

No. 25-915

In the
Supreme Court of the United States

ROBERT J. MURPHY,

Petitioner,

v.

SUPREME COURT OF PENNSYLVANIA, ET AL.,

Respondents.

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

PETITION FOR REHEARING

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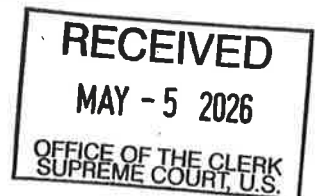


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PETITION FOR REHEARING

Petitioner respectfully requests this Court grant re-hearing of its order denying certiorari entered April 6, 2026 retitled and docketed on February 4, 2026 from the Third Circuit United States Court of Appeals Order exercising original jurisdiction imposing reciprocal discipline effective prospectively on October 21, 2025 based on the Pennsylvania Supreme Court's imposition of original discipline effective December 19, 2019 suspending petitioner from the practice of law for 5 years. Certiorari Pet.App.1a.

Petitioner requests re-hearing limited to intervening circumstances of substantial or controlling effect or other substantial grounds not previously presented pursuant to this Court's very recent substantial or controlling decision on March 31, 2026 in *Chiles v. Salazar*, 146 S. Ct. 1010 specifically deciding First Amendment protects all professionals' right to think and speak freely; and all as applied laws and regulations regulating *speech qua speech* based on its subject matter or its communitive content are subject to "strict scrutiny and presumptively unconstitutional" including as applied to petitioner's *speech qua speech* involving administrative and judicial removal proceedings that are based on underlying truthful facts involving "admitted ex parte communications" which petitioner says are "improper" based on petitioner's professional viewpoints and opinions pursuant to all applicable then existing Pennsylvania law and decisions in judicial proceedings which are also subject to the same strict scrutiny First Amendment protection as protected *Chiles* as applied medical free speech involving her

gender identity conversion therapy viewpoint and opinion!

Petitioner's right to the same as applied protection involving his viewpoint pursuant to his right to judicial free *speech qua speech* in judicial proceedings as afforded to *Chiles* involving medical proceedings is also protected under the equal protection clause pursuant to the Fourteenth Amendment to the United States Constitution.

Chiles specifically reiterated First Amendment zealously protects every individual's right to think and speak freely and any law or regulation regulating speech based on its subject matter or "communicative content" is subject to "strict scrutiny and presumptively unconstitutional." More specifically this Court decided that governmental law and regulations as applied to licensed medical professional therapist, *Chiles*, which restricts free expression of "medical speech" based on subject matter or "communicative content" are subject to "strict scrutiny" and presumptively unconstitutional violating medical professional's fundamental right to think and speak freely involving professional therapeutic practice and treatment involving so-called "conversion therapy" regarding a minor client's sexual orientation or gender identity.

This Court specifically recognized as well the greater danger associated with regulations when the government seeks not just to restrict speech based on its subject matter but also restricts *speech qua speech* as applied to the professional based on the professional speaker's point of view, *i.e.* professional "opinion or perspective" which professional individuals may freely express on the subject under consideration while practicing their profession violated a licensed professional's

fundamental right to freely speak the professional's "opinion or perspective" on the subject under consideration. *Id.* Violation of the professional's opinion or perspective on the subject under consideration is all the more a blatant and egregious form of content speech regulation clearly prohibited under the First Amendment as applied to professionals including as applied to petitioner who freely expresses *speech qua speech* his professional viewpoint and opinion on the subject involving underlying admitted "ex parte communications" in a judicial proceeding constitutes an impropriety in his professional viewpoint and opinion which is not subject to any traditional content-based restrictions as recognized in *Chiles*.

Chiles rejected government's traditional arguments providing rational or intermediate scrutiny involving two kinds of content-based restrictions that can apply to professional speech without triggering strict scrutiny.

The very few limited historic and traditional exceptions involving content-based restrictions on speech which will not automatically trigger strict scrutiny involve two kinds of content based restrictions that can apply to professional speech including categories that include fraud, defamation and fighting words: first, laws and regulations requiring speakers to disclose only factual, non-controversial information in "commercial speech"; second, laws and regulations regulating conduct in ways that incidentally sweep in speech may also generally avoid strict scrutiny. However these exceptions are clearly not based on the fact that a licensed professional happens to speak his professional viewpoint in the practice of his profession.

From these general principles *Chiles* specifically decided laws and regulations regulating the content of speech cannot avoid searching First Amendment review just because it mostly regulates non-expressive conduct quoting and relying on *Cohen v. California*, 403 U.S. 15 involving conduct wearing a shirt containing a epithet implicated core First Amendment concerns because the only “conduct” engaged in was speech he displayed; *Holder v. Humanitarian Law Project*, 561 U.S. 1 involving material support to foreign terrorist organizations which mostly addressed conduct but as applied particularly involving prosecution of lawyers, doctors and others for their speech and expert advice involving the use of humanitarian and international law to resolve disputes required strict scrutiny. This Court decided that speech-incident-to-conduct exceptions including laws and regulations which mostly regulates non-expressive conduct are subject to strict scrutiny and presumptively unconstitutional because the question is not whether a law mostly addresses conduct and only sometimes sweeps in speech. Rather the question involves whether the law or regulation in question restricts speech only because it is integrally related to unlawful conduct such as the sale of contraband bound up with traditional criminal conduct; or whether the law restricts expressive conduct only for reasons unrelated to its conduct such as an ordinance against outdoor fires would not require a court to apply strict scrutiny even if it prohibited burning a flag in protest because the law forbids conduct without regard to the message it may convey.

Therefore this Court concluded that Colorado’s conversion therapy law involving professional therapeutic speech treatment does not regulate speech inci-

dent to conduct because the speech bears a close causal connection to some separately unlawful conduct like a traditional crime nor does the law regulate a professional speech for reasons unrelated to its content like the ban on outdoor fires that happens to sweep in flag burning.

This Court concluded that Colorado's law as applied to *Chiles* effectively attempted to recast *Chiles* speech involving her medical free expression of conversion therapy treatment involving her viewpoint as regulating professional conduct incident to speech amounted to semantics and an inaccurate labeling game which nullifies her First Amendment protection to freely speak her professional viewpoint in the conduct of her profession. As applied to *Chiles* the law regulates what she may say and her speech does not become conduct just because the state may call it conduct. On the contrary the law as applied to *Chiles* does not regulate speech incident to conduct but regulates "speech as speech" involving her professional viewpoint and opinion on the subject involving gender identification therapy subject to strict scrutiny which is presumptively unconstitutional.

In every case involving whether regulations restricting professional viewpoints violate strict scrutiny under First Amendment protections the question is not whether the regulation mostly regulates non-expressive conduct but whether, in fact, the law regulates professional *speech qua speech* involving the professional's viewpoint *i.e.* opinion and perspective as applied in the specific case based on the context from review of the entire record and federal courts are not bound by the state's labels.

Pennsylvania intentionally imposed original discipline suspending petitioner from practice of law for five years commencing 12/19/2019 on the basis that all petitioner's removal proceedings were based solely on petitioner's allegedly false accusations that Bachman, Dombrowski and subsequently Hagan engaged in conduct involving "improper ex parte communications and contacts and, in fact, admitted to having done so" involving their off-the-record declarations at unknown dates and times allegedly conducting multiple ex parte communications, contacts and proceedings over the telephone via Bachman's secretary, Meehan, commencing on 2/18/2010 without the presence of petitioner involving a Workers' Compensation matter pending before Bachman subsequently transferred to Hagan involving alleged multiple material orders which were never issued, entered, docketed, exist and unappealable, subsequently proven false. *See* Certiorari Pet.App.147a-149a, ODC Exhibit 14.

Pennsylvania simultaneously specifically refused to decide whether the underlying factual allegations that Bachman, Dombrowski and subsequently Hagan, in fact, engaged in "ex parte communications" were true or whether petitioner reasonably believed the statements were true based upon exhaustive diligent research.

Pennsylvania only concluded that petitioner's accusation involving petitioner's communicative content pursuant to his viewpoint and opinion that Bachman, Dombrowski and Hagan's admitted factual "ex parte communications" were "improper" solely based on all then applicable Pennsylvania law and decisions in 2010 including specifically the Workers' Compensation Removal Statute 77 PS 2504(a)(1-3), (5-7), and (13)

were labeled as false exclusively because accusations that Bachman, Dombrowski and Hagan conducted “improper ex parte communications and admitted to having done so” purportedly violated the non-existent subsequently enacted inapplicable 2014 Judicial Code, Canon 2, Rule 2.9 based on the administrative exception to prohibited “ex parte communications” initiated by common law elected judges without any evidence whatsoever as follows:

“This matter arose out of proceedings in a Workers Compensation matter in that matter respondent repeatedly made false allegations that two Workers Compensation judges [Bachman, Hagan and Dombrowski] had engaged in improper, ex parte communications and, in fact, admitted to having done so As a preliminary matter, we find that ex parte communications from a court to counsel are proper in certain circumstances. The Pennsylvania Code of Judicial Conduct Rule 2.9 permits judges to engage in ex parte communications for administrative purposes provided that they do not deal with substantive matters or issues on the merits, where the judge reasonably believes the communications will not result in one party gaining a procedural or tactical advantage, and where there is adequate notice to both sides. Without deciding whether the subject communications were ‘ex parte,’ we conclude that the calls made by Ms. Meehan were not prohibited under the [2014] Code of Judicial Conduct, as there is no evidence of record that the

subject calls included a discussion of the merits of the case or any fact in issue.”

Certiorari Pet.App.32a-33a (ODC F.F. 12-13), Certiorari Pet.App.57a- 59a, 80a-84a, 86a, 90a, 115a, 147a-150a.

In fact the Pennsylvania state disciplinary record confirms that Pennsylvania never alleged, proved or found petitioner accused Bachman, Dombrowski and Hagan discussed any fact in issue or the merits of the case; albeit Bachman and Hagan specifically admitted the subject admitted ex parte communications including commencing on 2/18/2010 clearly involve the merits of the pending compensation case because it prevented the claimant, Wilson, from presenting evidence. The disciplinary proceedings also expressly decided that the subject ex parte communications ODC Exhibit 14 involved critical material orders immediately granting supersedeas suspending and ultimately eliminating claimant’s Workers Compensation benefits which had previously been confirmed after approximately 20 years litigation, which clearly does not constitute an administrative exception. Certiorari Pet.App.35a (F.F. 21), Certiorari Pet.App.147a-150a, 153a, 163a

The Third Circuit specifically recognized that if a removal proceeding including in the Workers Compensation matter determines that “. . . if an improper ex-party contact to have occurred in the Workers’ Compensation case, there would no longer be a basis for the disciplinary proceedings”. *See In Re: Robert J. Murphy* U. S. C.A. Third Circuit No. 22-1429, *id.* page 3.

On 10/21/2025 the Third Circuit imposed reciprocal discipline prospectively for five years commencing on that date rejecting that petitioner’s content based speech qua speech that his accusations that Bachman,

Dombrowski and subsequently Hagan in 2010-2011 clearly engaged, in fact, in ex parte communications which in his viewpoint and opinion were clearly “improper and prohibited” because all then existing Pennsylvania law and decisions including specifically the exclusively applicable Pennsylvania Workers’ Compensation Removal Statute 2504(a)(1-3), (5-7), and (13) involving all removal proceedings involving unelected administrative pending Workers Compensation judges involving Workers Compensation proceedings are specifically and expressly improper and prohibited their conduct engaging in any ex parte communications without any exceptions much less administrative exceptions. Moreover, although not applicable to removal proceedings involving Workers Compensation judges nonetheless the then existing 2010 Judicial Code analogously also prohibited elected common law judges from engaging in any ex parte communications without any exceptions including administrative exception for decades. *See In Re Larsen*, 616 A. 2 d 529 (Pa. 1992) specifically deciding long ago the Pennsylvania Supreme Court in an exhaustive opinion decided Justice Larsen violated ethical rules based on the fact, i.e. act and conduct of ex parte communication with trial judge because ex parte communications involving all attorneys, judges and justices in a pending case are improper or, at a minimum, involves appearance of impropriety and specifically prohibited although without improper motive based on then existing 2010 Judicial Code effectively rejecting any harmless error analysis as follows:

“We find that such a [ex parte] tip violates the rule forbidding all attorneys (including judges and justices) to communicate with a judge

regarding a case, outside of the presence of one or more of the parties or their attorneys, and that a recommendation of discipline would seem appropriate despite the absence of any improper motive for the improper ex parte communication. . . . While all ex parte communications with judges regarding cases pending before those judges, may be equally prohibited, all ex parte communications are not equally sanctionable.”

Id. 530, 558, 560. This decision has been continuously followed throughout the relevant time period in 2010-2011 specifically common law elected judges confirming petitioner’s foregoing truthful viewpoint that ex parte communications without the presence of petitioner by Workers Compensation judges are also clearly improper raising a reasonable question involving their prejudice requiring removal without any exceptions much less an alleged administrative exception based on the unconstitutional retroactive application of the 2014 Judicial Code, Canon 2, Rule 2.9 by the Pennsylvania Supreme Court decision involving the alteration and novel construction of law unexpected and indefensible by reference to law which had been expressed prior to the conduct at issue in 2010 which itself clearly violates fundamental constitutional right to due process in violation of all *Selling* infirmities. *See In Re Trukula*, 699 A. 2d 3 (Pa. Ct. Jud Disc. 1997); *In Re De Leon*, 967 A. 2d 460 (Pa. Ct. J. D. 2008); *In Re Segal*, 173 A. 3d 603 (Pa. 2017); *In Re Roca*, 173 A. 3d 1176 (Pa. 2017).

It is undisputed and indisputable that the disciplinary record did not and refused to decide whether petitioner’s truthful underlying factual accusations that Bachman, Dombrowski and subsequently Hagan

actually and admittedly, in fact, engaged in ex parte communications and therefore could not and did not decide this underlying factual component of petitioner's accusations were false. For example petitioner did not accuse Bachman, Dombrowski and Hagan of robbing a bank or were drunk as the underlying factual basis upon which petitioner pursued removal proceedings. Petitioner freely expressed his foregoing true viewpoint and opinion pursuant to his *speech qua speech* content and communication that Bachman, Dombrowski and Hagan's underlying factual admissions confirmed they engaged in underlying admitted ex parte communications which were improper and prohibited which viewpoints are entitled to the same strict scrutiny afforded *Chiles* to determine whether petitioner's professional viewpoints and opinions are clearly protected under the First Amendment prohibiting the Third Circuit from imposing any reciprocal discipline including prospectively based on Pennsylvania's disciplinary decision manifestly violating petitioner's fundamental right to freely think and express his viewpoints and opinions in order to protect his client's fundamental due process rights in judicial proceedings which are entitled to the same strict scrutiny as this Court afforded the free expression by *Chiles* in medical proceedings.

In *United States v. Skrmetti*, 605 U.S. 495 (2025) [No. 23-477, Decided June 18, 2025] the Fourteenth Amendment's command that no State shall "deny to any person within its jurisdiction the equal protection of the laws," U.S. Const., amend. XIV includes any as applied law or regulation which restricts content communicative free expression as occurred involving petitioner's as applied viewpoint and opinion that the

underlying truthful factual accusations that Bachman, Dombrowski and subsequently Hagan engaged in “improper ex parte communications” involves his truthful viewpoint and opinion pursuant to this Court’s decision in *Chiles* and also requires strict scrutiny and violates petitioner’s fundamental privileges, rights and immunities as applied to free speech protection, contrary to equal protection!

Respectfully submitted,

/s/ Robert J. Murphy

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May 1, 2026

RULE 44.2 CERTIFICATE

I, ROBERT J. MURPHY, petitioner pro se, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:

1. This petition for rehearing is presented in good faith and not for delay.

2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.

/s/ Robert J. Murphy
Petitioner

Executed on May 1, 2025



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