_en.html)

<sup>23</sup> *Truth and Meaning, supra*, No. 104.

<sup>24</sup> *Educational Guidance, supra*, No. 103.

Church teaching in matters of human sexuality.”<sup>25</sup> The USCCB has not found that either Catholic teaching or the available evidence allows it to draw a firm conclusion as to whether “a homosexual inclination can be changed with the help of some kind of therapeutic intervention.”<sup>26</sup> But *amicus* is confident that the general principle of human virtue applies in this area as in any other: “through persistent effort we can,” if we wish, “at least reduce the resistance of our passion to acting well.”<sup>27</sup>

### **III. The First Amendment Must Certainly Protect The Ability To Seek And Give Counsel On Such Fundamental Matters.**

In sum, professionals who offer counsel like Petitioner’s here—and clients who seek it—are speaking to fundamental human questions: Who am I? What does it mean to be human? What are the right and wrong ways to act, and to live? How can I find authentic love and happiness? This case arose because Colorado wants to dictate how its citizens may and may not answer these questions. Specifically, Colorado is ordering Catholic clients and counselors that they may not—even when they want to—discuss the ideas that they believe in, or take the approach that their Church has expressly recommended.

If the First Amendment ever protects any conversations from government intrusion, surely it

---

<sup>25</sup> *Pastoral Guidelines*, *supra*, at 22-23.

<sup>26</sup> *Id.* at 7.

<sup>27</sup> *Id.* at 9.

must protect these ones. The most “fixed star in our constitutional constellation” famously “is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.” *W. Va. Bd. Of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). And this “bedrock principle underlying the First Amendment” is at its strongest when the government finds speech “offensive or disagreeable,” as Colorado plainly finds Petitioner’s desired speech here. *Texas v. Johnson*, 491 U.S. 397, 414 (1989). Surely, then, Colorado may not dictate the content of the advice that its citizens may seek, or give, about major life questions such as these.

That reveals the error of the panel majority’s conclusion below that Petitioner’s desire to discuss these fundamental questions is regulable “professional conduct.” (*E.g.*, App.38a.). Licensed counseling is a heavily regulated profession, but it is also a profession that implicates profound and even religious questions, as here. Counseling would be impoverished without a sphere of protection for speech. What this Court recently observed about medical practice is at least equally true of counseling and psychotherapy: “[d]octors help patients make deeply personal decisions, and their candor is crucial;” and so the freedom of speech is an essential bulwark to prevent government from “manipulat[ing] the content of doctor-patient discourse.” *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 771 (2018) (citations omitted).

Thus, government authority to regulate professional conduct stops well short of censoring speech-based counseling like Petitioner’s here.

Government of course has leeway to regulate or outlaw *physical* medical procedures (for instance, shock therapy). And it has some latitude to regulate what professionals say *about* the services they propose to provide—by ensuring disclosure of “the terms under which services will be available,” or that the patient gives “informed consent to perform an operation” or other treatment. *Id.* 768, 770 (cleaned up). But the core holding of this Court’s *NIFLA* decision is that government may not treat speech as *being* the service in question, and seek to compel stand-alone speech just because it conveys a ‘professional’ message that the government wants people to hear. The state does not have “unfettered power to reduce a group’s First Amendment rights by simply imposing a licensing requirement,” because “that would give them a powerful tool to impose invidious discrimination of disfavored subjects.” *Id.* at 773 (cleaned up). This case is simply the other side of the same coin: when a professional like Petitioner proposes to serve a client by doing nothing more than talking with him or her, then government may not punish or restrain her just because it does not like what she plans to say.

That makes this case easier than *NIFLA*, where the court had to decide whether compelled speech was sufficiently related to the non-speech professional conduct of providing pregnancy services. Here, in sharp contrast, there is no relevant non-speech conduct at all: the *only* relevant service that Petitioner proposes to provide consists entirely of talking with her clients. That should be conclusive. Government may not dictate the content that such speech may or may not cover, or the viewpoints that it may or may not express.

**CONCLUSION**

The judgment below should be reversed.

Respectfully submitted,

Nicholas J. Nelson

*Counsel of Record*

2140 4<sup>th</sup> Avenue North

Anoka, MN 55303

(612) 887-4360

nicholas.nelson@

crosscastle.com

*Counsel for Amicus Curiae*