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 Colorado Department of Regulatory Agencies, et al.,

Respondents.

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

BRIEF OF AMICI CURIAE MARY HASSON, ERIC KNIFFIN, THERESA FARNAN, AND SUSAN SELNER-WRIGHT IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

INTEREST OF *AMICI CURIAE*

Mary Hasson, JD, Eric Kniffin, JD, Theresa Farnan, PhD, and Susan Selner Wright, PhD, are Catholic scholars and pastoral consultants who work with parents, Catholic dioceses, and Catholic institutions on issues related to Christian anthropology and gender ideology. In their work, they frequently encounter families seeking licensed counselors for teens experiencing difficulties related to sexual identity.[1]

Too often, parents report on the difficulty of finding counselors who will honor their family's religious or cultural background, or who share the family's convictions about the truth of the human person. Families express concerns over what the U.K. Cass Review called "diagnostic overshadowing," i.e., the tendency of counselors to see "gender affirmation" as the immediate answer to a teen's mental health issues.

Our work also has given us a window into the difficulties experienced by religious institutions as they search for counselors who will respect and collaborate in their religious mission, which is grounded in the Traditional Vision of the human person. Individuals, families, and religious

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[1] No counsel for any party authored this brief in whole or in part, nor did any such counsel or party make any monetary contribution intended to fund the preparation or submission of this brief. No person other than the amici curiae or their counsel made a monetary contribution to its preparation or submission.

institutions worry that counseling restrictions like Colorado's will dissuade like-minded people from entering the counseling field or thin the ranks of clinical professionals willing to engage identity issues from a Traditional or sex-realist perspective.

We also encounter counselors who fear that sincere exploration of a client's experiences and identity- or sexuality-related goals might jeopardize their professional careers.

As scholars and pastoral consultants, we have a strong interest in seeing people of faith well-represented in the counseling field, and in helping Catholic parents, dioceses, and institutions find compassionate counselors who treat the whole person as an integral unity of body and soul, embodied as male or female from conception, in accord with Christian anthropology. Laws like Colorado's counseling restriction create formidable barriers for people of faith seeking counseling that will respect their deeply held religious convictions.

SUMMARY OF ARGUMENT

Colorado's counseling restriction seeks to compel Petitioner to provide counseling services that effectively endorse the Transgender Vision of the human person (a set of beliefs that Petitioner rejects) and communicate a state-favored message (with which Petitioner disagrees), in violation of her First Amendment rights. Petitioner and other amici ably defend Petitioner's free speech rights from the content and viewpoint-based restrictions imposed by the counseling law.

This brief addresses several specific aspects of this case. First, we highlight for the Court's attention the two competing and irreconcilable visions of the human person that come into play in this case (and others) where "gender identity" claims clash with the reality of sex. The conflict between the Traditional Vision and the Transgender Vision of the human person, described elsewhere by Justice Blacklock of the Texas Supreme Court, provides necessary context for this case and raises issues this Court has yet to address.

Colorado's counseling restriction reflects Colorado's ideological commitment to the Transgender Vision of the human person. The law, by its terms, privileges the subjective concept of "gender identity" over the reality of sex, treating the immutable nature of sex as irrelevant in the face of human desires or feelings.

"Gender identity," however, is an ill-defined concept, encompassing an infinite number of "identities." Despite the difficulty of defining "gender identity," gender clinicians (and the Colorado legislature) insist on the necessity of "affirming" *all* self-determined identities. A core premise of the "gender affirming" approach is that "*no* gender identity or expression is pathological," no matter how fanciful ("gender Tesla"), childish ("gender smoothie"), or dangerous ("eunuch").[2] Sound ethical principles demand better. When an adolescent seeks validation for an asserted identity at odds with reality, an astute therapist will help the teen explore feelings, experiences, and background issues in light of the truth, rather than validating the adolescent's false self-perception.

Second, although the implicit premise of Colorado's "conversion therapy" ban is that gender identity feelings are innate and immutable, the claim that transgender self-identification is "permanent, or 'stable'"[3] is contradicted by mounting evidence. In fact, psychological assessments that measure gender

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[2] American Psychological Association, *Introduction to the Gender Affirmative Model*, in *The Gender Affirmative Model: An Interdisciplinary Approach to Supporting Transgender and Gender Expansive Children* 5, 14 (Keo-Meier and Ehrensaft eds. 2018).

[3] Society for Evidence-Based Gender Medicine, *Denmark Joins the List of Countries That Have Sharply Restricted Youth Gender Transitions,* SEGM, Aug. 17, 2023, https://segm.org/Denmark-sharply-restricts-%20youth-gender-transitions.

identity *presume* "change" is possible, and validate the reality of change, regardless of its direction.[4] In addition, the experience of de-transitioners (who previously identified as transgender but no longer do) demonstrates the reality of change.

Third, the implicit adoption of the Transgender Vision of the human person by Colorado legislators makes conflict inevitable, as Colorado presumes to impose on counselors and clients an anthropological view at odds with common sense and deeply held religious beliefs. Colorado's law expressly permits counselors to facilitate identity "change" that moves *towards* transgender identification but not *away* from it. Colorado requires counselors to channel the client towards a state-favored goal but forbids counselors from exploring the client's desire to change when the desired change is to accept the reality of their sex. This is clear viewpoint discrimination. In addition, the law's prohibition of "change" efforts—in one direction—despite the predictable and regular experience of "change" in gender identity, raises concerns that Colorado's counseling restriction is a poorly disguised, targeted effort to drive counselors who adhere to the Traditional Vision of the person out of the profession.

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[4] Penelope Strauss et al., *A Critical Discussion of Pediatric Gender Measures to Clarify the Utility and Purpose of "Measuring" Gender,* Int'l J. Transgender Health (2024), https://www.tandfonline.com/doi/full/10.1080/26895269.2024.2375409.

ARGUMENT

I. Colorado's counseling restriction reflects a deep conflict between the Traditional Vision and the Transgender Vision of the human person

At its core, this case reflects a dispute over the nature of the human person, a dispute played out wherever "gender identity" claims confront the reality of "sex." Two competing visions of the human person, the Transgender Vision and the Traditional Vision, were well described in a 2024 Texas Supreme Court concurrence by Justice Blacklock. *State* v. *Loe*, 692 S.W.3d 215, 239-240 (Tex. 2024). In that case, which involved a challenge to the Texas legislature's ban on sex-rejecting procedures for minors, Justice Blacklock identified the clash of two "irreconcilably conflicting visions" of the human person, the Transgender Vision and the Traditional Vision, as particularly relevant. *Id.* at 239. The same clash over the truth of the human person is the backdrop for the case at hand.

A. The Traditional Vision: the human person is immutably male or female.

The Traditional Vision, writes Justice Blacklock:

> * * * holds that a boy is a boy, a girl is a girl, and neither feelings and desires nor drugs and surgery can change this immutable genetic truth, which binds us all. Within the Traditional Vision, human males and females do not 'identify' as men and women. We *are* men

> and women, irreducibly and inescapably, no matter how we feel. * * * The Traditional Vision further holds that adolescent children who feel out of place in their physically healthy, normally developing bodies should receive mental health care that seeks to accommodate their feelings to the biological reality of their bodies, which are unavoidable and irreplaceable components of who they truly are.[5]

B. The Transgender Vision: the human person is self-defined by feelings, labeled as "gender identity."

The Transgender Vision, writes Justice Blacklock:

> * * * holds that we all have a 'sex assigned at birth,' which usually corresponds to our physical traits but which may or may not correspond to our inwardly felt or outwardly expressed 'gender identity.' It holds that a person's gender identity is a constitutive part of his or her humanity and that when a person's biological sex and gender identity diverge, often gender identity should be given priority. * * * [T]he Transgender Vision holds that an adolescent child who feels out of place in a biologically normal body should in many cases take puberty-blocking drugs designed to retard or prevent the emergence of sexual characteristics out of line with the child's

[5] *Loe*, 692 S.W.3d at 239.

> gender identity. Ultimately, the Transgender Vision holds that a person's body can be, and in many cases should be, conformed to the person's gender identity—using hormone therapy and even the surgical removal of healthy sexual organs—in pursuit of the person's mental health.[6]

II. Colorado's counseling restriction endorses the Transgender Vision of the human person, arbitrarily privileging gender identity over sex and censoring competing beliefs.

Colorado's counseling restriction reflects Colorado's ideological commitment to the Transgender Vision of the human person. The law, by its terms, privileges the subjective concept of "gender identity" over the reality of sex, treating the immutable nature of sex as irrelevant in the face of often temporary human desires or feelings.

A. Sex is real, objective, and immutable.

The National Academy of Sciences (NAS) defines sex as "the classification of living things * * * as male or female according to their reproductive organs and functions assigned by the chromosomal complement."[7]

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[6] *Loe*, 692 S.W.3d at 239.

[7] Inst. of Med., *Exploring the Biological Contributions to Human Health: Does Sex Matter?* 1 n.1 (2001), https://www.ncbi.nlm.nih.gov/books/NBK222288/.

Sex, according to the NAS, is imprinted in every cell of the body and cannot change.[8] It can never be wished away or erased, no matter how intensely the person desires, in psychiatric language, "to be rid of one's primary and/or secondary sex characteristics."[9]

In a recent essay in The Boston Globe, prominent evolutionary biologist Richard Dawkins strenuously countered the claim of the Transgender Vision, which asserts that sex is a spectrum and arbitrarily assigned at birth. "There are two, and only two sexes: male and female," he wrote, and "a person's sex is an objective biological reality, just like their blood group or fingerprint pattern, not something that is 'assigned.'"[10]

Public opinion also aligns with the Traditional Vision of the person, recognizing sex as an immutable reality with a fundamental role in human identity. Over two-thirds of Americans (including seven in ten teens) believe that identity is determined by sex (as

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[8] *Id*. at 28-44 (Chapter 2: "Every Cell has a Sex").

[9] *What is Gender Dysphoria? "Diagnosis,"* American Psychiatric Association (updated 2022). https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria (citing American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2022)).

[10] Alan Sokol & Richard Dawkins, *Sex and Gender: The Medical Establishment's Reluctance to Speak Honestly About Biological Reality,*Boston Globe, Apr. 8, 2024, https://www.bostonglobe.com/2024/04/08/opinion/sex-gender-medical-terms/

observed at birth).[11] Strong majorities also believe that government documents should reflect a person's accurate sex and that males do not belong in women's sports, no matter how they identify.[12]

Awareness of sexual difference, and its significance, is intuitive from an early age and taught by many faith traditions. Catholic teaching, for example, understands the human person as an organic unity of body and soul. The body is good, and reveals "who we are," male (man) or female (woman). To believe that it is possible to become the opposite sex is to reject not only the body but also reality itself. The Church expressly teaches that every person is called to "acknowledge and accept" his or her "sexual identity" (male or female) as a gift from God.[13]

Colorado's counseling restriction is not rooted in science; to the contrary, it *contradicts* science. Further, it reflects Colorado's ideological commitment to the Transgender Vision of the human person, which privileges the subjective concept of "gender identity"

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[11] Juliana Menasce Horowitz, *US Teens Are Less Likely Than Adults to Know a Trans Person, More Likely to Know Someone Who is Nonbinary,* Pew Research, Jan. 24. 2025, https://www.pewresearch.org/short-reads/2025/01/24/us-teens-are-less-likely-than-adults-to-know-a-trans-person-more-likely-to-know-someone-whos-nonbinary/.

[12] Megan Brenan, *Two-thirds in U.S. Prefer Birth Sex on IDs, in Athletics*, Gallup, June 10, 2025, https://news.gallup.com/poll/691454/two-thirds-prefer-birth-sex-ids-athletics.aspx.

[13] Catechism of the Catholic Church § 2333 (2nd ed. 1997).

over the reality of sex, reducing sex to a minimally significant label ("sex assigned at birth").

Colorado, however, prohibits counselors from helping clients become more comfortable with their sexed bodies and accept the inescapable reality of being born male or female. In so doing, Colorado's counseling restriction implicitly denies the immutable reality of sex—or at least its significance—and reveals its ideological bias. This in turn places an ethical burden on Colorado therapists. Sound ethical principles require clinicians to treat patients experiencing identity distress with "honesty, beneficence [doing good], nonmaleficience [sic] [doing no harm], justice, and respect for patient autonomy."[14] Good therapy facilitates human flourishing, where mind and body function well and achieve their ends. A person's thoughts and feelings achieve their ends by being in contact with reality—here, the reality that sex is binary and immutable. Colorado's law, however, denies these truths and in so doing, reflects "a deep conflict over human nature," an "unbridgeable" divide over what it means to be a human person. *Loe*, 692 S.W.3d 215 at 239.

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[14] Stephen B. Levine, *Informed Consent for Transgendered Patients*, 45 J. Sex & MaritalTherapy 218 (2019), https://doi.org/10.1080/0092623X.2018.1518885.

B. "Gender identity" and "gender affirmation," concepts integral to Colorado's counseling restriction, reflect the Transgender Vision of the person.

Colorado's law makes a metaphysical claim about the nature of the human person, a claim rooted in the Transgender Vision of the person: that "gender identity," a person's feelings or self-perception, *is* the person's identity, regardless of sex. "Gender identity," however, is a subjective, undefined, and unstable concept.

The American Psychological Association's description of gender identity is hardly clarifying, defining "gender identity" as:

> a person's psychological sense of self in relation to their gender. Many people describe gender identity as a deeply felt, inherent sense of being a boy, a man, or male; a girl, a woman, or female; or a nonbinary gender (e.g., genderqueer, gender-neutral, agender, gender-fluid, transgender) that may or may not correspond to a person's sex assigned at birth, presumed gender based on sex assignment, or primary or secondary sex characteristics.[15]

[15] *APA Dictionary of Psychology, "gender identity,"* American Psychological Association (updated Nov. 15, 2023), https://dictionary.apa.org/gender-identity.

Psychologist David Schwartz describes "gender identity" as "psychological, made up of expectations and self-perceptions," noting that, "gender does not exist in the body or in any bodily structure or process * * * in contrast to *sex*, which is determined exclusively by bodily data: genitals and chromosomes."[16]

A recent report by the U.S. Department of Health and Human Services (HHS) describes the term "gender identity" as "ill-defined," noting its evolution from the 1960s, when it meant "the sense of knowing to which sex one belongs," to the circular definition offered by the World Professional Association of Transgender Health, which defines "gender identity" as "a person's deeply felt, internal, intrinsic sense of their own gender."[17] WPATH also lists a range of "gender identities," each variously defined: "Gender identities other than those of men and women (who can be either cisgender or transgender) include transgender, nonbinary, genderqueer, gender neutral, agender, gender fluid, and 'third' gender, among

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[16] David Schwartz, *Clinical and Ethical Considerations in the Treatment of Gender Dysphoric Children and Adolescents: When Doing Less Is Helping More*, 20 J.Infant, Child & Adolescent Psychotherapy 439 (2021), https://www.tandfonline.com/doi/full/10.1080/15289168.2021.1997344?journalCode=hicp20 (Schwartz).

[17] Office of Population Affairs, Department of Health & Human Services, Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices 32-33 (2025), https://opa.hhs.gov/gender-dysphoria-report.

others; many other genders are recognized around the world."[18]

Despite the difficulty of defining "gender identity," gender clinicians (and the Colorado legislature) insist on the necessity of "affirming" that identity. Leading gender clinicians describe "gender affirmation" not as objective science but in ideological, subjective, even childish terms.

For example, Dr. Jason Rafferty, author of the American Academy of Pediatrics policy, Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse People,[19] frames "gender affirmation" as "fundamentally about 'affirming and validating the child's sense of identity from day one through to the end.'"[20] The child's "sense of reality and feeling of who they are," according to Rafferty, become "the navigational beacon" around which treatment is oriented.[21] For Rafferty, the human person is best

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[18] Eli Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 Int'l J. Transgender Health S1 (2022) (WPATH SOC v8).

[19] Jason Rafferty et al., *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 Pediatrics e20182162 (2018) (reaffirmed 2023), https://pubmed.ncbi.nlm.nih.gov/30224363/.

[20] Jennifer Block, *Youth Gender Medicine Has Become a Hall of Mirrors,* Boston Globe, Nov. 7, 2023, https://www.bostonglobe.com/2023/11/07/opinion/gender-affirming-care-trans-kids/?p1=Article_Inline_Related_Box.

[21] Leor Sapir, *The Reckoning Over Puberty Blockers Has Arrived*, The Hill, April 4, 2024,

represented by androgynous cartoon figures like the genderbread person or the gender unicorn, while the individual's unlimited identity choices are represented by a "gender galaxy" and the concept of "crossing borders."[22]

Similarly, pioneering gender clinician Laura Edwards-Leeper, explains that gender affirmation presumes "that the gender identity and related experiences asserted by a child, an adolescent, and/or family members are true, and that the clinician's role in providing affirming care to that family is to empathetically support such assertions."[23]

Gender clinicians Marcus Hidalgo and Diane Ehrensaft imagine "an infinite variety of authentic gender selves" available to a child, as the gender affirming approach permits a child's "gender identity and expression * * * to unfold over time, as a child

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https://thehill.com/opinion/healthcare/4573662-the-reckoning-over-puberty-blockers-has-arrived/.

[22] Jason Rafferty, MD, *Past Events, "Dispelling the Myths: An Introduction to Gender Affirmative Care, Virtual Education Series,"* Help Me Grow Skagit (2024) https://helpmegrowskagit.com/healthcare-providers/.

[23] Laura Edwards-Leeper et al., *Affirmative Practice With Transgender and Gender Nonconforming Youth: Expanding the Model*, 3 Psych. Sex. Orient. & Gender Diversity 165 (2016), https://dx.doi.org/10.1037/sgd0000167.

matures, acknowledging and allowing for fluidity and change."[24]

Ehrensaft speaks to the therapist's opportunity to peer through the "new lens" of "gender affirmation," and facilitate a child's emerging (but invisible) "innermost concept of self," which need not align with the child's sex.[25] This affirming lens, says Ehrensaft, treats all self-determined "gender identities" as healthy and normal, including minors who identify as "transgender," a "gender smoothie," "gender Tesla," "gender minotaur," "genderqueer," or something else.[26] The child's inner belief must be "accepted" and validated as true, even if it is patently false or nonsensical.[27] After all, the HHS report notes, gender affirmation is "a child-led process in which comprehensive mental health assessments are often minimized or omitted, and the patient's 'embodiment

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[24] Marco A. Hidalgo et. al., *The Gender Affirmative Model: What We Know and What We Aim to Learn*, 56 Hum. Dev. 285, 288. https://karger.com/hde/article/56/5/285/157895/The-Gender-Affirmative-Model-What-We-Know-and-What.

[25] American Psychological Association, *Introduction to the Gender Affirmative Model*, in *The Gender Affirmative Model: An Interdisciplinary Approach to Supporting Transgender and Gender Expansive Children* 6 (Keo-Meier and Ehrensaft eds. 2018) (*Introduction to the Gender Affirmative Model*).

[26] *Id*. at 8-9.

[27] *Ibid*.

goals' serve as the primary guide for treatment decisions."[28]

A core premise of "gender affirmation," the approach that underlies Colorado's counseling restriction, is that "*no* gender identity or expression is pathological."[29] A single example should suffice to illustrate the ideological—and dangerous—nature of gender affirmation (and Colorado's counseling restriction).

In 2022, the WPATH Standards of Care (8) debuted a new gender identity: "eunuch." WPATH defines "eunuchs as males who desire to "eliminate masculine physical features, masculine genitals, or genital functioning,"[30] noting that a "eunuch" gender identity can emerge in "childhood or adolescence" and "eunuchs may also seek castration to better align their bodies with their gender identity."

Imagine a distraught Colorado teen who is exposed to a variety of "gender identities" and begins to believe that "eunuch" best describes his "authentic gender identity." He seeks counseling to understand his fears and to "change" his identity feelings. Under Colorado's counseling restriction, a counselor is likely to feel

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[28] Office of Population Affairs, Department of Health & Human Services, Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices 14 (2025), https://opa.hhs.gov/gender-dysphoria-report.

[29] *Introduction to the Gender Affirmative Model* 14.

[30] WPATH SOC v8, S88-89.

compelled, by fear of legal ramifications, to affirm the teen's belief that "eunuch" is his true identity, and to "support" and "facilitate" his castration for "gender transition" purposes.

A sound ethical approach demands better. When an adolescent seeks validation for an asserted identity at odds with reality, a therapist is duty bound to speak the truth, not validate the adolescent's false self-perception. It is profoundly unethical, for example, to reinforce a male child's belief that he is *not* a boy or that he "*is*" a female. It is similarly unethical for a therapist to tell a female patient that her self-perception that she "*is*" a boy overrides the reality of her female-sexed body. And in the case of the hypothetical teen who questions whether his "gender identity" is that of a "eunuch," speaking the truth can save him from life-altering genital mutilation.

III. "Change" is an ordinary and expected aspect of "gender identity" development, routinely assessed by standard psychological instruments.

Colorado's law treats a minor's transgender identification or expressed "gender identity" as "a fixed or stable entity, rather than a state of mind with multiple causative factors," and thus "closes down opportunities for doctors and patients to explore the

meaning of any discomfort."[31] A therapist seeking to help a client achieve the goal of aligning his or her feelings with the immutable reality of the sexed body will run afoul of the law.

Although the implicit premise of Colorado's "conversion therapy" ban is that gender identity feelings are innate, the law expressly permits therapists to facilitate identity "change" that moves *towards* transgender identification, but not *away* from it.

And contrary to "gender-affirming" rhetoric that opposes "change" efforts, the claim that "transgender" self-identification is "permanent, or 'stable'"[32] is contradicted by mounting evidence. It is well established that "gender identity and the importance of gender to an individual's sense of self can change over time."[33] Even "proponents of gender affirmation recognize that gender identity development is

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[31] Lucy Griffin et al., *Sex, Gender and Gender Identity: A Re-evaluation of the Evidence*, 45 B. J. Psych. Bull. 291, 297 (2021), https://pubmed.ncbi.nlm.nih.gov/32690121/.

[32] Society for Evidence-Based Gender Medicine, *Denmark Joins the List of Countries That Have Sharply Restricted Youth Gender Transitions,* SEGM, Aug. 17, 2023, https://segm.org/Denmark-sharply-restricts- youth-gender-transitions.

[33] Sarah C. J. Jorgensen et al., *Puberty Suppression for Pediatric Gender Dysphoria and the Child's Right to an Open Future*, 53 Archiv. Sex. Behav. 1941, 1947 (2024), https://pubmed.ncbi.nlm.nih.gov/38565790/ (Jorgensen).

dynamic and can undergo multiple shifts throughout childhood and into adulthood."[34]

Therapists, including those who are "gender-affirming," measure gender identity using psychological assessments that *presume* "change" is possible, and validate the reality of change, in any direction. A recent narrative review of "pediatric gender measures" demonstrates that "change," including change over time and the client's prediction of and desire for change, is a common aspect of clinical psychological assessment.[35]

For example, the Perth Gender Picture, a "pictorial and narrative tool used * * * with young people aged 11–18 to reflect on and communicate gender identity," asks the child to "use colored markers to show * * * their current gender identity, how it was in the past, and how they hope or wish it will be in five or ten years in the future."[36] The Genderqueer Identity Scale, "a tool to measure non-binary and genderqueer identities

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[34] *Id*. at 1943.

[35] Penelope Strauss et. al., *A Critical Discussion of Pediatric Gender Measures to Clarify the Utility and Purpose of "Measuring" Gender*, Int'l J. Transgender Health (2024). https://www.tandfonline.com/doi/full/10.1080/26895269.2024.2375409 (Strauss).

[36] Strauss (citing Julia K. Moore et al., *The Perth Gender Picture (PGP): Young People's Feedback About Acceptability and Usefulness of a New Pictorial and Narrative Approach to Gender Identity Assessment and Exploration*, 22 Int'l J. Transgender Health 337 (2020), https://pubmed.ncbi.nlm.nih.gov/34240076/).

and expression across time, including before, during and after medical transition," asks whether "[i]n the future, I think my gender will be fluid or change over time."[37] The Gender Preoccupation and Stability Questionnaire probes the client's experience of disharmony between body and mind by asking: "Over the past two weeks how often has your sense of what gender you identify with changed at all?"[38]

A 2024 study of sexual and gender minority youth found that "18.2% reported a different gender identity over time," proving that "gender identity can evolve."[39] "Non-binary" and "gender-fluid" identity labels defy narratives of immutable gender identity, demonstrating instead that an individual's

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[37] *Id.*(citing Jenifer K. McGuire et al., *The Genderqueer Identity (GQI) Scale: Measurement and Validation of Four Distinct Subscales with Trans and LGBQ Clinical and Community Samples in Two Countries*, 20 Int'l J. Transgenderism 289 (2018), https://pmc.ncbi.nlm.nih.gov/articles/PMC6830987/).

[38] *Id.* (citing Sarah Joy Bowman et al., *Assessing Gender Dysphoria: Development and Validation of the Gender Preoccupation and Stability Questionnaire–2nd Edition (GPSQ-2)*, 71 J. Homosexuality 666 (2022), https://pubmed.ncbi.nlm.nih.gov/36286814/).

[39] Andre Gonzales Real et al., *Trajectories of Gender Identity and Depressive Symptoms in Youths*, 7 JAMA Open Network e2411322 (2024), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC11112442/.

"relationship to the body can vary at different time points," signaling "a dynamic gender identity."[40]

Finally, the experiences of de-transitioners cannot be ignored: their compelling testimonies recount their "changes" over time—in opposing directions. For these young people, "change" in response to gender affirmation resulted in amputated body parts, mental illness, and lifelong disability,[41] reflecting the tragic consequences of mandated gender affirmation.[42] Only "change" towards an integrated identity, with mind and body in harmony, brought them the peace they sought.

These examples illustrate the reality of clinical practice, where "change," including gender identity change, happens regularly. Ethical counseling seeks to respond to changes in a client's self-knowledge and individual goals, not to impose an inflexible narrative or to channel the client towards a state-favored goal.

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[40] Nastasja M. de Graaf, et al., *Psychological Functioning in Non-binary Identifying Adolescents and Adults*, 47 J. Sex Marital Therapy 773, 780 (2021), https://pubmed.ncbi.nlm.nih.gov/34344272/.

[41] Kristine Parks, *Young Mother Facing Permanent Health Problems After Gender Transition Warns She Was Sold a 'Lie,'* Fox News, December 22, 2024, https://www.foxnews.com/media/young-mother-facing-permanent-health-problems-after-gender-transition-warns-she-sold-lie.

[42] Jorgensen 1945-1946.

Colorado's "conversion therapy" ban expressly permits therapists to facilitate identity shifts *towards* transgender identification, but not *away* from it. As a result, Colorado's counseling restriction renders it quite risky and near impossible to navigate the arbitrary and vague distinctions between *prohibited* versus *permissible* "change" discussions.

To uphold Colorado's counseling restriction, this Court must "assume the legitimacy of the Transgender Vision," including its radical beliefs about "gender identity." *Loe*, 692 S.W.3d at 243. In contrast, a sound ethical approach must be based on the truth of the human person. An adolescent who experiences identity distress and seeks counseling to sort it out needs a therapist willing to explore those feelings in light of the truth, not a therapist with a one-way mandate to affirm the adolescent's confused self-perception.

It is untrue, and profoundly unethical, to reinforce a male child's belief that he is *not* a boy or that he "*is*" a female, or that "gender-affirming" counseling or body alterations will magically make him a "woman." It is similarly unethical for a therapist to tell a female patient that her self-perception that she "*is*" a boy overrides the reality of her female-sexed body, or that "gender affirmation" will create her anew, as she desires. These are, in the words of Justice Blacklock, "fantasy" beliefs at war with reality. *Loe*, 692 S.W.3d at 242.

The targets of Colorado's counseling restriction are counselors who, like Petitioner, believe what most people believe—that sex matters and that it is desirable to resolve identity distress by accepting one's given sex. Yet Colorado's law precludes the therapeutic goal of seeking to "desist," or re-integrate one's sense of identity with the reality of the sexed body. "Remember what desisting is," writes psychologist David Schwartz, "the child becomes *comfortable* in his or her skin. The child stops insisting that he or she *is* really another gender * * * The child is at relative peace with the body he or she has. By what logic could the child's acquisition of peace and comfort not be a desirable outcome?"[43]

In fact, Colorado's counseling restriction is not based on logic or evidence; it reflects an ideological goal to restrict Coloradans' exposure to the Traditional Vision of the human person and to the goodness of accepting one's given sex. In the conflict between two irreconcilable visions of the human person, Colorado has chosen sides, imposing professional and legal consequences on any therapist who responds positively to a client's desire to "change" feelings, identity, or behavior *towards* the integration of mind and body.

The Transgender Vision's novel claims about the human person constitute the unacknowledged premise of Colorado's counseling restriction. The

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[43] Schwartz 446.

implicit adoption of the Transgender Vision of the human person by Colorado legislators leads to inevitable conflicts, as Colorado seeks to impose on counselors and clients an anthropological view at odds with common sense and deeply held religious beliefs. The constitutional implications of enforcing laws based on the Transgender Vision of the human person, an ideological viewpoint rejected by most Americans, warrants rigorous analysis by this Court.

Disputes over the nature of the human person raise fundamental questions about reality and objective truth. Such questions are at the heart of religious beliefs and deeply held convictions about the human person. It is unconscionable for the state of Colorado to mandate that its counselors endorse the Transgender Vision of the person and reject the Traditional Vision of the person. It is equally unconscionable for the state of Colorado to impose the same mandate, in derivative fashion, on the young clients who desire professional counseling. Until the Court directly addresses the "irreconcilably conflicting visions" of humanity—and reality—represented by the Traditional Vision and the Transgender Vision, controversies rooted in this clash will continue to clog the federal courts. And sincere "Americans who are unwilling to assent to the new orthodoxy" will find themselves vilified and foreclosed from professional opportunities.[44]

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[44] *Obergefell* v. *Hodges*, 576 U.S. 644, 741 (2015) (Alito, J., dissenting).

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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