No. 25-606

IN THE

Supreme Court of the United States

JOHN STOCKTON, *et al.*,

Petitioners,

v.

NICK BROWN, ATTORNEY GENERAL OF WASHINGTON, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONERS' REPLY BRIEF

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The Court's March 31, 2026, 8-1 decision in *Chiles v. Salazar*, 607 U.S. ___ (2026), held that viewpoint-based restrictions on professional speech require strict scrutiny under the First Amendment, that there is no separate category of "professional speech" subject to lesser protection, and that the government may not suppress speech by relabeling it as conduct or treatment.

Respondents' brief, filed April 3, 2026, dismisses *Chiles* as "[b]road gestures towards professional speech" that do not affect the threshold holdings below. BIO 34. That misreads the decision. *Chiles* did not gesture broadly. It held that the constitutional framework on which the lower courts' proceedings rest is wrong. The third *Younger* factor requires an important state interest. After *Chiles* and *Wilkinson* (as discussed below), the state has no cognizable interest in enforcing a program of viewpoint-based discipline against physicians for their public speech, and the flagrantly unconstitutional exception to *Younger* applies.

That this case was resolved on threshold grounds does not insulate it from this Court's consideration. *See City & County of San Francisco v. Sheehan*, 575 U.S. 600, 610 (2015) (Scalia, J.) (Court may grant review on attendant threshold questions connected to a compelling constitutional issue); *Camreta v. Greene*, 563 U.S. 692 (2011) (granting review to resolve important constitutional question despite threshold obstacles).

The lower courts in *Kory v. Bonta*, No. 24-932, and this case erroneously confined their analysis to facial and as-applied challenges to the underlying statutes, without recognizing that a challenge to an enforcement policy

and practice targeting viewpoint speech states a First Amendment claim even when the underlying statute is neutral. *NRA v. Vullo*, 602 U.S. 175 (2024) (9-0, Sotomayor, J.), was decided before either Ninth Circuit ruling. Neither panel addressed it.

On April 1, 2026, the Washington Supreme Court denied the petition for review in *Wilkinson v. Washington Medical Commission*, No. 1046740, making final the Court of Appeals' holding that the Commission's discipline of a physician for public COVID-19 speech violates the First Amendment. 576 P.3d 1191 (Wash. Ct. App. 2025). Respondents mischaracterize it. In footnote 5, page 21, Respondents quote *Wilkinson* at 1212 for the proposition that the Commission's policy "does not prohibit physicians from publicly declaring their disagreement with official COVID-19 policy statements." BIO 21-22 n.5.

But that passage describes the Commission's own characterization of its policy, not the court's holding. The actual Commission policy statement encourages complaints against physicians who "generate and spread" COVID-19 misinformation, without limitation to patient care, and specifically lists ivermectin and hydroxychloroquine as falling outside the standard of care. Pet. 1-3 (reproducing the policy). The *Wilkinson* court rejected the Commission's framing, held that the discipline imposed for the physician's public blog posts violated the First Amendment, and reversed the sanction. That holding is now final Washington law. The Commission is prosecuting Petitioners Eggleston and Siler for violating a written policy that has been held unconstitutional by the Washington courts.

On April 7 and 8, 2026, the Commission withdrew its Statements of Charges against Petitioners Siler and Eggleston. The withdrawals were not stated as with prejudice.

Respondents' remaining arguments regarding the record were addressed in the petition. Pet. 21-29.

The petition should be granted; the judgment below should be vacated and the case remanded based on *Chiles* and *Wilkinson*. Specifically, Petitioners respectfully request that this Court:

1. Find that the lower courts erred by dismissing under *Younger* abstention because the state has no interest, compelling, important, or otherwise, in enforcing an unconstitutional policy and practice.

2. Resolve the continuing vitality of the prudential ripeness doctrine. Respondents invoke prudential ripeness as an independent basis for affirmance, asserting that Petitioners "do not meaningfully challenge" it. BIO 24. Petitioners did challenge it. The petition argued that "*Wilkinson* completely eliminates the lower court's prudential ripeness argument." "Ripeness cannot require Petitioners to exhaust a proceeding the State has no legal authority to conduct." Pet. 18 n.11, 28-29. The panel below acknowledged it lacked "the power to abolish" the doctrine, App. A at 39a n.13, and this Court has recognized the doctrine is "in some tension" with the principle that a federal court's obligation to hear cases within its jurisdiction is "virtually unflagging." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014); App. A at 38a-39a. A party raising a structural constitutional

challenge to an agency proceeding need not await its conclusion. *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023) (9-0, Kagan, J.).

3. Recognize that a challenge to an enforcement policy and practice targeting viewpoint speech states a First Amendment claim even when the underlying statute is facially neutral. *NRA v. Vullo*, 602 U.S. 175 (2024) (9-0, Sotomayor, J.).

4. Hold that public viewpoint speech by professionals is subject to the strictest possible scrutiny, and government restrictions on such speech are (or are likely) *per se* unconstitutional.

Respectfully submitted,

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