

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

**AMICUS CURIAE BRIEF OF CHRISTIAN
FAMILY COALITION (CFC) FLORIDA, INC.
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS

Amicus is a non-profit Florida corporation representing over 500,000 Floridians and is dedicated to family values, religious freedom, fellowship, social justice, respect for human life, brotherhood and peace among people and nations, and world peace. Amicus actively seeks to protect these values and principles in political forums and in litigation including amicus filings in prior cases in this Court. These values are central to Amicus's purpose and are at the core of its efforts to ensure the protection of therapeutic counseling and related rights of free expression in all walks of life, and not merely in formal political discourse.

These are exactly the protections at stake in this case. Petitioner seeks to exercise her freedom of speech through her constitutionally protected rights of professional speech in her patients' best interests. Amicus has an interest in this case because the rights of expression which Petitioner seeks to protect are central to Amicus's purpose in ensuring the protection of therapeutic counseling and the free flow of ideas which is essential to make counseling work.¹

SUMMARY OF ARGUMENT

Colorado's restriction on Petitioner's psychotherapeutic counseling violates this Court's established First

1. No counsel or other representative or agent of any party in this case authored any part of this Amicus Brief or exercised any form of control or approval over it. No person or entity, aside from Amicus or its counsel, made a monetary contribution to the preparation or submission of this Amicus Brief.

Amendment protection of professional speech. The protection of professional speech under the First Amendment is central to the protection of First Amendment freedoms generally and is essential to the free flow of ideas in patient counseling.

Professional speech, in therapeutic counseling, often touches hot political issues and is indistinguishable from political speech. The First Amendment protection of Petitioner's professional speech is essential to give First Amendment freedoms the "breathing space" they need to survive.

Colorado's restriction on Petitioner's therapeutic counseling violates the First Amendment also because it discriminates against expression based on content or message. It prohibits counseling to maintain, but not change, the gender status quo.

ARGUMENT

I. Petitioner's Psychotherapeutic Counseling Is Professional Speech Which Has As Much First Amendment Protection As Ordinary Political Speech

The First Amendment does not permit Colorado to restrict psychotherapeutic counseling on any aspect of transgender transitioning, either for or against. Regardless of whether the counseling is designed to assist transgender transitioning or oppose it, the counseling is professional speech which is fully protected by the First Amendment. This Court has underscored the point:

“As with other kinds of speech, regulating the content of professionals’ speech poses the inherent risk that Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information. Take medicine, for example. Doctors help patients make deeply personal decisions, and their candor is crucial. Throughout history, governments have manipulated the content of doctor-patient discourse, to increase state power and suppress minorities....

“[W]hen the government polices the content of professional speech, it can fail to preserve the uninhibited marketplace of ideas in which truth will ultimately prevail.”

National Institute of Family and Life Associates v. Becerra, 585 U.S. 755, 771-772 (2018); *see also Legal Services Corp. v. Velazquez*, 531 U.S. 533, 543 (2001) (attorney advocacy is professional speech protected by the First Amendment).

Professional speech involves matters of intimate and private concern that are purely within the control of doctor and patient. They are not reasonably subject to restrictions imposed by the State. Artificial restrictions imposed by government skew the professional relationship from the needs of the patient and best judgment of the therapist. The best (and perhaps only) way to secure professional counseling which harmonizes professional judgment with patient needs is to permit the free flow of ideas and counseling in the professional relationship

without governmental restrictions. The marketplace of ideas has as much place in the professional therapeutic sphere as in the political arena. Colorado’s restriction on one type of transgender counseling defeats this interest – and defeats the First Amendment interest in the free flow of ideas in therapeutic counseling.

This First Amendment protection of professional speech cuts both ways – as it should – protecting the professional speech of “liberals” and “conservatives” alike. It protects the expression of viewpoints on all sides of the political/medical spectrum. *Planned Parenthood Great Northwest, Hawaii, Alaska, Indiana, Kentucky v. Labrador*, 122 F.4th 825 (9th Cir. 2024) (State Attorney General’s interpretation of Idaho law to prohibit out-of-State abortion referrals violates First Amendment protection of professional speech); *Brandt v. Rutledge*, 677 F.Supp.3d 877, 923-925 (E.D.Ark. 2023) (State law barring professional referral for transgender transition therapy violated First Amendment protection of professional speech).

The full First Amendment protection for “professional speech” is necessary also because it is difficult, and often impossible, to differentiate professional speech from political speech. *National Institute, supra*, 585 U.S. at 773 (“ ‘Professional speech’ is also a difficult category to define with precision”). Psychotherapeutic counseling often contains heavy political overtones and messages. Witness the present case. Counseling on transgender issues necessarily entails political messages on transgenderism which is a hot political issue. *Janus v. American Federation of State, County and Municipal Employees*, 585 U.S. 878, 913-914 (2018) (“sexual

orientation and gender identity ... are sensitive political topics”); *Meriwether v. Hartop*, 992 F.3d 492, 506 (6th Cir. 2021) (First Amendment right of college professor to choose the pronouns he uses because pronoun “choices touch on gender identity – a hotly contested matter of public concern”).

Given the impossibility of distinguishing “professional speech” from political speech, it is especially important to give professional speech the full range of First Amendment protections to ensure the “breathing space” First Amendment freedoms need to survive. *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 609 (2021) (“First Amendment freedoms need breathing space to survive”); *Keyishian v. Board of Regents*, 385 U.S. 589, 604 (1967) (“Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity”).

II. Colorado Has Not Demonstrated Any Exceptions Which Would Deprive Petitioner’s Psychotherapeutic Counseling of Its First Amendment Protection

There are at least three reasons why Colorado cannot demonstrate any exceptions to Petitioner’s First Amendment right to psychotherapeutic expression. First, Colorado may not sustain its legislative restriction as a restriction on “conduct” or as a restriction on speech incidental to conduct. *Cf. United States v. O’Brien*, 391 U.S. 367 (1968) (upholding statute which prohibited draft-card burning notwithstanding expressive feature of the prohibited conduct). There simply is no “conduct” involved in Petitioner’s counseling. It is pure speech. Colorado’s restriction bars speech as such, not the underlying

conduct which is the subject of the counseling. *Contrast Eknes-Tucker v. Marshall*, 603 F.Supp.3d 1131, 1144-1146, 1149 (M.D.Ala. 2022) (underlying transgender medical treatment, as opposed to transgender counseling, is conduct which, although protected by Substantive Due Process, is not protected by the First Amendment).

Second, Colorado may not sustain its restriction as one that prevents illegal actions. While speech which proximately causes violence or illegal conduct may be proscribed, *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) (fighting words); *Schenck v. United States*, 249 U.S. 47, 52 (1919) (“not protect a man in falsely shouting fire in a theatre”), there is nothing in Petitioner’s counseling which remotely approaches the counseling of violence or illegality.

Third, nor may Colorado sustain its restriction as one serving an allegedly compelling interest which trumps Petitioner’s First Amendment rights. One cannot reasonably conceive of a legitimate, let alone compelling, basis to restrict open dialogue in Petitioner’s therapy sessions – especially since the patient/parent is free to leave at any time and retain another therapist.

III. Colorado’s Restriction on Petitioner’s Psychotherapeutic Counseling Violates The First Amendment Because The Restriction is Based on The Content of Petitioner’s Message

Colorado’s restriction on Petitioner’s psychotherapeutic message violates the First Amendment in yet another respect. In addition to the above-discussed violation of professional speech rights generally (pp.2-6 *supra*), the Colorado restriction violates the First Amendment

also because it discriminates based on the content of Petitioner’s message. The Colorado statute prohibits counseling to maintain, but not change, the gender status quo. This type of content-based discrimination in expression violates a consistent line of First Amendment non-discrimination precedent:

- *National Institute, supra*, 585 U.S. at 766 (2018) (selective restriction on abortion counseling: “Content-based regulations target speech based on its communicative content ... [and] are presumptively unconstitutional.... [G]overnments have no power to restrict expression because of its message, its ideas, its subject matter, or its content”);
- *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (selective restrictions on sign content: “Under [the First Amendment] a government ... has no power to restrict expression because of its message, its ideas, its subject matter, or its content”);
- *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972) (selective restrictions on school picketing: “[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content”);
- *Cohen v. California*, 403 U.S. 15, 24 (1971) (selective restriction on anti-draft message: “[G]overnmental bodies may not prescribe

the form or content of individual expression ... putting the decision as to what views shall be voiced largely in the hands of each of us, in the hope that use of such freedom will ultimately produce a more capable citizenry”);

- *Legal Services Corp. v. Velazquez*, *supra*, 531 U.S. at 543 (2001) (selective restriction on attorney advocacy: “invalidat[ing] viewpoint-based restrictions [on attorney advocacy]”).

CONCLUSION

This Court should reverse the judgment of the Tenth Circuit, should hold that Colorado's restriction on Petitioner's counseling violates the First Amendment's protections of professional speech, and should remand for compliance with this Court's judgment.

Dated: June 13, 2025

Respectfully submitted,

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