

In the
Supreme Court of the United States

SALLY PRIESTER, M.D.,

Petitioner,

v.

PUERTO RICO DEPARTMENT OF HEALTH, ET AL.,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the First Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Since the onset of the COVID-19 pandemic in March 2020, Dr. Priester, M.D., exerted her rights under the Free Speech, Freedom of Association, and Free Exercise clauses of the First Amendment by speaking in public meetings, churches, and the media about topics ranging from the unscientific, draconian measures imposed by the government to the mRNA vaccine ingredients that included cells of aborted fetuses.

In April, 2021, Respondent Puerto Rico Department of Health issued Resolution 2021-04 ordering Dr. Priester to: “*CEASE AND DESIST from making, expressing, communicating, disseminating, . . . and/or endorsing, by any means of communication or in person, messages . . . against the health efforts . . . with respect to . . . the Coronavirus Pandemic . . . , as well as any of its variants*” apprising her that “*[f]ailure to comply with this Order may entail severe monetary and disciplinary penalties and/or even judicial contempt.*” The district court denied Petitioner’s motion for preliminary injunction challenging the gag order on *Younger* abstention grounds. After staying Petitioner’s interlocutory appeal for almost two years, the court of appeals entered an order dismissing the case as moot. The Questions Presented Are:

1. Whether, a physician has a First Amendment right to publicly speak on healthcare matters in the public square without government interference or disciplinary actions by licensing boards.
2. Whether the First Circuit decision should be reversed, as this case meets the exceptions to mootness that this Court articulated in *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167 (2000) and *FBI v. Fikre*, 601 U.S. 234 (2024).

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- Sally Priester, M.D.

Respondents and Defendants-Appellees below

- Puerto Rico Department of Health
- Victor Ramos
- Colegio de Médicos-Cirujanos de Puerto Rico
- John Doe
- Richard Roe
- John Smith
- Peter Poe
- Freddie Roman-Aviles
- Veronica Rodriguez-de la Cruz

LIST OF PROCEEDINGS

U.S. Court of Appeals for the First Circuit
No. 22-1694

Sally Priester, Plaintiff-Appellant v. *Puerto Rico Department of Health et al.*, Defendants-Appellees
Judgment: April 24, 2025 (App.1a)

United States Supreme Court:

No. 24-1041

In re Sally Priester

Voluntary dismissal pursuant to Sup. Ct. R. 46:
June 6, 2025.

U.S. District Court for the District of Puerto Rico
No. 22-1035

Sally Priester, Plaintiff v.
Puerto Rico Department of Health et al., Defendants
Omnibus Opinion: August 10, 2022 (App.5a)

Department of Health Legal Counseling Office, the
Medical Discipline and Licensing Board of Puerto Rico
No. QF-JLDM-2020-270

The Medical Discipline and Licensing Board of
Puerto Rico, *Plaintiff*, v. Dr. Sally Priester, Lic. No.
16480, *Defendant*.

Agency Decision (Resolution): July 10, 2024

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Sally Priester, M.D., (“Dr. Priester”) respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit.



OPINIONS BELOW

The court of appeals for the First Circuit’s Order dismissing Petitioner’s appeal was entered on April 24, 2025 (unpublished), and reprinted in the Appendix (“App.”) at 1a. The Omnibus Memorandum and Order of the district court (unpublished) is found at 2022 U.S. Dist. LEXIS 144023 and reprinted at App.5a.



JURISDICTION

The First Circuit entered its opinion on April 24, 2025. App.1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).



CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend XIV, sec. 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



STATEMENT OF THE CASE

Petitioner Dr. Sally Priester is a medical doctor and scientist with more than 20 years of clinical experience in disaster medicine and public health. She has published ten peer-reviewed abstract, book chapter, or medical journal manuscript publications. She has a license to practice medicine in Puerto Rico

and, by operation of law, is required to be a member of the Association to practice medicine in Puerto Rico.¹

Since the early days of the COVID-19 health emergency began in Puerto Rico in March 2020, Petitioner became a staunch critic of Respondent PRDH's management of the situation. During the nine months prior to her silencing by Respondent PRDH, Dr. Priester raised reasonable concerns regarding mask mandates, forced lockdowns, and the government's unsatisfactory response to the COVID-19 emergency.

A few days prior to the December 2020 announcement of the Emergency Use Authorization of the Pfizer COVID-19 vaccine, Respondent Ramos,² acting under color of state law as the President of Respondent Colegio de Médicos-Cirujanos³ and in violation of the organization's regulations,⁴ sent Respondent PRDH's licensing board a complaint letter against Petitioner. App.26a. Ramos requested that Respondent PRDH carry out an investigation of, and issue a gag order

¹ P.R. Laws Ann. tit. 20 § 73(g).

² On March 31, 2025 Ramos was confirmed as Respondent PRDH's Secretary of Health. He now has the authority to order any proceeding, persecution, and/or sanctioning of Petitioner, including the deprivation of her license to practice medicine. Ramos continues to be a defendant in his individual capacity in the case before the district court.

³ The College of Physicians and Surgeons is the statutory entity created to group the medical professionals in Puerto Rico pursuant to P.R. Laws Ann. tit. 20 § 73(g). The Puerto Rico Supreme Court eliminated the mandatory membership to this College in *Delucca Jimenez v. Colegio de Médicos-Cirujanos*, 2023 TSPR 119, 213 DPR ____ (2023).

⁴ See paragraphs 36-47 of Amended Complaint, Dist. P.R. Dkt. 76.

against, Dr. Priester to prevent her from speaking in public and in the media about anything relating to the COVID-19 issue. Respondent Ramos specifically requested that Respondent PRDH's Medical Licensing Board issue an order against Petitioner to:

[C]ease and desist immediately from promoting and distributing information with no scientific basis regarding the pandemic, the SARS-CoV-2 virus, the COVID-19 illness, and that jeopardizes the health of the People and the fiduciary relationships between doctors and patients of the entire medical class of this country. This order must be decreed as soon as the investigation commences, as a preventive action to avoid greater harm to the population and deviations from safety measures.

1st Cir. Doc. 00117987018 at p. 7.

Respondent Ramos' complaint was based on Petitioner's public expressions made in public spaces before crowds of people that were interested to hear what Dr. Priester had to say on matters of public concern such as public health. Respondent Ramos denounced the following public expressions made by Dr. Priester on a November 29, 2020, rally:

To refer to the pandemic as the 'plandemic'
... [H]ow dare they launch a terror and impotence campaign ...

It is a lack of respect from us in the medical community and that doctors are lending themselves for this kind of things, let's put an end to this sham ...

I can't understand why health centers like CDTs are closed and thus force patients to turn to just emergency rooms for receiving healthcare. It is incredible to know that they cannot communicate with primary care physicians. Don't let them scare you anymore because there will come the time when those 14 days of incubation do NOT exist and the Department of Health will have to explain, on trial, from where it has taken so much data that has not been scientifically proven worldwide.

We do not have to wait for any vaccine . . .

No child will get vaccinated . . .

App.27a.

Respondent PRDH readily complied with Ramos' request, even though the complaint did not stem from Petitioner's professional conduct.

The minutes of Respondent PRDH's Licensing Board's meetings evaluating the complaint illustrate what Dr. Priester was up against. Some of its members set their opinions for the record as follows:

Specifically, a member of the Licensing Board said that "because Dr. Priester is a licensed physician, her freedom of speech is irrelevant, and therefore, if at any point she intends to question the establishment publicly, she must submit proof to partake on such challenge. Otherwise, she should not be allowed to challenge the establishment."⁵ Another member

⁵ These expressions were made by PRDH Licensing Board member Carlos Portocarrero Blanco, and they are particularly troubling

pointed out that Dr. Priester did not offer expert testimony to rebut the experts who declared on behalf of the Association, although she was never made aware of the “expert testimony” that she was required to rebut. And that the same member said that “he wanted to make clear that while a physician has freedom of speech, a medical doctor cannot speak against the recommendations of the CDC, FDA, and accrediting colleges during a pandemic.” Then, a third member intimated that Dr. Priester had to submit evidence that she was capable of publicly expressing her opinion regarding Covid-19 and that, because she was unsuccessful in a challenge to the investigative proceedings in state court, the Licensing Board could censor Dr. Priester’s speech without repercussions. A fourth member said that “because Dr. Priester is a medical physician, she must face the consequences of providing opinions contrary to the standards of care promulgated by the FDA, AMA, infectious disease experts, the CDC, and the whole world.” The last member said that Dr. Priester did not show that she had knowledge on how to manage Covid and that she could not demonstrate that she did not violate the Code of Ethics.

1st Cir. Doc. 00117987021 at pages 249-251. (Emphasis ours.)

because, unlike the rest of the Licensing Board Members, Dr. Portocarrero is the only licensed attorney among them. PR Supreme Court License number 17,870.

Without granting a full hearing observing due process guarantees, on April 21, 2021, Respondent PRDH issued Resolution and Order 2021-04 prohibiting Dr. Priester from speaking out against the efforts of the Government of Puerto Rico and other private entities with respect to the COVID-19 pandemic. The document specifically ordered Dr. Priester to:

... CEASE AND DESIST from making, expressing, communicating, disseminating, publishing, sharing, and/or endorsing, by any means of communication or in person, messages without any legitimate scientific basis against the health efforts being carried out by government or private authorities recognized and respected by the scientific and medical community to alert and protect the society with respect to the spread and propagation of the SARS-CoV-2 virus, the Coronavirus Pandemic and/or Covid-19, as well as any of its variants.

Resolution 2024-04 further apprised Dr. Priester that:

[F]ailure to comply with this Order may entail severe monetary and disciplinary penalties and/or even judicial contempt . . .

Dist. P.R. Dkt. 1-1 at page 26.

Since then, Respondent PRDH has acknowledged that the gag order and subsequent investigation stemmed from Petitioner's "disparaging declarations concerning the policies and efforts undertaken by the PRDH and the Commonwealth . . ." (Emphasis ours.) 1st Cir. Doc. 00118222835 at 1-2.

Petitioner requested the dismissal of the complaint based on her First Amendment rights of freedom of speech and assembly. App.26a.

After having filed two prior lawsuits seeking redress, on January 19, 2022, Petitioner filed a third lawsuit⁶ before the district court seeking injunctive and declaratory relief under 42 U.S.C. 1983. Dist. P.R. Dkt. 1. Dr. Priester also filed a petition for preliminary injunction under F. Civ. Proc. R. 65 seeking to have the Resolution 2021-04's gag order declared an unconstitutional prior restraint on her freedom of expression, viewpoint discrimination, and an imminent threat of retaliation. Dist. P.R. Dkt. 4.

Without holding an evidentiary hearing, on August 10, 2022, the district court disregarded Dr. Priester's First Amendment claims and those regarding the prejudice and bias of the administrative forum, dismissing the motion for preliminary injunction on *Younger v. Harris*, 401 U.S. 37 (1971) abstention grounds. App.5a. Despite the statements by Respondent PRDH's Licensing Board Members alleged in the complaint as reproduced above, the district court concluded that:

⁶ This case is Petitioner's third lawsuit seeking redress. As early as February 10, 2021, Dr. Priester filed her first lawsuit in what has become a judicial *via cruxis* to vindicate her constitutional rights. Prior to the case that gave rise to this Petition, Petitioner had unsuccessfully sought redress three times from the Commonwealth Courts (SJ2021CV00832 (filed February 10, 2021), *Sally Priester v. Colegio de Médicos et al*; *Sally Priester v. Colegio de Médicos et al.*, KLAN202100203 (P.R. Court of Appeals); and once from the United States District Court for the District of Puerto Rico (3:21-cv-01313-ADC) voluntarily dismissed on PROMESA grounds.

Dr. Priester has not identified any type of bias or intent to harass in the second phase of the ongoing administrative proceedings and she will be afforded numerous procedural safeguards there, the Board is capable of remaining impartial and moving forward with the administrative proceedings.

App.20a-21a.

Despite the undisputed bias by the Licensing Board members against Dr. Priester set forth above, the district court found that all the factors set forth in *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982) were present to justify the denial of the preliminary injunction. App.16a. This, despite the district court's acknowledgment that: “... at first glance, the statements attributed to certain Board members regarding Dr. Priester's First Amendment rights that were included in the Amended Complaint may be concerning.” App.19a. (Emphasis ours). The district court did not take a second glance to protect Petitioner.

Petitioner filed an interlocutory appeal for the review of the dismissal of the preliminary injunction. Dist. P.R. Dkt. 111. Respondents requested that the court of appeals summarily affirm the judgment without further briefing and stay the case until its decision. 1st Cir. Doc. 00118011062 and Doc. 00118011072. Petitioner opposed these requests. 1st Cir. Doc. 00118027117. Despite the momentous constitutional and public interest issues that Dr. Priester's appeal raised, the court of appeals acquiesced to Respondents' requests. As of June 8, 2023, it had unreasonably stayed the appeal for twenty-three months, exempting Respondents from replying thereto. 1st Cir. Doc. 00118018886.

Since then, the court of appeals' actions reflected its position that Petitioner was not entitled to due process or the protection of her constitutional rights because of her beliefs and convictions.

While the case lingered in the courts, Petitioner's speech was entirely chilled, enabling the most successful COVID-19 vaccination campaign in the nation to unravel in Puerto Rico.⁷

Eleven months after the court of appeals had stayed the case, on July 10, 2024, Dr. Priester was notified of Respondent PRDH's Resolution 2024-22 that had been issued four months before. Like the first one, devoid of regulatory authority or due process, and with the aim of publicly discrediting Petitioner, Respondent PRDH notified the document to thirteen state and federal agencies and insurance companies outside of the licensing process. App.38a-40a.

In this new order, Respondent PRDH dismissed Resolution 2021-04 without finding that Petitioner had violated the ethical provisions that govern the

⁷ By July 2022, 95% of the population in Puerto Rico had been injected with at least one dose of the product compared to the national average of 81.3% as of July 2025, and 84% were “fully vaccinated” as of the same date of July 2022, compared to the national average of 70% in 2025. American Hospital Association, *Digging into the Reasons for Puerto Rico’s Successful COVID-19 Response*, July 22, 2022, found in <https://www.aha.org/news/blog/2022-07-22-digging-reasons-puerto-ricos-successful-covid-19-response>, archived in <http://archive.today/WETBz>, last accessed on July 18, 2025, and the House of Representatives Select Subcommittee on the Coronavirus Pandemic, *After Action Review of the COVID-19 Pandemic: The Lessons Learned and a Path Forward* found in <https://oversight.house.gov/wp-content/uploads/2024/12/2024.12.04-SSCP-FINAL-REPORT-ANS.pdf>, last accessed on July 18, 2025.

medical profession. App.24a. However, it imposed a new, all-encompassing, permanent warning and gag order that states:

... The Board understands and forewarns Dr. Sally Priester that should there be any national crisis or emergency similar to that caused by the COVID-19 pandemic in the future, she should abide by the safety measures that the organizations in charge of healthcare should then recommend and adopt for the benefit of the citizenship as a whole.

App.35a.

On November 22, 2024, the court of appeals *sua sponte* issued an order instructing the parties to show cause as to why the case should not be dismissed as moot. 1st Cir. Doc. No. 00118218075. Petitioner replied, setting forth specific reasons why Resolution 2024-22 did not turn the appeal moot (1st Cir. Doc. 00118223300 at pages 6-8).

On March 28, 2025, Petitioner filed a Writ of Mandamus with this Court, case 24-1041, to compel the court of appeals to proceed with the adjudication of the case. After two years of having stayed the appeal, and six days short of the deadline for Respondents to file their reply with this Court, the court of appeals entered an order dismissing the case as moot. App.1a.

The court of appeals' order is conspicuously silent regarding Respondent PRDH's new, all-encompassing, forward-looking gag order against Petitioner contained in Resolution 2024-04.



REASONS FOR GRANTING THE PETITION

- I. This Court Should Grant This Petition Because This Case Presents Questions of Great and Increasing Societal Importance Worthy of This Court’s Review, Such as the Need to Set the National Standard Required to Protect Physicians’ First Amendment Rights, Shielding Them from State Action Seeking to Suppress Public Speech on Matters of Public Concern and Divergent Viewpoints in Violation of the First and Fourteenth Amendments of the U.S. Constitution.**

A. Protected Public Speech by a Professional

The First Amendment is extensive to Puerto Rico through the Due Process Clause of either the Fifth or Fourteenth Amendments. *Posadas de Puerto Rico Assocs. v. Tourism Co.*, 478 U.S. 328, 330 n.1 (1986).

The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury’ for purposes of the issuance of a preliminary injunction. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The COVID-19 pandemic prompted our “first freedom [to fall] on deaf ears.” *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14, 23 (2020) (Per Curiam) (Gorsuch, concurring). “Judicial deference in an emergency or a crisis does not mean wholesale judicial abdication, especially when important questions of . . . free speech . . . are raised.” *Id.* “Even in a [real]

pandemic, the Constitution cannot be put away and forgotten.” *Id.*, 592 U.S. at 19.

“A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more.” *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017). “[W]here a speaker exists . . . , the protection afforded is to the communication, to its source and to its recipients both.” *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 756 (1976).

The First Amendment protects an individual’s right to speak his mind regardless of whether the government considers his speech sensible and well intentioned or deeply “misguided.” *Snyder v. Phelps*, 562 U.S. 443, 571-572 (2011). Likewise, the government cannot compel a person to speak its own preferred messages. *303 Creative LLC v. Elenis*, 600 U.S. 570, 571-72 (2023).

The right of people to freely communicate publicly on matters of public concern lies at the core of First Amendment values. “Speech on public issues occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection.” *Snyder v. Phelps*, 562 U.S. at 451-452 (The First Amendment precludes viewpoint discrimination, an “egregious form of content discrimination” and is therefore “presumptively unconstitutional.”) The prohibition on viewpoint discrimination reflects the fundamental principle that governments have “no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 766 (2018) (“NIFLA”).

This Court has made the unequivocal distinction that the regulation of a profession does not extend to the licensing of public speech. “The principle that the government may restrict entry into professions and vocations through licensing schemes has never been extended to encompass the licensing of speech *per se* . . .” *Lowe v. SEC*, 472 U.S. 181, 229 (1985).

Justice White’s concurrence in *Lowe* is particularly enlightening here:

Where the personal nexus between professional and client does not exist, and a speaker does not purport to be exercising judgment on behalf of any particular individual with whose circumstances he is directly acquainted, government regulation ceases to function as legitimate regulation of professional practice with only incidental impact on speech; it becomes regulation of speaking or publishing as such, subject to the First Amendment’s command that “Congress shall make no law . . . abridging the freedom of speech, or of the press.”

Lowe v. SEC, 472 U.S. at 232 (White, J., concurring).

In the specific context of physicians, “[w]hen a physician speaks to the public, his opinions cannot be censored and suppressed, even if they are at odds with preponderant opinion within the medical establishment.”⁸ There should be no labeling of “misinformation” on a medical doctor’s public speech

⁸ Robert Post, *Informed Consent to Abortion: A First Amendment Analysis of Compelled Physician Speech*, 2007 U. ILL. L. REV. 939, 949 (2007).

because “the First Amendment recognizes no such thing as a ‘false idea.’” *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 51 (1988). The “point of the First Amendment is that majority preferences must be expressed in some fashion other than silencing speech on the basis of its content.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 392 (1992). “Discrimination against speech because of its message is presumed to be unconstitutional,” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 whereas “viewpoint discrimination . . . is presumed impermissible.” *Id.*, 515 U.S. at 830.

Regardless of the mass hysteria and genuine concerns that the COVID-19 emergency presented, “even in a pandemic, the Constitution cannot be put away and forgotten.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2014). “Judicial deference in an emergency or a crisis does not mean wholesale judicial abdication, especially when important questions of religious discrimination, racial discrimination, free speech, or the like are raised.” 592 U.S. at 30 (Kavanaugh, J., concurring).

In short, constitutional rights do not vanish in a pandemic.

Respondent PRDH’s undisputed gag order chilling Petitioner’s right to speak in public on matters of public concern is repugnant to the constitution. It is dangerously susceptible to unbridled repetition against Petitioner and physicians across the nation if this Court does not rein in its illegality.

B. A Medical Licensing Board's Authority Is Subject to Strict Scrutiny

Eighty years ago, Justice Jackson's concurring opinion in *Thomas v. Collins*, 323 U.S. 516 (1945), first articulated the bedrock constitutional principle that a professional's public speech is essentially off-limits to government regulation and control. Although Justice Jackson recognized the right of the state to regulate the practice of a profession, he stated that the state does not have right to protect against "false doctrine."

[I]t is not the right, of the state to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us. Nor would I. Very many are the interests which the state may protect against the practice of an occupation, very few are those it may assume to protect against the practice of propagandizing by speech or press. These are thereby left great range of freedom.

...

This liberty was protected because they knew of no other way by which free men could conduct representative democracy.

323 U.S. at 545-46 (Jackson, J., concurring) (Citations omitted.)

Hence, even when a medical licensing board has the authority to regulate the medical profession within each state, such authority cannot be used to curtail protected speech. “Where a professional is engaged in a public dialogue, First Amendment protection is at its greatest. Thus, for example, a doctor who publicly advocates a treatment that the medical establishment considers outside the mainstream, or even dangerous, is entitled to robust protection under the First Amendment—just as any person is—even though the state has the power to regulate medicine.” *See Lowe*, 472 U.S. at 232.

This Court has recognized that “a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights” and the line is “long familiar the bar,” *United States v. Stevens*, 559 U.S. 460, 468 (2010). Moreover, its “precedents require disclosures to remedy a harm that is ‘potentially real, not purely hypothetical’” *Ibanez v. Florida Dep’t of Bus. & Professional Regulation, Bd. of Accountancy*, 512 U.S. 136, 146 (1994), and to extend “no broader than reasonably necessary,” *In re R.M.J.*, 455 U.S. 191, 203 (1982).

In *NIFLA*, this Court held that content-based regulations “target speech based on its communicative content.” *NIFLA*, 585 U.S. at 765. As a general matter, such laws “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *Id.*

This stringent standard reflects the fundamental principle that governments have “no power to restrict expression because of its message, its ideas, ‘alte[r] the content of [their] speech, its subject matter, or its

content.” *Riley v. National Federation of Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). This is a high bar, particularly because of the danger of content-based regulations “in the fields of medicine and public health, where information can save lives.” *NIFLA*. 585 U.S at 756.

“Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.” *NAACP v. Button*, 371 U.S. 415, 438 (1963).

From the above it is axiomatic that a medical licensing board’s regulation of a physician’s speech is subject to the highest degree of strict scrutiny that requires that the government provide evidence that other alternatives that do not involve restricting protected speech would not have been effective to achieve the compelling state interest. *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004).

This Court should hold Respondent PRDH’s Resolutions 2021-4 and 2024-22 to be subject to strict scrutiny since they target Petitioner’s viewpoint and public speech. “Robust” First Amendment protection requires nothing less. The Resolutions issued against Petitioner are not “neutral” and of “general applicability,” they must satisfy “strict scrutiny,” and this means that they must be “narrowly tailored” to serve a “compelling” state interest. *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993).

Strict scrutiny means that Respondents must prove a compelling state interest to have chilled Dr. Priester’s speech, and they also must prove that the means chosen were narrowly tailored such that the

least restrictive means possible were used. *South Bay Pentecostal Church v. Newsom*, 141 S.Ct. 716, 718-19 (2021).

Respondent PRDH never provided for such alternatives to Petitioner, revealing its clear intent of silencing any diverging viewpoints from its narratives, most of which Congress in its “House of Representatives Select Subcommittee on the Coronavirus Pandemic, *After Action Review of the COVID-19 Pandemic: The Lessons Learned and a Path Forward*”⁹ concluded were “unscientific” and “caused more harm than good.”

C. The Need for a National Standard

The egregiously unconstitutional nature of the original and most recent gag orders that Respondent PRDH has imposed on Petitioner provides an ideal setting for this Court to set the record straight and establish clear constitutional limits that medical licensing boards must adhere to with respect to physicians’ First Amendment rights to speak freely about matters of public concern whose suppression can cause irreparable harm.

From there that this case presents this Court with the unique opportunity to set a uniform guidance for the equal protection of physicians’ First Amendment rights, including a medical licensing board’s lack of authority to chill the speech of a medical doctor speaking on matters of public health.

The facts of this case are not speculative. They occurred, remain undisputed, and are ominously susceptible of occurring again. Thus, they provide an

⁹ See n. 7.

actionable framework for this Court to set the record straight when it comes to the highest degree of constitutional protection that physicians are entitled to when publicly speaking on matters of public concern.

Respondent PRDH eliminated the possibility that its unconstitutional behavior would not recur. Under the latest gag order issued against Dr. Priester, she is again under the threat of facing yet another unfounded prosecutorial process and risking the loss of her license to practice medicine if she publicly speaks to the mostly Spanish-speaking population of Puerto Rico about matters of public concern exposed in the mainland regarding the public health that are in contravention of PRDH's unscientific policies. For example: publicly speaking about recent discoveries linking myocarditis and autism to vaccines could be used by Respondent PRDH to initiate new proceedings against Dr. Priester since the current "safety measures that the organizations in charge of healthcare should then recommend and adopt for the benefit of the citizenship as a whole" adopted by Respondent PRDH include mandatory COVID vaccination in children under the age of 16, including babies, mandating it as a requirement to allow children, adolescents, and even university students to enroll in school.

This petition should be granted because it presents a unique opportunity to adjudicate an actual case and controversy and provide sensible guidance on the constitutional parameters that medical licensing boards must adhere to in the protection of physicians' rights of freedom of expression and association under the First Amendment.

Based on *Lowe*, *NIFLA*, and *Roman Catholic Diocese of Brooklyn*, this Court should conclude that

Respondent PRDH’s gag orders violated the First Amendment clauses on freedom of speech and association, satisfying the likelihood of success on the merits under *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008) test. Consequently, this Court should reverse the court of appeals’ dismissal and remand it with instructions accordingly.

II. This Court Should Grant This Petition to Reverse the First Circuit Court of Appeals’ Erroneous Dismissal of the Case on Inapplicable Mootness Grounds, Deviating from This Court’s Precedent.

A court with jurisdiction has a “virtually unflagging obligation” to hear and resolve questions properly before it. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

After staying its decision for almost two years, only to hastily dismiss the appeal six days short of Respondents’ deadline to reply to Dr. Priester’s petition in this Court’s case 24-1041, the court of appeals disregarded its longstanding mootness criteria to conclude that Dr. Priester’s appeal was moot.

This Court’s and the First Circuit’s precedent provide that a case is not moot if the plaintiff can provide “demonstrated probability” that the situation is “capable of repetition, yet evading review.” *Friends of the Earth, Inc. v. Laidlaw Env'l. Servs. (TOC), Inc.*, 528 U.S. 167 (2000); *ACLU of Mass. v. U.S. Conf. of Cath. Bishops*, 705 F.3d 44, 57 (1st Cir. 2013). If a court concludes that “unchecked by the litigation, respondents’ wrongful behavior will likely occur or continue and that the threatened injury to Petitioner

is certainly impending” it cannot conclude the case is moot. *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990).

Regarding the voluntary cessation exception, this Court expressed in *FBI v. Fikre*, 601 U.S. 234, 240 (2024) that a defendant does not “automatically moot a case” by the simple expedient of suspending its challenged conduct after it is sued. Instead, this Court’s precedents hold that a defendant’s “voluntary cessation of a challenged practice” will moot a case only if the defendant can show the “formidable burden” that the practice cannot “reasonably be expected to recur.” *Friends of the Earth, Inc.*, 528 U.S. at 189-190.

The “voluntary cessation” doctrine presents a “formidable burden” because “[t]he Constitution deals with substance, not strategies.” *Id.* “Were the rule more forgiving, a defendant might suspend its challenged conduct after being sued, win dismissal, and later pick up where it left off; it might even repeat ‘this cycle’ as necessary until it achieves all of its allegedly ‘unlawful ends.’” *Id.* (Citations omitted).

In this context, Respondent PRDH failed to meet the formidable burden of proving that it was highly unlikely that it would not persecute Petitioner again for exerting her right to public speech on matters of public concern. With Resolution 2024-22, it confirmed it would.

It is revealing that after Respondent PRDH issued Resolution 2024-22 on March 21, 2024, it did not readily appear before the court of appeals to argue that the appeal had turned moot. Instead, it waited for the court of appeals that had indefinitely stayed the case, to *sua sponte* issue an order expressing its inclination to dismiss the appeal relying on the a

clearly distinguishable situation discussed in *Harris v. Univ. of Mass. Lowell*, 43 F. 4th 187 (1st Cir. 2022).

In response to the court of appeal's intent of dismissing the case, Petitioner asserted that her claims were "capable of repetition," as long as she was a licensed doctor subject to Respondent PRDH's authority. As a Puerto Rico licensed physician subject to Respondent PRDH's regulatory power, Dr. Priester has a reasonable expectation that as soon as she again engages in public speech, she will be subjected to the arbitrary, capricious, and unconstitutional restrictions and threats by Respondent's Licensing Board.

Furthermore, Petitioner argued to the court that by enacting Resolution 2024-22, Respondent PRDH confirmed that not only was it capable of repetition, but that it had repeated itself. Resolution 2024-04 unequivocally imposed on Dr. Priester an ambiguous, all-encompassing, future, and permanent prohibition on her public speech. Through its own undisputed conduct, Respondent PRDH proved to the court of appeals that as long as any court with jurisdiction doesn't order otherwise, it was not willing to let go of the hijacking of Dr. Priester's right to speak in public on matters of public concern. Respondent PRDH removed the speculation out of the "reasonable expectation" and turned it into an uncontroverted fact.

The court of appeals' order dismissing the case made no mention of this fact.

The court of appeals' unjustified prolonged stay, treatment, and dismissal of Dr. Priester's interlocutory appeal requesting the protection of her First Amendment rights leaves a lot to be desired. Regardless of the ideology of the individual members of that

court, they should not have allowed it to interfere with their responsibility towards a litigant properly before the court.

Respondents' collusion to suppress Dr. Priester's public speech on matters of public concern has caused—and continues to cause—irreparable harm on Petitioner as well as the thousands of victims that were prevented from hearing what she had to say to decide for themselves whether the government was being forthcoming or not regarding its campaigns associated with the COVID-19 emergency, most of which have been debunked.

This harmful and egregiously unconstitutional conduct cannot be allowed to happen again within a jurisdiction of the United States.

Petitioner urges this Court to grant this petition, that will incidentally provide the necessary guidance to state medical boards throughout the United States to prevent physicians' civil rights violations under the guise of a future pandemic.

This Court should reverse the court of appeals' order dismissing the appeal and remand the case for its full adjudication according to the Court's precedents set forth above and the guidance that this Court should provide.



CONCLUSION

For the reasons set forth above, this Petition for a Writ of Certiorari to the First Circuit Court of Appeals should be granted as to Questions 1 and 2.

Respectfully submitted,

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