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.,

Respondent.

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

BRIEF OF THE MANHATTAN INSTITUTE, ISLAM AND RELIGIOUS FREEDOM ACTION TEAM, JEWISH COALITION FOR RELIGIOUS LIBERTY, AND DR. DOVID SCHWARTZ AS *AMICI CURIAE* SUPPORTING PETITIONERS

Howard Slugh
JEWISH COALITION FOR RELIGIOUS LIBERTY
2400 Virginia Ave., NW
Apt. C619
Washington, DC 20037
954-328-9461
hslugh@JCRL.org

Ilya Shapiro
Counsel of Record
Tal Fortgang
MANHATTAN INSTITUTE
52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000
ishapiro@manhattan.institute

June 13, 2025

QUESTION PRESENTED

Whether a law that censors certain conversations between counselors and their clients based on the viewpoints expressed regulates conduct or violates the Free Speech Clause.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutory Provisions

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

The **Manhattan Institute for Policy Research** is a nonpartisan public policy research foundation whose mission is to develop and disseminate ideas that foster greater economic choice and individual responsibility. To that end, it has historically sponsored scholarship and filed briefs supporting constitutionally protected liberties and opposing governmental overreach. MI works to promote laws regulating individuals and businesses based on sound principles of public policy, including the right to religious liberty.

The **Islam and Religious Freedom Action Team**, a part of the Religious Freedom Institute, amplifies Muslim voices on religious freedom, seeks a deeper understanding of the support for religious freedom inside the teachings of Islam, and protects the religious freedom of Muslims. RFI more broadly engages in research, education, and advocacy on core issues like religious freedom and the freedom to live out one's faith. RFI also represents Muslim therapists with clients seeking the counseling banned by laws of the kind at issue.

The **Jewish Coalition for Religious Liberty** is an incorporated group of rabbis, lawyers, and professionals who practice Judaism and are committed to defending religious liberty. JCRL aims to foster cooperation between Jewish and other faith communities in the public square. Representing members of the legal profession and as adherents of a minority religion, JCRL has a unique interest in ensuring that the First

---

[1] Rule 37 statement: No party's counsel authored any part of this brief; no person other than *amici* or their members made a monetary contribution to fund its preparation or submission.

Amendment protects the diversity of religious viewpoints and practices in the United States.

Dr. Dovid Schwartz is a therapist from Brooklyn with nearly 60 years' experience. In 2019, he sued over a New York City law similar to the Colorado one at issue here on free-speech and free-exercise grounds, prompting the city council to repeal its law unanimously! Dr. Schwartz knows first-hand the harm that such laws inflict on patients who seek treatment to ease their suffering and allow them to conform their lives to their consciences. He has felt the harms such laws inflict on doctors by preventing them from providing the care they know will help their patients.

This case interests *amici* because it involves infringements of free speech and religious liberty that interfere with professional therapy services.

INTRODUCTION AND SUMMARY OF ARGUMENT

"Government actions that favor certain religions, the Court has warned, convey to members of other faiths that 'they are outsiders, not full members of the political community.'" *Cath. Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm'n*, No. 24-154, 2025 WL 1583299, at *5 (U.S. June 5, 2025) (quoting *Santa Fe Independent School Dist. v. Doe*, 530 U. S. 290, 309 (2000).). This Court has already rebuffed several of Colorado's attempts to tell adherents of traditional faiths that they are such political outsiders. *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. 570, 588 (2023) (noting that Colorado intended to "excise" traditional religious ideas about marriage from the public dialogue, and that its goal was the "coercive '[e]limination' of dissenting 'ideas.'") (alteration in original);

Masterpiece Cakeshop v. Colo. Civil Rights Comm'n, 584 U.S. 617, 640 (2018) (noting that the state commission's "hostility was inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion."). It is against that backdrop that Colorado is now attempting to silence members of traditional faiths while exempting members of progressive faiths.

"The fullest realization of true religious liberty requires that government refrain from favoritism among sects." *Cath. Charities Bureau*, *supra* at *5 (cleaned up). Unfortunately, the Colorado law at issue here is steeped in sectarian favoritism and is incompatible with religious liberty. "When a state law establishes a denominational preference, courts must treat the law as suspect and apply strict scrutiny in adjudging its constitutionality." *Id.* at *6. Colorado's law governing the content of therapy sessions dealing with patients' gender dysphoria establishes exactly such a preference. First, it regulates the entire subject area. Then, it exempts behaviors encouraged or demanded by favored faiths while continuing to prohibit the practices of other faiths regarding the same subject.

Colorado enacted its licensing restrictions to exempt counselors who convey the state-approved message of encouraging minors to explore non-traditional gender identities. But counselors may not engage in the same therapy if the goal is to help a patient become more comfortable with his or her biological sex.

That statutory design amounts to a state preference for the view of sex and gender advanced by certain religious denominations over others. Several faiths compel their adherents to engage in and support the counseling exempted from Colorado's ban. But

many other faiths, as described in detail in this brief, take the opposite position. Colorado has thus taken a position in a dispute that is, among other things, religious. That may be within its state authority as a matter of *government* speech, but the law here regulates *private* speech and thus cannot be regarded as neutral and generally applicable for the sake of Free Exercise or Establishment Clause analysis. The law should thus face strict First Amendment scrutiny.

Furthermore, Colorado's law represents a serious burden on orthodox Jewish and Muslim religious practice. These faiths are built upon long-standing notions of the importance of biological sex. In slightly different ways, traditional Judaism and Islam require the distinction between male and female to remain clear and constant for the sake of each individual and the community as a whole. Neither traditional Judaism nor Islam recognizes the concept of gender identity as a matter distinct from biological sex.

In Judaism, the entire community's obligations at any given time depend on the number of men and women present. That means that everyone's proper observance of Judaism requires knowing the sex of everybody in the room. A Jew experiencing gender dysphoria who desires to participate fully in traditional Jewish life—without burdening the local Jewish community—may seek to become more comfortable with his or her biological sex. But Colorado's law forces such a person either to seek therapy that will alienate him or her from the community or to forgo therapy altogether. That is a serious burden on the exercise of Judaism. It portends an even greater collision between sex- and gender-based systems in the future.

In Islam, belief in the distinct biological sexes is not only rooted in sacred teachings but goes to the very core of religious exercise. Rules governing decency, modesty, and seclusion apply to all Muslims and require clear distinctions between men and women. Colorado's law thus interferes with Muslim therapists' and patients' religious freedom in basic yet crucial ways. Prohibiting therapy that would make patients more comfortable with their biological sex interferes with religious free exercise, which Muslim therapists would consider to include helping fellow Muslims fulfill Islam's obligations. It also contradicts Muslim therapists' religiously driven mission to alleviate pain and suffering. It imposes a set of values that are alien to Islam and violates the principles of proper care.

It is Colorado's prerogative not to be a neutral observer in the most important social and cultural debates of the day. But no matter how passionately the state favors one side of the debate over gender identity, it's not permitted to silence dissenters. Yet that's exactly what it's trying to do here, violating speech and religion rights. This Court should subject that effort to strict scrutiny and find it constitutionally wanting.

ARGUMENT

I. COLORADO'S LAW IS NOT RELIGIOUSLY NEUTRAL BECAUSE IT FAVORS FAITHS WHOSE THEOLOGY SUPPORTS GENDER TRANSITION OVER THOSE WITH MORE TRADITIONAL VIEWS OF SEX AND GENDER

It is axiomatic that a law prohibiting one faith's practices but allowing another's is subject to strict

scrutiny. See *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 536 (1993) (invalidating a law exempting Jewish but not Santerían practice); *id.* at 533 ("[A] municipal ordinance was applied in an unconstitutional manner when interpreted to prohibit preaching in a public park by a Jehovah's Witness but to permit preaching during the course of a Catholic mass or Protestant church service.") (discussing *Fowler v. Rhode Island*, 345 U.S. 67 (1953)). Similarly, laws privileging people who practice their faith in the state's preferred manner over those with different religious approaches are not religiously neutral. *See Cath. Charities Bureau,* 2025 WL 1583299, at *6; *Larson v. Valente*, 456 U.S. 228, 246 (1982) ("[W]hen we are presented with a state law granting a denominational preference, our precedents demand that we treat the law as suspect and that we apply strict scrutiny in adjudging its constitutionality").

That is, laws that discriminate between faiths, exempting the government's preferred theologies while burdening others, are not religiously neutral. *Cath. Charities Bureau,* 2025 WL 1583299, at *2 ("The First Amendment mandates government neutrality between religions and subjects any state-sponsored denominational preference to strict scrutiny."); *see also Carson v. Makin*, 596 U.S. 767, 787 (2022) (expressing "serious concerns" about "denominational favoritism").

The court below erred in concluding that Colorado's statute was religiously neutral and thus refusing to apply strict scrutiny. It recognized that "[g]overnment fails to act neutrally when it proceeds in a manner intolerant of religious beliefs or restricts practices *because of their religious nature*." *Chiles v. Salazar*, 116

F.4th 1178, 1222 (10th Cir. 2024) (emphasis in original) (quoting *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021)). But it failed to recognize that governments act in ways that are intolerant of religious beliefs when they enact laws that favor one religion over another. Here, Colorado has outlawed certain therapeutic practices by orthodox or traditional religious believers who are otherwise fully licensed and qualified to work in their chosen field. The state's ban on talk therapy for gender dysphoria expressly exempts speech and practices encouraged or demanded by favored faiths while prohibiting the practices of other faiths regarding the same subject.

A. Colorado's Law Is Written to Differentiate Among Religions

The law at issue bans "any practice or treatment ... that attempts or purports to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex." Colo. Rev. Stat. §12-245-202. On its face, this rule bans interventions aimed at changing behaviors or expressions regardless of whether those changes align a person's behavior and expression with either their biological sex or gender identity. The entire subject is verboten, regardless of viewpoint or intended outcome. To that point, the law is neutral as among religious faiths and practices.

But the statute does not stop there. It expressly exempts "practices or treatments that provide . . . Acceptance, support, and understanding for the facilitation of an individual's coping, social support, and identity exploration and development . . . as long as the counseling does not seek to change sexual orientation

or gender identity; or (II) Assistance to a person undergoing gender transition." *Id.* In other words, "licensed counselors can speak with minors about gender dysphoria, but only if they convey the state-approved message of encouraging minors to explore their gender identities." See *Tingley v. Ferguson*, 144 S. Ct. 33, 34 (2023) (Thomas, J., dissental). This caveat doesn't only limit therapists to the state's approved message. It permits therapists committed to progressive religions to engage in activities required—or at least encouraged—by their faiths, while prohibiting therapists belonging to more traditional faiths from fulfilling their religious obligations. An exemption provided only to people whose faith requires them to engage in one type of gender-related counseling "is not, on its face, available on an equal basis to all denominations." *See Cath. Charities Bureau,* 2025 WL 1583299, at *7.

The fact that the exception does not mention religion by name does not prevent it from discriminating against certain faiths. The First Amendment protects against "covert suppression of particular religious beliefs," *Church of Lukumi*, 508 U.S. at 534 (quoting *Bowen v. Roy*, 476 U.S. 693, 703 (1986) (opinion of Burger, C.J.)) and "governmental hostility which is masked, as well as overt." *Id.*

Colorado's gerrymandered exception was enacted against a backdrop where it was understood that the ban would disproportionately affect religious practitioners. *See* Pet. for Writ of Cert. at 128a–184a, *Chiles v. Salazar*, No. 24-539 (U.S. filed Nov. 8, 2024) (showing that the law targets "ideas and motivations well known to be primarily associated with and advocated by people of faith for reasons of faith."); *cf. Blais v. Hunter*, 493 F. Supp. 3d 984, 997 (E.D. Wash. 2020)

(finding that a law touching on similar issues constituted a religious gerrymander because it would "disproportionately exclude persons who observe certain religious faiths"). It is also yet another instance in an established pattern in which Colorado has attempted to promote its favored ideology while excluding traditional religious voices. *See, e.g., 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023); *Masterpiece Cakeshop v. Colorado Civil Rights Comm'n*, 584 U.S. 617 (2018). "Few States would be so naive as to enact a law directly prohibiting or burdening a religious practice as such." *Emp. Div., Dep't of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 894 (1990) (O'Connor, J., concurring). Colorado indeed is not so naïve.

B. Colorado's Law Is Not Religiously Neutral in Practice

The statute is having its intended effect. Petitioner Kaley Chiles is a "practicing Christian who views her career as an outgrowth of her faith." Pet. for Writ of Cert. at 5. Having been denied an exemption, Ms. Chiles cannot practice her profession in keeping with her conscience. Yet other counselors who are similarly motivated by their distinct faiths are granted exemptions by law. That is not religious neutrality.

Contrary to the views of traditional faiths outlined in Section II, *infra*, several faiths compel their adherents to engage in and support the counseling exempted from Colorado's ban. For example, Unitarian Universalists recognize a religious imperative to affirm the identities of transgender individuals including by defending "gender-affirming care for youth." *Embracing Transgender, Nonbinary, Intersex and Gender Diverse People is a Fundamental Expression of UU Religious*

Values, Business Resolution of the Unitarian Universalist Ass'n, June 22, 2024, https://rb.gy/4gn3ea. Their general assembly "affirm[ed] that living one's identity, in terms of gender identity/expression, sex characteristics, and affectional/sexual orientation, is part of [their] free exercise of religion." *Id.* (quoting *Defend and Advocate with Transgender, Nonbinary, and Intersex Communities*, 2021 Action of Immediate Witness, https://tinyurl.com/ddt399ct). And progressive Muslim groups have adopted views regarding sex and gender that diverge from traditional Islam. Muslims for Progressive Values, *LGBTQI Resources*, https://tinyurl.com/y9eturm7 (last visited June 10, 2025).

Representatives of faiths with more progressive views on sex and gender have also asserted their theological opposition to laws restricting the provision of puberty blockers and hormones to minors with gender dysphoria. For example, a progressive Jewish group urged its members to lobby against laws that "target gender-affirming medical care" and to support laws that "fully ban conversion therapy for minors." Religious Action Center of Reform Judaism, *Tell Your State Legislators to Stop Attacks on LGBTQ+ People*, https://tinyurl.com/yr4vxkzp (last visited June 10, 2025). "Parents in the Reform Jewish movement who seek medical treatment for a transgender child, in consultation with medical professionals and according to established medical standards, are following their values as Jewish parents." *See*, *e.g.*, Corrected Brief for Amici Curiae Unitarian Universalist Ass'n, Union for Reform Judaism, Cent. Conference of Am. Rabbis, Se. Conf. of the United Church of Christ, Universal Fellowship of Metro. Cmty. Churches, et al. in Support of Plaintiffs-Appellees, *Eknes-Tucker v. Governor of Ala.*, No. 22-11707 (11th Cir. filed Aug. 23, 2022), at 4.

A coalition of progressive religious groups has stated that traditional religious views on sex and gender are "offensive, hurtful, and anathema to core tenets of their faith." Brief for Amici Curiae the Central Conference of American Rabbis et al. in Support of Petitioners, *Barber v. Bryant*, No. 17-547 (U.S. filed Nov. 13, 2017), at 2 (brief representing progressive Jewish, Christian, and Muslim groups). The Southeast Conference of the United Church of Christ described the restriction of gender-related medical and surgical interventions as "an attack on '[the] very existence' of transgender and nonbinary children and youth, 'beloved children created by God.'" *Id.* at 3. They maintained that a law allegedly favoring traditional religious views regarding sex and gender "offends the First Amendment by demeaning and rendering second-class the beliefs of religious actors who do not adhere to the government-blessed doctrine." *Id.* at 4.

That argument applies *mutatis mutandis* here, where the government-blessed doctrine is of the progressive variety. Blocking all "efforts to change behaviors or gender expressions," Colo. Rev. Stat. § 12-245-202, burdens certain religious therapists by preventing them from counseling patients to strengthen their gender identity or to better conform their behaviors to that identity. The law's carveouts for things like "the facilitation of an individual's . . . identity exploration and development" allow counselors from faiths that require facilitating transition to satisfy their religious obligations. *Id.* The law does not contain similar carveouts for people like Ms. Chiles who adhere to faiths that hold more traditional views. Such a regime is not religiously neutral under this court's precedents.

That is the only determination that this Court needs to make before applying strict scrutiny. The lower court's conclusion that the statute is aimed at protecting minors from allegedly harmful procedures, *Chiles*, 116 F.4th at 1223, should certainly be part of that strict judicial scrutiny—and Colorado is free to present evidence that its differentiation of religious faiths is necessary to further a compelling state interest based on scientific or other empirical evidence. That is the sort of evidence that was highlighted to the Court during the oral argument in *Skrmetti* and will probably continue to work its way through litigation in coming years. *See* Oral Arg., *United States v. Skrmetti*, No. 23-477 (argued Dec. 4, 2024) (discussing the Cass Report among other sources of evidence). But such arguments cannot justify allowing the state to exempt its favored religious groups while burdening the free exercise of disfavored religious adherents without facing heightened First Amendment scrutiny.

II. COLORADO'S LAW BURDENS THE PRACTICE OF TRADITIONAL JUDAISM AND ISLAM, WHICH ADHERE TO LONGSTANDING TENETS OF FAITH REGARDING SEX AND GENDER

A. Adherence to Jewish Law Requires a Sex Binary

The practice of Judaism is often described as gendered. *See Feminism and Judaism*, The Pluralism Project, https://tinyurl.com/7m48rc5d (last visited June 10, 2025). More accurately, it is sexed. Much of Orthodox Jewish practice depends on distinguishing between males and females. That famously begins eight days after birth, when Jewish males are circumcised at a *brit milah*. It continues with the onset of the "age

of education," a child's third birthday, when, in many Jewish families, training in Jewish practice begins. Some Jews mark a boy's third birthday with a ritual haircut and recitation of Torah verses, and donning ritual garments such as *kippah* (skullcap) and *tzitzit* (ritual fringes) for the first time. *See The Upsherin*, Chabad.org, https://tinyurl.com/bdhftfkc (last visited June 10, 2025). Girls learn to recite a morning blessing thanking God for creating them as women. In traditional Jewish communities, youth reach legal majority at different ages: girls become *bat mitzvah* at 12, reflecting their earlier maturation and development, while boys become *bar mitzvah* at 13.

Jewish law and practice rely on sex differences even more in adulthood, in strictures that govern all areas of Jewish life, from marriage, sex, and privacy to prayer and even death and burial. Judaism operates through a communal lens rather than an individualistic one. The obligations incumbent upon each Jew at any given time depend on the setting, including the people present and the sexes of those people. Entire communities thus have a stake in identifying the precise number of males and females present in a synagogue or at a Shabbat dinner table. Certain prayers, such as the repetition of the *Amida,* may only be led by men in the presence of a *minyan* (quorum of ten men). *See Davening with a Minyan*, Halachipedia, https://tinyurl.com/49tzt3d6 (last visited June 10, 2025). Others, such as *birkat hamazon* (grace after meals), are led by a man if there are at least three men present, but may—some authorities say *must*—be led by a woman if there are three or more women and fewer than three men present. *See* Rabbi Dr. Ari Zivotovsky, *Tzarich Iyun: Women's Zimun*, OU Torah,

https://outorah.org/p/5707 (reprinted from Jewish Action, Fall 1999). This is not a mere matter of figuring out "who counts"; in Jewish communal life structured by *halacha* (rabbinical law), everyone must be accounted for. *See* Rabbi Dov Lev, *Women and Mitzvot in Judaism*, Aish, Apr. 1, 2025, https://tinyurl.com/3tcunm8j. Sex is a crucial category for determining the responsibilities that every Jew has as part of a community at any given moment. Maintaining the sex binary is accordingly crucial to perpetuating traditional Judaism.

Gender identity, by contrast, is not a concept recognized in traditional Jewish law or its practice. Under *halacha*, the sharp distinction between men and women is a function of biological sex. One's self-conception, whether expressed as a gender identity or any other, is *halachically* irrelevant. When allowed to replace sex, an individual's gender identity can burden traditional communities that rely on sex-based distinctions to determine how the entire community can fulfill its *halachic* obligations.

B. Anti-Therapy Laws Inhibit the Free Exercise of Traditional Judaism

Laws that prohibit the therapy at issue here inhibit the free exercise of Judaism by burdening Jewish patients, therapists, and communities. Most obviously, they restrict Jews who struggle with gender dysphoria from seeking all available avenues for feeling more comfortable with their biological sex. Jews who want to participate in sex-based roles but feel dissociated from their sex should have the right to try to ease their dysphoria so that they can fulfill their religious obligations. Stopping them from receiving the care they seek only serves to drive them away from their community,

preventing the free exercise of a largely communal religion and depriving a small faith community of members who sincerely wish to participate in it.

Under laws like Colorado's, even Jews who accept that biological sex is determinative for Jewish practice cannot seek counseling based on their understanding of what would be best for them and their obligations to God. A Jewish male who wishes to uphold *halacha* individually and as part of a community but experiences gender dysphoria may agree with his community that what is theologically relevant is his sex. He will therefore seek to become more comfortable with his sex. Doing so would allow him to participate in a *minyan* without distress, lead communal prayer rituals, avoid a biblical prohibition against cross-dressing, and more, all without forcing an entire community to rearrange the sex-based arrangements woven throughout its observance of *halacha*. Even if broader society or more progressive strains of Judaism accept that a male of transgender identity is a woman in some meaningful sense, an Orthodox Jewish community would not allow that person to participate in the community as a woman, nor calculate the obligations incumbent upon each Jew in that person's presence as though he were a woman. He would experience a continuing tension between his gender and his desire to participate in his community. Colorado's law prevents him from seeking a type of care that could help alleviate that suffering.

All Jews are responsible for one another. *See All of Israel Are Responsible for One Another*, My Jewish Learning, https://tinyurl.com/ycykh3ft (last visited June 10, 2025). Accordingly, a *halacha*-observant therapist may believe it is imperative that a Jewish gender-dysphoric patient feel more comfortable with his

or her biological sex. In such a situation, everyone involved believes that simply "accepting" one's dysphoria would burden the patient and the community and ultimately preclude the patient's full participation in Jewish life. But the state, having decided that this patient has an inviolable gender identity, aims to prevent all from fulfilling the tenets of their faith. State policies that privilege gender identity over biological sex thus pose an immediate threat to the free exercise of traditional Judaism, while portending even greater clashes about how Jewish communities may conduct their affairs in the future.

C. Anti-Therapy Laws Impede the Free Exercise of Traditional Islam

Traditional Muslim adherents believe that men and women are defined as two distinct biological sexes with important differences and relationships toward one another. The Quran elucidates this, teaching that "[God] created from one soul and created from it its mate and dispersed from both of them many men and women." Surah An-Nisa 4:1. Many Shi'ah and Sunni Muslims alike heed the Prophet Mohammad's words: "men and women are twin halves of each other (Bukhari) . . . by using the analogy of twin half, the Prophet (pbuh) has underlined the reciprocal and interdependent nature of men and women's relationships." *Marriage in Islam*, Why Islam?, Jan. 22, 2025, https://tinyurl.com/2zzmrszx; *see also Women are the Twin Halves of Men*, Kashmir Observer, Mar. 9, 2017, https://tinyurl.com/mwne4fuv. Many Muslims believe that sex is binary, fixed, and immutable, which "[reinforces] the fact that men and women are created from a single source." *Id.*

The Muslim belief that the identities of biological men and women are unique and divinely created has important implications for religious worship. "Men and women in Islam have different roles, responsibilities, and accountabilities, as they differ in anatomy, physiology, and psychology." Ani Amelia Zainuddin & Zaleha Abdullah Mahdy, *The Islamic Perspectives of Gender-Related Issues in the Management of Patients with Disorders of Sex Development*, 46 Arch. Sex Behav. 353, 354 (2017). As a matter of religious obedience, Muslims must observe *ihtisham* (decency), which prevents a Muslim female from sharing a restroom with the opposite biological sex, *hijab* (modesty), which includes both dress and behavior, and *khalwa* (seclusion), which means that a man and woman who are unrelated and unmarried cannot be alone together in an enclosed space. *See*, *e.g.*, Surah Nur 24:31 (describing the concept of *hijab*); Marwan Ibrahim Al-Kaysi, *Morals and Manners in Islam: A Guide to Islamic Adab* 60–61 (1986) (describing prohibitions on sharing a restroom with the opposite sex). In religious worship, men and women sit in separate areas to reduce distractions and protect modesty as a "way of preventing men and women from seeing each other and a way of increasing attention to prayer." *Sisters Object to Barrier between Them and Men in the Mosque*, Islamweb.net, Sept. 29, 2004, https://tinyurl.com/4c5e2xf7 (referencing Fatwa No. 88708). Males, unlike females, also have the obligation of Friday prayers. Thus, Muslims' belief in distinct biological sexes is not only rooted in sacred teachings but goes to the very core of their religious exercise.

An Islamic therapist associated with *amicus* RFI explained that this law would prevent a Muslim therapist from working with the client's religious values:

> In professional counseling, it is in our code of ethics to work with the values of our client. Denying clients this service is contradictory to our very mission to elevate human suffering and contradicts our code of ethics because we are saying they are not entitled to help, in essence imposing another set of values on them. A Muslim therapist who is not allowed to assist clients with issues related to gender and sexuality in congruence with their and the clients beliefs would actively be harming the client.

Statement on file with counsel.

While Islamic teachings do account for *khuntha* (intersex biology)—the presence of both male and female genitalia—these theological discussions only serve to aid comfortable religious observance as *either* male or female. In cases where doctors determine that a *khuntha* individual would be able to live life more comfortably within one of the two biological sexes, surgery is allowed. *See* Zainuddin & Mahdy, *supra*, at 355–56. "There are fatwas from different Islamic countries which give rulings regarding sex change surgery or gender reconstruction surgery . . . [t]hese fatwas generally agree that gender reconstruction surgery for the [*khuntha*] is permissible in Islam" but "totally prohibited" in other cases. *Id.* at 358. Just as some Jewish sources recognize sex-organ abnormalities that have nothing to do with gender identity, *see* Tal Fortgang, *No, the Jewish Tradition Does Not Support Transgenderism*, Nat'l Rev., Mar. 22, 2023, https://tinyurl.com/nz9vbpka; Yaakov Menken, *Judaism's Stance on Gender Is Clear, Despite Attempts To Re-*

write Torah, Newsweek, Mar. 29, 2023, https://tinyurl.com/5ddmzdsn, grappling with such rare cases only serves to illustrate how central the sex binary is to Islam. It certainly has nothing to do with a Muslim's innate sense of self expressed as a gender identity.

In sum, laws banning gender-related talk therapy interfere with Muslim therapists' and patients' religious freedom. They also contradict therapists' mission to alleviate suffering and pain, in essence imposing another set of values on the client in violation of the principles of proper care.

CONCLUSION

For the foregoing reasons, and those stated by the petitioner, this Court should reverse the court below.

Respectfully submitted,

Howard Slugh
JEWISH COALITION FOR RELIGIOUS LIBERTY
2400 Virginia Ave., NW
Apt. C619
Washington, DC 20037
954-328-9461
hslugh@JCRL.org

Ilya Shapiro
Counsel of Record
Tal Fortgang
MANHATTAN INSTITUTE
52 Vanderbilt Ave.
New York, NY 10017
(212) 599-7000
ishapiro@manhattan.institute

June 13, 2025