

No. 24-539

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IN THE  
Supreme Court of the United States

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KALEY CHILES,

*Petitioner,*

v.

PATTY SALAZAR, in Her Official Capacity as  
Executive Director of the Colorado Department of  
Regulatory Agencies, et al.,  
*Respondents.*

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

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**BRIEF OF ERIN LEE AND MARY BUCHANAN  
AS *AMICI CURIAE* IN SUPPORT OF  
PETITIONER KALEY CHILES**

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**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

Amici consist of Colorado parents whose children have previously needed, currently need, or may have need in the future of mental health services, including therapy from a Licensed Professional Counselor or other licensed mental health provider on the subject matter contained in the challenged statutes—specifically the desired mental health treatment that would be supportive of sexual orientation or gender identity that matches their biology. The children of the amici range in age from 9 to 15, with each having unique needs. The families have been harmed by the MCTL in different ways. In 2021, the Lee family sought counseling for issues related to their 12-year-old’s gender identity. The family looked for a counselor whose approach aligns with their values and their daughter’s needs. What they did not realize is that the MCTL bans counselors from approaching issues with their daughter in a way that does not affirm whatever feelings she had – no matter their or their daughter’s therapeutic needs or desires, and regardless of the underlying cause or triggering events. It took several weeks to find a counselor who was open to the idea that transitioning a 12-year-old without a gender dysphoric history might not be the best approach. To the parents and daughter’s dismay, however, the counselor ultimately refused to address gender identity, or the child’s exposure to it, out of fear of losing her license. She felt her only option was

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no person other than amici and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

to avoid the topic altogether because of the threat of running afoul of the MCTL.

As a result of her parents' inability to find a counselor to address her need, the child's emotional distress deepened. The delay in obtaining counseling, coupled with the therapist's refusal to address her concerns, led to greater confusion, depression, and ultimately suicidal thoughts. While the child is now healing, she and her parents attribute some of the prolongment of her past depression to the inability to freely discuss these issues with a counselor who would address it in the way that is consonant with her and her parents' goals. She could have had those helpful discussions in a professional setting were it not for the MCTL. The daughter has since expressed a deep distrust of therapists.

Similarly, Mary Buchanan and her daughter suffered through two years of pain because of the MCTL and matching school policies. When Ms. Buchanan's daughter was in fifth grade, she started having gender dysphoric thoughts that she has come to realize stem from childhood trauma. At the time that she needed help addressing those thoughts, the school counselor was limited in her practice under the MCTL and matching school policies. So, the school counselor was not free to properly explore how trauma might have caused her feelings or counsel the child according to the child's goals. Her depression deepened, and due to suicidal ideations, she was put on a 72-hour hold at a Colorado hospital. There, sadly, she encountered the same response from treatment providers – unwanted affirmation of her dysphoric feelings without first understanding that the feelings stemmed from childhood trauma. The girl was sent

home with boys' underwear and without the help she desired and needed.

It was only when Ms. Buchanan pulled her daughter from school and worked together with a provider willing to at least partially explore these things despite the MCTL that she was able to help her daughter heal and work through past trauma. The girl is continuing in the helpful therapy to address her needs and goals and is doing much better. She no longer experiences suicidal ideation. Yet the MCTL continues to harm her in that she could still benefit from working with a therapist who is able to speak more freely to her situation and without fear of regulatory action. As it is, Mary's daughter must wait until she turns 18 to get the most out of therapy.

For their children, parents amici desire the freedom to select a mental health professional whose treatment approach aligns with the needs and desires of their children without the constraints imposed by the MCTL. These parents deserve access to therapeutic options that do not necessarily push their children in only one therapeutic direction—especially if their children have questions about their orientation, identity, feelings, or attractions. These parents have a vested interest in the state allowing therapists the freedom to engage their children in conversations that further their therapeutic goals and more fully treat their children, without artificial legislative limitations that fail to account for each child's unique experiences, needs, or directives.

### **SUMMARY OF THE ARGUMENT**

The MCTL creates significant barriers for parents and children seeking mental health support to navigate issues related to gender identity and same-

sex attraction. It is a prior restraint on speech, it denies the fundamental right of fit parents to direct the care and nurture of the child, and it revokes the right of mental health professionals to provide treatment as they deem appropriate. As such, it violates the Constitution.

Mental health professionals regulated by the MCTL are prohibited from discussing these critical topics openly from any perspective other than that prescribed by the government, even when clients express goals or request guidance that would lead a mental health professional to counsel them in a way that conflicts with the MCTL. The MCTL amounts to a legislative imposition on free speech that is not rooted in accepted therapeutic and scientific understanding. It undermines Constitutional protections without a compelling governmental interest and does not do so in the least restrictive manner. The United States Constitution does not grant to the State of Colorado authority to foreclose fundamental parental rights to access needed mental health treatment. Neither does it confer upon the State of Colorado authority to restrict the speech of mental health providers in this way.

## ARGUMENT

### I. COLORADO PARENTS AND CHILDREN SHOULD HAVE CHOICES.

#### A. Parents in the Third and Eleventh Circuits can choose mental health treatment that comports with their children's needs, but the same is not true for parents in Colorado.

The MCTL limits licensed mental health providers in their therapeutic determinations and limits Colorado parents in their provider options. Parents in the Third and Eleventh Circuits with children who need or desire mental health treatment for issues involving gender identity and same-sex attraction can find counselors that will help their children in a way that aligns with their worldview and has been shown to help other children. Colorado parents cannot. Despite finding *licensed* providers who take their insurance, and despite their searches for licensed providers due to a perceived higher standard of treatment due to regulation of the profession, Colorado parents must nevertheless sacrifice their therapeutic goals and, possibly, the long-term health of their children because of the MCTL. Alternatively, Colorado parents, like the parents amici, when presented with the restrictions imposed by the legislature, must choose to seek therapy under those impositions or decline to seek help from licensed professionals entirely. It should not be that parents in other states have more constitutional protections than do parents in Colorado.



**B. The MCTL conflicts with other State law**

C.R.S. § 12-245-203.5 provides that children from the age of 12 own their mental health privilege, subject to certain provisions, including that the child at issue seeks mental health services knowingly and voluntarily and that the provision of psychotherapy services is clinically indicated and necessary to the child's well-being. However, children who seek guidance from licensed therapists to explore whether their same-sex attraction or gender identity concerns are truly desired, including when such feelings stem from past abuse, the MCTL dictates that they must be denied support for those directives. Therapists are left with a difficult choice: either provide care that conflicts with the child's request under C.R.S. § 12-245-203.5 or refuse treatment due to the MCTL. Either decision risks disciplinary action against the therapist's license and leaves these children without support, regardless of whether the desired therapy is clinically indicated. Thus, even children's statutory rights under existing Colorado law are denied by the MCTL.

**II. THE CHALLENGED COLORADO LAW IS SUBJECT TO HEIGHTENED SCRUTINY UNDER THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT.**

"Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015).

**A. The MCTL targets speech based on its communicative content.**

The MCTL applies to so-called “conversion” therapy, “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.” C.R.S. § 12-245-202(3.5)(a). At the same time, the law allows for practices or treatment that provide “[a]cceptance, support, and understanding for the facilitation of an individual’s coping....” C.R.S. §12-245-202(3.5)(b)(I). For a regulatory body to determine whether a provider’s treatment includes efforts to change sexual orientation, it must look to the communicative content of the provider’s speech. The Tenth Circuit Opinion in the instant case, by relabeling speech regulated conduct, opens the door for the Colorado legislature to prohibit other professionals, such as licensed barbers from suggesting certain haircuts or licensed athletic trainers from offering advice on training regimens. However, the MCTL does so in a context of paramount importance and of constitutional significance. The restrictions of the MCTL should be subject to strict scrutiny, which allows for narrowly tailored regulations for compelling state interests, including the protection of minors. There is not a compelling state interest in controlling the therapeutic goals of parents or children. Even if there were, MCTL restrains parents and children broadly.

**B. The State has put itself in the shoes of parents.**

The MCTL passed under the guise of protecting children but is not based in objective scientific

research with long-term studies, and it ignores clinical indications that mental health providers are trained to determine and treat, as well as the fact that a regulating body oversees those providers. Therefore, there is no compelling governmental interest in imposing a prior restraint on speech (or parental or children's rights). The MCTL effectively forecloses all discussions about whether transitioning children or affirming potentially transient same-sex attraction is good for them in the long-term and in every case. The science is not conclusively in the MCTL's favor. Indeed, the sole approach (in Colorado) of affirming a child's gender identity, even when it differs from that child's biological sex, leads children down a path of state-mandated inculcation of ideas that is untethered to determinations of appropriate mental health care and may also be contrary to the treatment sought. Moreover, the treatment trajectory required by the MCTL points to a future marked by medical intervention and drugs, including puberty blockers and cross-sex hormones, with long-term health complications. One study conducted in England demonstrated negative side effects of puberty blockers such as lowered bone density and stunted growth, without showing a change in the psychological well-being of the children studied. Carmichael et al., 2021, p. 18; Brown & Stathatos, 2022. Cross-sex hormones prescribed to children also demonstrated a plethora of side effects, including blood clots in veins and permanent infertility. CDC, n.d.; NHS England, 2016, p. 8; Brown & Stathatos, 2022.

There is a presumption that fit parents act in the best interests of their children. *Troxel v. Granville*, 530 U.S. 57, 68 (2000). The MCTL improperly

determines that 1) no Colorado parent—fit or unfit, and no child, should have the option of pursuing any type of regulated therapy that might fall under the sweeping definition of so-called “conversion therapy,” 2) no licensed mental health provider may speak in connection with a therapeutic approach that contravenes the Colorado legislature’s therapeutic strictures.

### CONCLUSION

Colorado’s MCTL violates rights long-protected under the United States Constitution, including free speech and parental rights. History is devoid of examples of legislative enactments that prescribe only certain mental health approaches and disregard the needs, goals, and desires of the patient. In fact, historically, medical treatment has been protected as private between the patient and the physician, including where minors are the patients. Here, Colorado seeks to accomplish political goals at the expense of children’s and their parents’ treatment goals, parental rights, and First Amendment rights. Certain other states, however, allow parents and children the opportunity to find medical treatment, including mental health treatment, that aligns with their goals. This honorable Court should find for the Petitioner and thus protect the rights of parents and children to obtain the mental health care they choose.

Respectfully submitted,

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