SUPREME COURT
OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

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KALEY CHILES,)

Petitioner,)

v.) No. 24-539

PATTY SALAZAR, IN HER OFFICIAL)

CAPACITY AS EXECUTIVE DIRECTOR OF)

THE COLORADO DEPARTMENT OF)

REGULATORY AGENCIES, ET AL.,)

Respondents.)

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Washington, D.C.

Tuesday, October 7, 2025

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:05 a.m.

APPEARANCES:

JAMES A. CAMPBELL, ESQUIRE, Lansdowne, Virginia; on behalf of the Petitioner.

HASHIM M. MOOPPAN, Principal Deputy Solicitor General, Department of Justice, Washington, D.C.; for the United States, as amicus curiae, supporting the Petitioner.

SHANNON W. STEVENSON, Solicitor General, Denver, Colorado; on behalf of the Respondents.

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P R O C E E D I N G S

(10:05 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 24-539, Chiles versus Salazar.

Mr. Campbell.

ORAL ARGUMENT OF JAMES A. CAMPBELL

ON BEHALF OF THE PETITIONER

MR. CAMPBELL: Thank you, Mr. Chief Justice, and may it please the Court:

Colorado forbids counselors like Kaley Chiles from helping minors pursue state-disfavored goals on issues of gender and sexuality. This law prophylactically bans voluntary conversations, censoring widely held views on debated moral, religious, and scientific questions. Aside from this law and recent ones like it, Colorado hasn't identified any similar viewpoint-based bans on counseling.

These laws are historic outliers. In NIFLA, this Court protected professional speech, highlighting the dangers of censoring private conversations between professionals and their clients, and this Court rejected by name two lower court decisions upholding laws like

Colorado's. But the Tenth Circuit gutted NIFLA's speech protection.

Colorado insists that its law is subject only to rational basis review, yet that would allow states to silence all kinds of speech in the counseling room, such as disfavored views on divorce or abortion. If heightened scrutiny doesn't apply, states can transform counselors into mouthpieces for the government.

Here, Colorado can't satisfy any level of heightened scrutiny. It didn't seriously consider any less restrictive alternatives. And Colorado can't prove harm because it hasn't cited a study focusing on what's at issue here: voluntary speech between a licensed professional and a minor. Nor can Colorado deny that many people have experienced life-changing benefits from the kind of counseling that Ms. Chiles wants to provide.

The First Amendment doesn't permit Colorado's censorship.

I welcome the Court's questions.

JUSTICE THOMAS: In its introduction of its brief, Colorado says that the only thing

that the law prohibits therapists from doing is performing a treatment that seeks the predetermined outcome of changing a minor's sexual orientation or gender identity because the treatment is unsafe and ineffective.

One, is this what Colorado argued below? And, two, is that your reading of the Colorado statute?

MR. CAMPBELL: Colorado took a different position below in its motion to dismiss, specifically Footnote 3, and on page 10 of its opposition to the motion for preliminary injunction, it recognized that efforts to change unwanted same-sex behavior or to reduce unwanted same-sex attraction would indeed violate the law. And that's contrary to the position it's taking now.

I do think, if we look at the plain language of the statute, we will find that what Ms. Chiles alleges in this case falls squarely within it. The statute says that there are -- can be no efforts to change sexual orientation or gender identity, including efforts to change behavior, gender expression, or attraction. On page 207 of the Petition Appendix, Ms. Chiles

alleges in her verified complaint that sometimes she helps clients who want to reduce unwanted same-sex attraction, change unwanted same-sex behavior, and to resolve dysphoria that they're experiencing with their bodies.

JUSTICE SOTOMAYOR: Counsel, you --

MR. CAMPBELL: All of that --

JUSTICE SOTOMAYOR: -- you are right that that fits the definition of the law, but we have been very clear in Susan B. Anthony that there has to be a sufficiently imminent and credible threat of prosecution. We've said merely having a law on the books is not enough. A chilling effect doesn't exist.

This is an unusual case because we have basically six years of no enforcement of this law, three before this lawsuit, three since, and we have the entity charged with administering the law saying we're not going to apply it to your kind of -- of therapy.

So how does that fit into being an imminent threat of prosecution? Yes, you have an argument. They've disavowed it. How does that give you standing?

MR. CAMPBELL: I don't believe that

the state has disavowed enforcement. The state is relying on a misreading of the allegations in this claim -- case to say that there's no standing, but they have not disavowed enforcement. If Colorado truly believed that it wouldn't enforce the law and that Ms. Chiles wasn't --

JUSTICE SOTOMAYOR: All right. So -- so tell me what kind of disavowal you would need to find no standing. Would it be sufficient to say that consent, which is what your complaint claimed, that your therapy is consensual talk therapy where you would seek to change the behavior of a child only if that's what they want -- correct? Am I articulating it correctly?

MR. CAMPBELL: That is certainly an aspect of what Ms. Chiles would like --

JUSTICE SOTOMAYOR: No, okay -- I don't want an aspect. Define your talk therapy. And then, when they get up, they can tell us whether they're disavowing any enforcement of that kind of talk therapy.

MR. CAMPBELL: I -- I would go back to what I referenced before, which is Petition

Appendix page 207 and --

JUSTICE SOTOMAYOR: Counselor, please answer my question.

MR. CAMPBELL: I -- I -- I'm trying to answer your question.

JUSTICE SOTOMAYOR: What is your talk therapy and -- that you want them to say they will not enforce it against?

MR. CAMPBELL: Ms. Chiles helps clients when their goals are to resolve gender dysphoria by getting comfortable with their body and realigning their identity with their sex. She also helps them if they're experiencing unwanted same-sex attraction, if that's their goal, to reduce it. And she helps them deal with issues of unwanted same-sex behavior.

That's the kind of counseling that we've alleged in the complaint. And, here, there's a credible --

JUSTICE SOTOMAYOR: Would any of that include what's -- talked about as aversion therapy, which is encouraging them to vomit, encouraging them to go into electric shock treatment, encouraging -- the typical

aversion-type therapy?

MR. CAMPBELL: No. Ms. Chiles does not do any of that. All she does is speech in her -- in her counseling.

JUSTICE SOTOMAYOR: And does that -- so what behavior does that include? Is that include date other people of your --

MR. CAMPBELL: No. She --

JUSTICE SOTOMAYOR: -- of the opposite sex?

MR. CAMPBELL: No, she does not -- that's not the kind of counseling she engages in. She engages in a discussion where her and the clients explore via concepts of identity, behavior --

JUSTICE SOTOMAYOR: So go back to my last part of my question. If they disavow enforcement of that kind of talk therapy, do you have standing in this case?

MR. CAMPBELL: We still have standing in this case.

Over the last few weeks, there have been anonymous complaints filed against my client, and those complaints are now being investigated by the State of Colorado for

allegations that she's violating the very law that we're challenging.

So we had a credible threat of enforcement before. Because there's no disavowal, anyone can file a complaint at any time, which this Court recognized bolsters a credible threat of enforcement in SBA List. But now that the state is actively investigating our client for supposedly violating this law --

JUSTICE SOTOMAYOR: Well, they haven't -- they -- okay. We're -- we're -- we're in a vicious cycle because, if they get up here and say they're disavowing, then they won't be investigating.

MR. CAMPBELL: But, regardless, if they disavow, it's only based on not only a misreading of the statute but also a misreading of the allegations in the complaint.

As we pointed out in our reply brief, there are often uses of portions of quotes, and the State of Colorado is ignoring the rest of the sentences in the allegations.

Once those are read, just as the lower courts found, there is standing in this case.

CHIEF JUSTICE ROBERTS: Counsel --

JUSTICE GORSUCH: Counsel --

CHIEF JUSTICE ROBERTS: -- how does your position change if, in addition to the counseling, there is more what I'll call medical treatment, whether it's medications, shots, whatever? Does that alter your position?

MR. CAMPBELL: It -- it certainly does alter our position.

So, as this Court talked about in NIFLA, when speech is incidental to regulated conduct, then that changes the analysis. And so, if we were in the medical context and there was something like administering drugs, performing procedures, conducting examinations, that would take it outside of the arguments we're making into a different bucket.

JUSTICE KAGAN: How about if it's just both? In other words, the speech isn't incidental to giving somebody a prescription for medicine, it's -- it's -- it's speech and it's giving somebody a prescription for medicine.

MR. CAMPBELL: It would depend on how

closely connected they are. So, if the speech is describing how to take the medication, then that would be incidental. It --

JUSTICE KAGAN: Right. But -- but, if it -- if the speech is the speech that your client engages in and, in addition, she engages in something that's non-speech, would we look at it separately, or would we look at it as a package?

MR. CAMPBELL: If they're sufficiently disconnected, I think you would look at them separately.

And my client doesn't have the authority to prescribe drugs because she's not a psychiatrist.

And the State of Colorado recognizes that there's a very big difference because it treats psychiatrists under Section 240 of the code and it treats counselors under 245, and that's a recognition that it's just different regulation when medicine is at issue.

In this case, Colorado is violating the promise that this Court laid out in NIFLA, which is that states should not manipulate private conversations between licensed

professionals and clients.

Beyond that, the --

JUSTICE BARRETT: Counsel, how would this apply to a malpractice suit? Let's say that we think that this is content discrimination and it triggers strict scrutiny.

Would your client then be subject to a malpractice suit?

MR. CAMPBELL: She would be subject to a malpractice suit, but she would have the protection of the rigorous elements of malpractice. She would be able to show that she's not violating the standard of care, that she would be able to establish what the standard of care is. She would be able to show there's no harm and there's no causation.

JUSTICE BARRETT: Well, I assume there would be a battle about the standard of care with, you know, competing experts, competing medical associations. Colorado has pointed to some professional associations in this case.

Would the First Amendment have anything to say about that? I mean -- it -- would it be strict scrutiny? I mean, it's -- it's -- it's the elements of a tort. It's a

different thing. We didn't get to this question in Snyder.

MR. CAMPBELL: As a general matter, the elements of a malpractice suit are sufficient to protect freedom of speech.

Now I'm not willing to foreclose the fact that there might not be an argument someone might make in a particular malpractice case, but for our purposes, the elements of malpractice are generally sufficient to protect free speech.

And in this case, the Court doesn't need to resolve whether there might be additional protection because the way that Colorado is using malpractice is as an analogue to what it's doing here. But it's nothing like the law that we're challenging.

JUSTICE BARRETT: Well, I -- I -- I wasn't actually asking about the analogue argument. I was just asking it -- independently. So --

JUSTICE JACKSON: Can I just ask you to --

JUSTICE KAGAN: I took you to say on page 18 of your reply brief that, in fact, a

malpractice suit could go forward and, completely separate from the First Amendment, that what you need to prove a malpractice suit provides sufficient protection.

Is -- is that a -- a -- a --

MR. CAMPBELL: That --

JUSTICE KAGAN: -- a -- a right reading of what you said?

MR. CAMPBELL: It is a right reading, although we said that those elements are generally sufficient. So I won't -- I don't want to foreclose that in a particular case there might be an argument, but, generally speaking, a malpractice action subject to the rigorous elements would be sufficient to -- protect free speech.

JUSTICE JACKSON: Can I get you to address whether or not the provision of therapy and the kind of therapy that your client practices is a medical treatment?

I mean, I understood the sort of basis of the Tenth Circuit's view to be that she's a licensed professional who is providing medical treatment, but your answers to the Chief Justice and Justice Kagan suggested that you're

putting the practice of medicine on one side and her therapy on another.

So I'm just unclear as to whether or not you're categorizing her therapy as a medical treatment.

MR. CAMPBELL: I -- I don't believe that we are categorizing that -- it that way, but I don't think it matters because the First Amendment depends on the difference between speech and conduct, not on the difference between treatment and non-treatment.

So, in my response to the Chief Justice --

JUSTICE JACKSON: But I guess the argument -- the argument that the Tenth Circuit seemed to find persuasive was that if you are in the world of medical treatment, you are regulating conduct, that the medical treatment itself is a -- an activity that is being licensed and that is being performed and that it really isn't speech, that speech is the tool that is being used, just like in other medical treatments you have scalpels, you have, you know, tools that -- medical professionals use to accomplish certain goals and to provide

treatment.

And so, in that sense, I think their argument was that speech is incidental to the provision of this medical treatment. So I guess we need to understand whether her therapy qualifies as medical treatment.

MR. CAMPBELL: The question is whether her speech is incidental to conduct. That's what the Court said in NIFLA. It said that if there's professional conduct, then speech that's incidental to that could be regulated.

But, here --

JUSTICE JACKSON: So treatment is not conduct in your view, medical treatment?

MR. CAMPBELL: If the -- if the treatment consists only of speech, then it doesn't trigger the speech-incidental-to-conduct doctrine. And, here, we're just in First Amendment land, where there is full, robust protection.

That's why I answered the Chief Justice's questions differently and acknowledged that if there was conduct in the practice of medicine going on, it changes the analysis.

JUSTICE JACKSON: But I guess it seems very odd that you could have two scenarios where you have two licensed professionals both attempting to provide treatment to an individual, say, for the same issue, that, you know, the person says: I'd like to live consistently with my biological sex, I feel that I -- I'm not doing that, I'd like your help. Medical Professional A treats that "condition" with medication. Medical Professional B treats that condition with talk therapy.

And I guess, under your theory, those two scenarios are sufficiently different from a constitutional perspective that one could be allowed and the other not?

MR. CAMPBELL: I think that's potentially correct because the First Amendment would apply to the speech-only therapy.

JUSTICE JACKSON: Just because words are being used to accomplish the therapy in one -- scenario and not the other?

MR. CAMPBELL: No. No, because only words are being used in the one scenario.

Again, if there's a combination of

words and conduct, I think that takes us into a different -- into a different realm.

But one of the things that's so problematic about Colorado's law is that it undermines the well-being of kids that are struggling with gender dysphoria.

And so Colorado accepts that up to 90 percent of kids who struggle with that before puberty will work their way through it and realign their identity with their sex. But this law says that if any of those children go to a licensed professional and say: I would like help realigning my identity with my sex, that licensed professional has to decline to help them.

On the other hand --

JUSTICE KAGAN: Does the same analysis apply if the law is not this law? I think Colorado has something like the law I'm going to describe, but I'm not trying to describe Colorado's law. Just take it as my hypothetical.

If instead of this law, which really focuses on the kinds of treatment it is and the kinds of goals everybody has, it just says

you're subject to penalties if you do any medical treatment, and that includes talk therapy, that deviates from the standard of care, and then it goes on to say something about how we find the standard of care, and suppose that sort of law was applied to your client.

Is it the same analysis or a different one?

MR. CAMPBELL: I think it's a similar analysis. So, if a law like that were applied against my client and all she did was speak, then I believe that the strict scrutiny analysis would apply and the government would have to satisfy it. But the underlying analysis would change somewhat too because my client, under those circumstances, would be able to establish that the kind of counseling she provides is consistent with the standard of care versus, under the current law, she's not able to make that showing.

JUSTICE KAGAN: Right. So she is able to make that showing under my hypothetical law, but -- but you're saying still not -- that -- that she would have a kind of separate argument

that there needed to be strict scrutiny applied?

MR. CAMPBELL: She would. She -- she would be able to argue that, and that would require the other side to show that what she's doing is causing harm because that ties into what this Court's recognized in cases like Brown under strict scrutiny.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Justice Thomas?

Justice Alito?

Justice Sotomayor?

JUSTICE SOTOMAYOR: Counselor, in your introduction, you appeared to be applying strict scrutiny. One of the factors you said is the state has not pointed to a study that shows that talk therapy is harmful.

I don't believe strict scrutiny always requires a study. I mean, look, give me -- I'll give you a hypothetical. A state tells dietitians don't encourage anorexic patients to engage in more restricted eating, all right?

I don't think the state has to provide a study to show that that advice is not sound.

Do you agree?

MR. CAMPBELL: Justice Sotomayor, I think that might be true, but that's because that kind of hypothetical is very different than what we have here. In that --

JUSTICE SOTOMAYOR: So explain the difference.

MR. CAMPBELL: In -- in that hypothetical, the counselor or dietitian is telling the client to do something that directly harms their body. In this case, Ms. Chiles is trying to help gender-dysphoric kids avoid --

JUSTICE SOTOMAYOR: That -- that -- that begs -- that begs the question, because there are studies that say that this advice does harm the child -- the people emotionally and physically.

But putting that aside, you agree then that you don't always need a study? An absolute statement like that misstates the law?

MR. CAMPBELL: No. What -- what I agree is that if what the state is getting at is a statement by a professional that's telling someone to harm their body, that that's a

different category.

But, if we're in a situation like this, where there is debated science, where the counselor is trying to help the child achieve their goals, then absolutely the standard this Court set in Brown would apply, which requires a showing of causation.

JUSTICE SOTOMAYOR: So there's only one circuit that has applied strict scrutiny to this kind of talk therapy. It's the Eleventh. The others, the Ninth and the Third, have not.

You seem to be encouraging us to apply strict scrutiny here, and the question I have -- we're not a court of first review on this issue -- why don't we send it back? I'm assuming that the Third and the Ninth didn't apply strict scrutiny because they thought they'd have a problem with applying it to this law. Why should we be do -- breaking our normal pattern in this case?

MR. CAMPBELL: Because there is ongoing harm every day. Ms. Chiles is being silenced, and the kids and families who want her help are unable to access it.

It's very similar to what this Court

did last term in the Mahmoud case, where the two lower courts had decided the case on rational basis review, and when this Court decided that strict scrutiny was the proper analysis --

JUSTICE SOTOMAYOR: Remember, I dissented.

(Laughter.)

MR. CAMPBELL: I do remember that, Justice Sotomayor.

CHIEF JUSTICE ROBERTS: Justice Kagan?

JUSTICE KAGAN: Do you think if -- if there were the exact opposite kind of law, so this is a therapist that, consistent with the child's goals, is trying to get the child, you know, to accept a gay identity or a trans identity, so it's -- it's exactly the same statute, but it's just flipped around, same argument?

MR. CAMPBELL: Strict scrutiny would apply to that, unless there was conduct involved. If there was conduct and that conduct was unlawful, then the speech-integral-to-unlawful-conduct doctrine would apply. But, if it's only speech, then yes, same doctrine.

JUSTICE KAGAN: Right. I'm -- I'm assuming that your caveat, unless there was conduct involved, applies to your case as well, right? That that applies symmetrically to both, unless there was conduct involved that was of that kind?

MR. CAMPBELL: That's correct.

JUSTICE KAGAN: Okay. So -- so symmetrical?

MR. CAMPBELL: Correct.

JUSTICE KAGAN: Okay. What do you think -- suppose -- I mean, you argue in your briefs that this is -- this law is a -- is -- has viewpoint bias in it, and suppose that that was accepted.

Do you think that we should stop there? Is there any reason at that point to go on to say how, in this particular context of medical treatment, we would treat a content-based law that is not viewpoint-based?

MR. CAMPBELL: I don't think the Court needs to address that if it finds that this is viewpoint-based discrimination. It reminds me of the distinction between this Court's decision -- decision in Brunetti and then in

Vidal. In Brunetti, there was viewpoint discrimination, and then, when just content discrimination was at issue, the Court treated it differently.

JUSTICE KAGAN: Thank you.

CHIEF JUSTICE ROBERTS: Justice Gorsuch?

JUSTICE GORSUCH: Just quickly back -- back to the late-breaking standing argument, which is in I think Footnote 18 on page 23 of Colorado's brief, and what your client intends to do, as -- as I read the verified complaint, she would, consistent with the patient's wishes, explore changes to not just attraction, behaviors, and expressions but also identity, is that correct?

MR. CAMPBELL: That's correct.

JUSTICE GORSUCH: Okay. So, even under Colorado's new reading of the statute, which is only about identity and orientation and not about those other things, even though the statute includes them, even under Colorado's understanding, your client would still wish to counsel people in a way that contravenes Colorado's present understanding of

its statute?

MR. CAMPBELL: That's correct.

JUSTICE GORSUCH: Okay. Thank you.

CHIEF JUSTICE ROBERTS: Justice Kavanaugh?

Justice Barrett?

Justice Jackson?

JUSTICE JACKSON: So, as I understand it, the First Amendment protects the communication of messages, expression, et cetera. Am I right about that? I mean, you're communicating and that's what the First Amendment is about?

MR. CAMPBELL: Correct.

JUSTICE JACKSON: So I guess I'm still just struggling with whether a therapist who is acting in their professional capacity to help someone achieve their goals is really expressing the kind of message or expressing a message for First Amendment purposes. I mean, I understand if Ms. Chiles here were writing an article about conversion therapy or writing -- or -- or -- or -- or giving a speech about it.

But it's just a little puzzling to me that she would stand in a different position

than a medical professional who has exactly the same goals, exactly the same interests, and would just be prescribing medication for that rather than her talking with the client.

MR. CAMPBELL: I -- I don't think that they would have exactly the same goals --

JUSTICE JACKSON: Why not?

MR. CAMPBELL: -- because the -- because this involves a conversation.

JUSTICE JACKSON: Yes.

MR. CAMPBELL: There is a back-and-forth -- so this Court has recognized many times in cases like McCullen that a one-on-one conversation is a form of speech. And that's exactly what's going on with Ms. Chiles and her clients.

So, when she engages in those conversations, she's encouraging them to achieve their goals. She's discussing concepts of identity and behavior and attractions and how they fit together. This is an ongoing, active dialogue where she's helping them to explore their goals, and that absolutely has to be protected by the First Amendment.

JUSTICE JACKSON: And -- and you're

saying a similar kind of exchange doesn't occur with a provision of other medical services that don't involve talking directly?

MR. CAMPBELL: It -- it -- it certainly might occur in other instances, but oftentimes there's conduct connected to it. That's what's different about the medical context.

JUSTICE JACKSON: And -- and, I'm sorry, can I just ask you -- you again what Justice Sotomayor asked, which is why wouldn't we send this back if you're right about strict scrutiny --

MR. CAMPBELL: Because --

JUSTICE JACKSON: -- and let the lower courts apply that standard?

MR. CAMPBELL: Because there is irreparable harm going on right now. Ms. Chiles is being silenced. The kids and the families who want help -- this kind of help that she'll offer are being left without any support.

JUSTICE JACKSON: No, I understand, but -- but strict scrutiny is not necessarily fatal, right? We have a -- cases in which

strict scrutiny was applied and it was surmounted. So why wouldn't we give the lower courts a chance to evaluate whether there's sufficient evidence here for the state to actually go forward with this regulation?

MR. CAMPBELL: Because we were arguing for strict scrutiny in the trial court, so Colorado knew that was our position and they had an opportunity to make their record.

But the evidence that they submitted and the expert materials undermine their case. The expert materials admit that they don't have any study addressing precisely what's at issue -- or specifically focusing on precisely what's at issue here, which is voluntary conversations between a licensed professional and a minor.

Their -- their expert materials also recognize that they cannot prove harm. We've catalogued all the places in their expert materials on page 22 of our reply brief where they concede that.

And, lastly, their own expert materials recognize that many people have experienced life-changing benefits from this

kind of counseling.

Again, the APA's own report talks about how this helps people because they're able to align their life with their religion. They're able to find deeper relationships with God. They're enabled -- they're able to find --

JUSTICE JACKSON: Doesn't Colorado have some evidence that -- conversion therapy more broadly is harmful?

MR. CAMPBELL: It -- it --

JUSTICE JACKSON: I mean, I think there are, like, 25 states or something who have similar laws, so someone has some evidence related to the harmfulness of this activity, right?

MR. CAMPBELL: Colorado certainly cites studies, but those studies suffer from significant flaws. The main flaw in all of them is that they lump together dissimilar approaches. They treat voluntary conversations the same as shock therapy.

JUSTICE JACKSON: Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

MR. CAMPBELL: Thank you.

CHIEF JUSTICE ROBERTS: Mr. Mooppan.

ORAL ARGUMENT OF HASHIM M. MOOPPAN

FOR THE UNITED STATES, AS AMICUS CURIAE,

SUPPORTING THE PETITIONER

MR. MOOPPAN: Mr. Chief Justice, and may it please the Court:

Colorado's law is subject to strict scrutiny under the First Amendment for three straightforward reasons. First, the law restricts speech based on content and viewpoint. It prohibits Petitioner from counseling minor clients to help change certain feelings and behaviors. It is thus subject to strict scrutiny, unless an exception applies.

Second, the law falls outside the exception for regulations of conduct that only incidentally burden speech. There's no separate non-speech conduct being regulated here. And professional medical treatment is not exempt from the ordinary First Amendment rule that strict scrutiny applies even to laws that generally regulate conduct where those laws are triggered by the communicative content of speech.

Third, the law falls outside any historically grounded exception. There is no longstanding tradition of states imposing this type of categorical prior restraint on the speech of therapists.

I welcome this Court's questions.

JUSTICE THOMAS: In the context of strict scrutiny, how strong evidence would Colorado have to show in order to prevail?

MR. MOOPPAN: Well, in this case, Your Honor, Colorado has no evidence, so I don't -- I think it's pretty --

JUSTICE THOMAS: I understand that, but -- hypothetically, how much would -- what would they have to show?

MR. MOOPPAN: I think, for this sort of sweeping categorical prior restraint, I think they would have to have very strong evidence that there was direct harm to patients, no countervailing benefit, along those lines before we could even talk about whether they could meet the very high standards of strict scrutiny.

But, again, this case is a much easier case because I think counsel will have to

concede that if you look at the preliminary injunction record, both the three pieces of evidence that they put in -- the Glassgold report, the 2009 APA report, and the 2015 SAMHSA report -- and all the materials cited therein, none of those, none of them consider the type of speech at issue here, speech by a licensed therapist involving non-aversive methods to minors. They just don't have any evidence of that. So, certainly, that's not enough under strict scrutiny.

CHIEF JUSTICE ROBERTS: Does your -- how does your analysis change if there is an aspect of -- of -- of conduct involved?

MR. MOOPPAN: So, the same answer, Your Honor. I think that if there is conduct, then the question would be, is the restriction of speech incidental to the conduct or -- the regulation of the conduct or not?

And this Court hasn't drawn a -- a particularly clear line about when speech is close enough to conduct to be viewed as incidental, but, here, again, this is an easy case because there is no conduct. There -- all that is happening here is speech.

Now there have been a lot of questions about, well, what -- it's medical treatment or what if you had a general rule about standard of care?

And this Court's cases and cases like Holder and Cohen make clear that that is still speech. In Cohen, for example, breach of peace was a violation of the law. You could breach the peace in the courthouse in -- in California in a lot of different ways.

JUSTICE JACKSON: Right. But neither Cohen nor Holder involved medical treatment, right?

MR. MOOPPAN: No. So that's true. But that's just a label. And this Court has also said that labels don't matter in cases like Bunin. There's nothing conceptually different.

Take Holder, for example. In Holder, there was a statute that said don't materially support terrorists. You can materially support terrorists in lots of different ways. You could give them money. You could give them guns. Or, as in Holder, you could give them advice about how to commit their acts.

JUSTICE JACKSON: No, I understand. But there are -- you know, when you look at the Tenth Circuit's opinion, they talk about how there is a long historical tradition of regulation of medical treatment as a particular thing --

MR. MOOPPAN: Right. But --

JUSTICE JACKSON: -- the provision of these kinds of therapies.

MR. MOOPPAN: Right. And the problem is the level of generality. There was also a long historical tradition in this country of regulating contempt of court and breach of peace.

But what there is not a long history and tradition in this country of doing is regulating contempt of court and breach of peace when it's purely based on speech.

And if you look at the history that the other side cites here, what is totally absent is the regulation of medical treatment that consists solely of speech --

JUSTICE JACKSON: So does the federal government agree with Justice Kagan's flip-side scenario? So it -- it doesn't matter to you

that we're talking about Mrs. Chiles's forms -- form of therapy versus gender-affirming care form of therapy?

MR. MOOPPAN: We do. And, in fact, we think that's a strong reason in support of our position. Colorado's position, I think, inevitably leads to the conclusion that all the states in Skrmetti could have not only banned things like cross-sex hormones and prescription blockers -- puberty blockers but also therapy -- talk therapy, along the same lines.

Even starker, in the 1970s, it was the standard of care, professional consensus, that being gay was a mental illness. So, on their position, a state in the 1970s could have made it illegal for a therapist in the state to counsel a gay patient that they weren't mentally ill.

JUSTICE BARRETT: Can you --

MR. MOOPPAN: That just cannot be right under the First Amendment.

JUSTICE BARRETT: Can you address Justice Sotomayor's question from before about whether we should apply strict scrutiny, assuming we think it applies here, or remand it

to the Tenth Circuit to do so? What does the United States want to say about that?

MR. MOOPPAN: So you could remand, but we think, like in Mahmoud, this is a case where it would be probably fairly appropriate to actually just resolve the case here.

JUSTICE BARRETT: Why?

MR. MOOPPAN: And for two reasons. One is there is ongoing irreparable harm to the Petitioner because of the -- restriction of their speech. And the second is the evidentiary record here is totally clear that they can't satisfy strict scrutiny.

If you look at the record on what's in the preliminary injunction record, there is just no evidence that this type of speech, not aversive therapy, not speech by non-licensed professionals, not speech to adults, but speech to minors by licensed therapists --

JUSTICE BARRETT: Okay. Do you have -- just last -- last point, last question from me -- standing? What's your position on the late-breaking standing argument?

MR. MOOPPAN: So -- so precisely because it's late-breaking, first of all, I

think the most important thing is it's mootness, not standing. The question is whether there was a credible threat of enforcement for standing purposes.

There clearly was because, as counsel said, if you match up paragraph 87 of the complaint with the statute, the conduct that Petitioner wanted to engage in is clearly covered by the plain text of the statute.

So, at most, we're talking about mootness because the government has come in now and suggested that somehow the plain text of the statute doesn't apply or they're not going to enforce the statute despite that.

And we don't think that in these circumstances, when the state comes in post-certiorari and advances a fairly implausible reading of their statute, that that should be enough to defeat standing.

If I could say one more thing about how implausible their reading is, as I understand their position, it seems to be that the language after "including" isn't independently sufficient. You have to be trying to change behavior or orientation

independently.

If that was true, it would equally apply to aversive therapy. So, if someone went into a therapist's office and said: I don't want to be gay anymore, I don't want to engage in same-sex conduct, if the therapist said: Look, I can't change your orientation, but I can try to change your behavior, and I'm going to use electroshock therapy, according to the state as I understand their position, they seem to be saying that that's not covered by their statute. I find that awfully hard to believe.

And that just sort of underscores how implausible their reading of the statute is and perhaps why it showed up on Footnote 18 after the Court granted cert.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Justice Thomas, anything further?

Justice Alito?

JUSTICE ALITO: If we thought that this statute engages in viewpoint discrimination, does that have a bearing on whether we should decide whether it satisfies the applicable constitutional standard or

remand the case?

MR. MOOPPAN: I think it makes it even clearer why it fails strict scrutiny, but I think, even as a content-based restriction, it pretty clearly fails strict scrutiny.

JUSTICE ALITO: Thank you.

CHIEF JUSTICE ROBERTS: Justice Sotomayor?

JUSTICE SOTOMAYOR: You keep going back to the question of the studies and what's the strongest -- list -- tick off -- the thing that grants -- that gives me pause in not applying strict scrutiny or in -- in applying it is that none of the studies say that talk therapy is harmful. Is that correct? And Colorado --

MR. MOOPPAN: For -- for this type -- for talk therapy by a licensed therapist to minors. They don't have any studies that say that that is either harmful or ineffective. And, indeed, they often concede that they don't have that.

The 2009 APA report expressly acknowledges at pages JA 221 and 256, expressly acknowledges that they don't have evidence of

that. And if you look at the Glassgold declaration, which is after 2009, she too doesn't cite anything.

If you look at the studies that she cites in her declaration, all of them are conflating either aversive and non-aversive or licensed and non-licensed or minors or adults. They just don't have anything.

And there was a -- this -- came -- this comes up to the Court after a PI hearing. And if strict scrutiny applies, they bore the burden and they just don't have anything.

JUSTICE SOTOMAYOR: Thank you.

CHIEF JUSTICE ROBERTS: Justice Kagan?

JUSTICE KAGAN: Mr. Mooppan, you have an evocative example in your brief which I want to pick up on, which is let's say there's a school of psychotherapists that say, that think that the best way to deal with suicidal patients is to go dare them to commit suicide.

And you basically say yes, strict scrutiny applies, but don't worry, it -- it -- it -- it could be satisfied in a case like that. And I just want you to run through that and tell me why -- why you think strict

scrutiny applies and why you're confident that it could come out the way you think.

MR. MOOPPAN: All right. So I'll say a couple things about that, Your Honor. So, first, we think strict scrutiny applies if the law was structured the way this law is.

JUSTICE KAGAN: Yeah. That's what I'm assuming.

MR. MOOPPAN: So if it was a categorical prior restraint. So, if it was a categorical prior restraint, we think strict scrutiny applies because it's content-based, it's not incidental to any conduct, and there isn't any history or tradition of imposing that sort of prior restraint. So we think you're in strict scrutiny.

As to why we think you could satisfy strict scrutiny, because that type of speech has utterly no redeeming value. It might be the type of speech where you don't even need a study because it's so obviously harmful --

JUSTICE KAGAN: Yeah. But how --

MR. MOOPPAN: -- and there's no real benefit.

JUSTICE KAGAN: Is -- is that -- is

that the right analysis? I mean, when I think about Brown, which I found one of the most difficult cases that I've ever encountered on this Court, you know, we really did insist, no, you need to -- you need to have studies. You need to have a kind of scientific showing of causation rather than rely on your intuitions that, of course, this causes harm.

And why -- why wouldn't that be true in a case like this? And if it's not true, if you're right, you know, are we basically diluting our strict scrutiny standard in a way that will come back to haunt us elsewhere?

MR. MOOPPAN: So I guess what I would say is this, Your Honor. If you were not confident in your judgment, then you probably should require studies. But, if you were confident -- and I think, on a case like that, you probably should be -- it would be enough.

But what I agree -- absolutely agree with is that you should not dilute strict scrutiny. It's important that strict scrutiny retain its rigor where it applies. But it's also important, as this Court held in NIFLA, not to create additional exceptions to the

general rule that content-based restrictions are subject to strict scrutiny.

And if you take a step back, the other side just doesn't have any doctrinal or historical basis for getting this out of strict scrutiny. They can't say it's conduct because there is no conduct. They can't say it's history because there is no relevant history.

All of their arguments would blow a massive hole in this Court's case law. Emphasizing that it's treatment is inconsistent with Holder and Cohen, which says that the fact that you could point to some other law that generally regulates conduct isn't enough if the particular speech is what's triggering that content-based restriction.

JUSTICE KAGAN: Thank you.

CHIEF JUSTICE ROBERTS: Justice Gorsuch?

JUSTICE GORSUCH: In Justice Kagan's hypothetical, could you point to a long history against assisting suicides?

MR. MOOPPAN: You could, but whether there's a long history of speech related to that, especially in a context where the

speech -- where if suicide was -- unlawful, but it -- it could --

JUSTICE GORSUCH: There have been convictions for counseling people to commit suicide and encouraging them to do so and providing -- and maybe providing a substantial step toward -- those -- those --

MR. MOOPPAN: It --

JUSTICE GORSUCH: -- have been all -- all over the books for hundreds of years.

MR. MOOPPAN: It's true it's a little trickier because -- I -- I don't want to -- I agree with you that that's a potential additional argument the state could make. I wouldn't want to leap to that because it would turn on things like --

JUSTICE GORSUCH: Speech versus conduct.

MR. MOOPPAN: -- is -- is suicide prohibited, so it's unlawful conduct.

JUSTICE GORSUCH: No, it's not. No, it's not.

MR. MOOPPAN: Right.

JUSTICE GORSUCH: But assisting is in most states.

MR. MOOPPAN: Right. Right. But -- so then it's a little bit harder to say it's speech incidental to regulated conduct. And even if --

JUSTICE GORSUCH: Yeah. No, I -- I follow you.

MR. MOOPPAN: -- even if suicide is illegal, the degree of connection, it's, you know, the -- the incitement question under cases like Brandenburg.

JUSTICE GORSUCH: Yeah, it's an -- essentially becomes an incitement.

MR. MOOPPAN: Exactly.

JUSTICE GORSUCH: And -- and that is illegal.

MR. MOOPPAN: Yeah. And I did want to make one other point about -- to Justice Kagan, which is, you know, I think another way of thinking about this. Her question was about ex ante categorical prior restraint, but often this sort of speech, where I think it could be --

JUSTICE GORSUCH: It's always after the fact.

MR. MOOPPAN: -- quite easy as

after-the-fact malpractice.

JUSTICE GORSUCH: Yeah.

MR. MOOPPAN: But I would like to say a couple things about malpractice because I think malpractice presents very different types of questions than this sort of law for --

JUSTICE GORSUCH: Because it's not prior restraint.

MR. MOOPPAN: Yes, for three reasons. So the first reason is often malpractice is incidental to conduct. It's speech that's restricted tied to some conduct.

The second is, as Your Honor just noted, this is a prior restraint. And this Court has recognized in a lot of cases, like Florida Star and NTEU and Madigan, that for First Amendment purposes, there's -- it's very important, the difference between letting someone speak and then adjudicating individually the -- that speech after the fact rather than categorically banning it ex ante.

And the third and related point is, as a matter of history and tradition, we have a long history and tradition in this country of malpractice. Now how that history and

tradition cashes out for this type of speech is a tougher question, to be candid. But what is not a tough question is there is no history and tradition for this sort of prior restraint.

JUSTICE GORSUCH: Thank you. Thank you.

CHIEF JUSTICE ROBERTS: Justice Kavanaugh?

Justice Barrett?

Justice Jackson?

JUSTICE JACKSON: Can I ask you about licensing? You talked a lot about malpractice. But don't states tend to tie licensing requirements to the standard of care? And so, if we had a situation like this in which a state licensing board disciplined a doctor for a speech-based practice outside of the standard of care, would that doctor have a First Amendment defense?

MR. MOOPPAN: So there is a long history and tradition in this country of licensing and even licensing for people who engage in speech.

What there isn't a long history and tradition of is, as a condition of that

license, imposing a prior restraint on the types of speech they engage in. And we know from NIFLA that the mere fact that there's a license isn't enough to obviate First Amendment review. Obviously, the whole point of NIFLA, it was -- it was regulating an --

JUSTICE JACKSON: But NIFLA was a notice scenario, right? It wasn't -- it wasn't --

MR. MOOPPAN: To a -- for a licensed clinic.

JUSTICE JACKSON: No, I understand, but it wasn't connected to the provision of services to particular people. That was part of the analysis. And so I guess what I'm saying is --

MR. MOOPPAN: So that's true, but --

JUSTICE JACKSON: -- a doctor who's providing services pursuant to a state license, I'm just trying to understand how the First Amendment protects that doctor from providing therapy that is outside the standard of care.

MR. MOOPPAN: Well, because, in NIFLA itself, the Court made clear that part of the reason it was rejecting a professional speech

exception is because it was very worried about the risks of the state interfering with the doctor/patient discourse, and it gave as an example how, in certain -- authoritarian governments, they do things like tell doctors you can't tell patients --

JUSTICE JACKSON: Yeah.

MR. MOOPPAN: -- about birth control.

JUSTICE JACKSON: Yeah.

MR. MOOPPAN: Those people are all licensed. And so, if -- if there was some sort of argument that because you're licensed, all of a sudden the state could tell you what to say and what not to say to your patients, those very harms, the precise harms that NIFLA pointed to --

JUSTICE JACKSON: Yeah.

MR. MOOPPAN: -- could happen.

JUSTICE JACKSON: So can I ask you just one final question just sort of from a very broad perspective? I'm wondering why this regulation at issue here isn't really just the functional equivalent of Skrmetti. I mean, I realize that the -- that there were two different constitutional provisions at issue,

but the regulations work in basically the same way and the question of scrutiny applies in both contexts. So it just seems odd to me that we might have a different result here.

MR. MOOPPAN: Well, Skrmetti was a law that regulated on the basis of age and medical treatment.

JUSTICE JACKSON: No, but here's what I mean, right? In Skrmetti, we had a state that wanted to prohibit certain medical treatment, gender-affirming care, being given to minors in the form of medication.

And we said that was okay. And I understand there are particulars with respect to how the -- the arguments, the constitutional arguments, worked, but the state can prohibit that.

Here, we have a state that wants to prohibit gender-related medical treatment in the form of talk therapy, but we now have the First Amendment that is inhibiting the state's ability to do that.

And I'm just, from a very, very broad perspective, concerned about making sure that we have --

MR. MOOPPAN: Well --

JUSTICE JACKSON: -- equivalence with respect to these things.

MR. MOOPPAN: Well, from a very broad perspective, there shouldn't be equivalence because --

JUSTICE JACKSON: Okay.

MR. MOOPPAN: -- obviously, we have a First Amendment. So, when you're free to make that call on speech --

JUSTICE JACKSON: Because talk therapy -- talk therapy -- the speech is what is at the core for you?

MR. MOOPPAN: Right.

JUSTICE JACKSON: It's not necessarily the state's interest in protecting minors from what it believes to be certain harmful --

MR. MOOPPAN: Right.

JUSTICE JACKSON: -- treatments.

MR. MOOPPAN: Just like in Holder, the state had a very compelling interest in stopping material support of terrorism.

JUSTICE JACKSON: Right.

MR. MOOPPAN: But, when you stop terrorism through speech versus from conduct,

the analysis is different.

JUSTICE JACKSON: Got it. All right. Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Ms. Stevenson.

ORAL ARGUMENT OF SHANNON W. STEVENSON

ON BEHALF OF THE RESPONDENTS

MS. STEVENSON: Mr. Chief Justice, and may it please the Court:

Throughout its history, this Court has recognized that state power is at its apex when it regulates to ensure safety in the healthcare professions. Colorado's law lies at the bull's-eye center of this protection because it prohibits licensed professionals from performing one specific treatment because that treatment does not work and carries great risk of harm.

No court has ever held that a law like this implicates the First Amendment and for good reason.

First, the law applies only to treatments, that is, only when a licensed professional is delivering clinical care to an

individual patient. In that setting, providers have a duty to act in their patients' best interest and according to their professional standards. The First Amendment affords no exception.

Second, because this law governs only treatments, it does not interfere with any First Amendment interest. It does not stop a professional from expressing any viewpoint about that treatment to their patient or to anyone else.

And because Colorado's law regulates treatments only and because it enforces the professional standard of care, the law falls squarely into the reasonable regulation of professional conduct that does not trigger First Amendment scrutiny.

Petitioner's argument, on the other hand, cannot be reconciled with history, precedent, or common sense. A state cannot lose its power to regulate the very professionals that it licenses just because they are using words.

A healthcare provider cannot be free to violate the standard of care just because

they are using words. And a state cannot be required to let its vulnerable young people waste their time and money on an ineffective, harmful treatment just because that treatment is delivered through words.

Petitioner asks you to enjoin a bipartisan law passed by 25 different states, but she did not put one single piece of evidence into the record, not a single expert, not a single study, not a single mental health professional willing to endorse conversion therapy, and there is a mountain of evidence to the contrary.

On this record, we request that you affirm the denial of preliminary injunction.

I welcome your questions.

JUSTICE THOMAS: If Petitioner were a non-therapist, would this be protected speech?

MS. STEVENSON: Well, so I -- I wanted to mention our law covers physicians as well. They are also subject to the -- to the conversion therapy ban. But, if you're talking about a non-professional, I think it -- it would. Our -- our -- our argument is premised on the notion that there is a special

relationship between a healthcare provider and a patient where that patient is in a position of vulnerability and dependency on the healthcare provider, and -- and the healthcare provider owes fiduciary duties to act in that patient's best interest only.

JUSTICE THOMAS: In Colorado, are there only healthcare providers who provide this sort of service?

MS. STEVENSON: No. The law excepts -- I -- I don't know factually if there are, but the law exempts religious ministers and ministries from this, and there is also a -- a group of people called life coaches who could perform this therapy.

JUSTICE THOMAS: So what exactly transforms speech in that context to -- speech that is protected in that context to speech that is not in the therapist's context?

MS. STEVENSON: It is the relationship between a healthcare provider and the patient that establishes this special context. And, again, if you go to a life coach or you go to someone else, they're not licensed by the state. You're not expecting them to be

complying with standards of care. You have a different expectation.

When you're going to see a licensed healthcare professional who owes you fiduciary duties, your expectations are different. You're expecting information that is complying with the standard of care and not expecting the -- the practitioner to just be, you know, exercising their right to say whatever they want to say. And that's just materially different and it's always been treated so.

JUSTICE THOMAS: So what if someone who was the -- happened to be devoutly religious and actually relied more on the minister than the therapist? It would seem that that person would be equally dangerous.

MS. STEVENSON: Well, I think that that would be a personal choice that they were making to rely on their religious minister. It wouldn't be a representation from the state that this is a licensed professional who we are holding to a certain standard of care. And so at -- the expectation at least vis- -vis the state license would matter a lot.

And, in addition, the religious

minister just as a legal matter doesn't owe fiduciary duties in the same way that a healthcare practitioner does.

CHIEF JUSTICE ROBERTS: Counsel, you said, you know, just because they're -- they're using words. But our cases separate those out, Holder, NIFLA. In other words, just because they're engaged in conduct doesn't mean that their words aren't protected.

MS. STEVENSON: So, Chief Justice, our case is absolutely premised on the notion that communications that are happening in the very specific context of treatment, which I will call a licensed professional -- delivering clinical care to an individual patient what where they are subject to fiduciary duties and subject to malpractice, that that is fundamentally -- a fundamentally different regulation than a regulation of -- of people out in the world going about their business, like at issue in Holder, where you have general -- general -- generally applicable statutes that apply to everyone.

This is just a fundamentally different relationship. It has always been treated like

that. In NIFLA, the Court talked about the fact that longstanding torts for malpractice were -- did not implicate heightened First Amendment scrutiny, and I think that analysis is exactly the same here. Malpractice, you're dealing with that same individualized relationship. And this is the exact same context.

JUSTICE GORSUCH: Ms. Stevenson, I want to ask you the mirror -- what Justice Kagan called the mirror image question and Mr. Mooppan and Judge Hart's example about homosexuality in the 1970s was professionally considered to be a mental health disorder.

What if a state back then -- or -- might -- have passed a law prohibiting talk therapy that affirmed homosexuality? Would that be subject to rational basis review on -- on your theory?

MS. STEVENSON: So, Your Honor, what -- what our theory depends on is that there is a treatment being provided that's being regulated --

JUSTICE GORSUCH: Yeah.

MS. STEVENSON: -- and that the

regulation is consistent --

JUSTICE GORSUCH: And check --

MS. STEVENSON: -- with the standard of care.

JUSTICE GORSUCH: Let's check --

MS. STEVENSON: Right.

JUSTICE GORSUCH: -- both of those boxes in our hypothetical.

MS. STEVENSON: Then -- then, yes. And I want to return to Justice Jackson's point because --

JUSTICE GORSUCH: So yes --

MS. STEVENSON: They could regulate.

JUSTICE GORSUCH: -- the state could forbid a -- a -- a regulated licensed professional from affirming homosexuality --

MS. STEVENSON: If that were --

JUSTICE GORSUCH: -- if that were consistent with the then-prevailing standard of care?

MS. STEVENSON: That -- that's right. And I don't --

JUSTICE GORSUCH: And so, likewise, if -- if the prevailing standard of care were to change or to solidify that this sort of talk

therapy is beneficial to minors or at least not harmful to minors, then a state could pass a mirror image statute to Colorado's that -- that prohibits any attempt to affirm changes of gender identity or sexual orientation, and that would be subject to mere rational basis review on your theory?

MS. STEVENSON: That's right, Your Honor.

JUSTICE GORSUCH: Thank you.

MS. STEVENSON: And -- and just to illustrate, there -- it's not -- the fact that there are boards involved doesn't make a difference. So states like we recognized in Skrmetti have the power to regulate even in the face of medical uncertainty. The laws or the, you know, the standard of care could change there, and the legislature can act to change that, and just --

JUSTICE GORSUCH: So even -- even in -- even cases where medical uncertainty exists, you think that the state could pass such a law prohibiting ex ante speech that would affirm gender identity changes or sexual orientation changes or homosexuality?

MS. STEVENSON: I don't think you have to reach that question in this case because, here --

JUSTICE GORSUCH: I'm asking about the logic of your argument. I -- I think you just said states can regulate even in the absence of medical consensus in this fashion, is that right?

MS. STEVENSON: Where -- where there are no words involved and no First Amendment issue raised, and I'm just --

JUSTICE GORSUCH: No, no, I'm asking what -- I'm -- we're talking about speech and we're talking about therapy, talk therapy. That's what I want to get at. And I think you're saying that if there's medical consensus, a state surely could pass mirror image laws. And I think you're saying, but I want to make sure, that even in cases where there's medical uncertainty, a state could so regulate?

MS. STEVENSON: You could reach a holding in this case that said yes, treatment is treatment and this can be -- it doesn't matter whether it's full -- you know,

consistent with the standard of care or not.

We would urge you to reach a narrower holding in this case.

JUSTICE GORSUCH: I -- I understand that. But I'm asking you to answer my question.

Could a state -- and -- is -- when there's medical uncertainty, and we normally provide -- this Court has many times said, when there's medical uncertainty, we defer to state judgments.

And I think you're saying that, yes, I -- I -- I think the logic of your position has to be yes, and it -- I'll -- I'll let you go as soon as you give me an answer up or down on the state of medical uncertainty and whether they could pass mirror image laws.

MS. STEVENSON: I think it's less clear that that fits into the historical tradition identified in NIFLA that calls specifically out malpractice, which is an enforcement of the standard of care. And while that question could come up in another day here where we meet the standard of care, we don't think you need to reach it.

JUSTICE BARRETT: Counsel, it's pretty important that I think about how this would apply to cases down the road, so let me describe medical uncertainty as competing medical views, and let's say that you have some medical experts that think gender-affirming care should be -- is dangerous to children and some that say that this kind of conversion talk therapy is dangerous.

Can a state pick a side? So it's not -- I'm -- I want to be very clear it's not that the medical community says we just don't know. It's that there are competing strands, and some states like, say, Tennessee, which was the state at issue in Skrmetti, pick one side. Colorado picks another side.

Your position is that rational basis applies?

MS. STEVENSON: Our position in this case is that the standard of care is important. It's important because that's been the historical tradition.

JUSTICE BARRETT: But -- but, like Justice Gorsuch said, just answer -- answer that question.

MS. STEVENSON: No. Our view is that -- that that would not be the right rule here, one, because that's not consistent with the history -- and tradition identified in NIFLA, and, two, because the reason why that history is important and the reason why the standard of care is important is because it's a -- a confirmation that the state is not actually trying to shut down viewpoints.

JUSTICE BARRETT: Okay. I'm not understanding the why the standard of care -- I -- tell me -- I mean, I'm -- maybe I'm just -- I'm not -- I'm not following you.

Are you saying that the standard of care -- why -- why do you think the standard of care question isn't relevant there? Because wouldn't that be a situation in which Colorado is essentially saying that the standard of care, that we're -- we're essentially looking at expert evidence and saying that we think this is what's appropriate, that we shouldn't have this kind of talk therapy, and Tennessee is choosing a different one as a matter of its state law? Or am I not understanding that correctly?

MS. STEVENSON: What I'm saying is, where there is a First Amendment issue raised and the state can show we're regulating a treatment and we're regulating consistent with the standard of care, there is -- a confirmation, a security that the Court can have that there -- there is no other motive going on to suppress viewpoints or expression.

JUSTICE JACKSON: Consensus.

MS. STEVENSON: And that's what's consistent with --

JUSTICE BARRETT: So Colorado's law would trigger rational basis, but Tennessee's hypothetical law would be strict scrutiny?

MS. STEVENSON: If it were at -- if it were against the standard of care, yes.

JUSTICE BARRETT: So there's no mirror image rule Justice Kagan --

JUSTICE JACKSON: Counsel, can you define standard of care to help us? Is the standard of care a medical consensus about what should happen in this situation?

MS. STEVENSON: It -- it's the same standard of care that would apply in a malpractice case. Yes, that is how malpractice

applies.

JUSTICE JACKSON: So it's not a situation in which you have competing doctors and there isn't a consensus on what is supposed to happen?

MS. STEVENSON: Correct.

JUSTICE JACKSON: So, in your --

JUSTICE BARRETT: No, but I think you could have that. In my hypothetical, I'm saying that there might be a dispute in the medical community, is my hypothetical, where you have some experts saying that this should be the standard of care and others saying something different. That was the hypothetical.

MS. STEVENSON: Well, I -- I -- the question would be is the regulation enforcing the existing standard of care. And you're describing a situation where it sounds like there would be many viable options under a standard of care?

JUSTICE BARRETT: Yeah.

MS. STEVENSON: Right. And so, in that instance, I think that would raise more significant questions if there were actual

multiple procedures, treatments available that all met the standard of care.

And, again, this is just a question that would be resolved exactly the same as it would be in a malpractice case, where you could have, you know, competing experts as well and we'll decide is this thing inside or outside the standard of care. If -- if Petitioner could put on an expert to show conversion therapy is inside the standard of care, then I -- I think we wouldn't be here. This -- that would be a different standard to apply to our law.

JUSTICE SOTOMAYOR: I have a question about how you're distinguishing Holder. It was a generalized law against providing material support to terror -- terrorists, but you seem to be suggesting that if there was a bar association rule that said it's a breach of your duty as a lawyer if you tell terrorists how they can break the law, that that would be subject to rational basis below -- review.

MS. STEVENSON: So I think that, again, the critical aspect of the relationship is that there is a duty between the

professional and the receiver of the professional services. And it sounds like in the law that you're describing, Justice Sotomayor, there would be -- the law is passed for some other interest than -- than to protect the client in that case. And I think that's materially different when we're talking about a special relationship where the client is depending on the expertise and training --

JUSTICE SOTOMAYOR: I -- I'm not -- I -- I --

MS. STEVENSON: -- of the lawyer --

JUSTICE SOTOMAYOR: But I'm just not sure why that makes a difference if we're talking about the speech aspects of it, why that becomes any less protected.

MS. STEVENSON: It -- it's because that's how we've always treated speech between -- especially in the healthcare context, between providers and patients. This has been an area that has been heavily regulated from the beginning of our country. And no one has ever suggested that a doctor has a First Amendment defense to say the wrong advice to their patient.

And -- and just to give an example on this speech/conduct distinction -- distinction, if I went to my doctor and had high cholesterol, she could tell me a number of things. She could say come back next year. She could say eat less red meat. She could say I'm going to prescribe you a statin. Or she could say you need an arterial stint. And whichever way she violated the standard of care in -- in making a -- a wrong judgment there could be equally harmful to me.

And so I don't see how you can parse out whether there is conduct involved in terms of when you're talking about professional services delivered in a fiduciary relationship, where the -- the client or the patient is expecting accurate information and -- and information delivered to benefit their health.

JUSTICE ALITO: I don't really see a --

JUSTICE KAGAN: But wouldn't --

JUSTICE ALITO: -- a difference between the argument that you're making now and the argument that I thought we rejected in NIFLA that professional speech is a special

category that's outside normal First Amendment scrutiny, but I'll -- let me put that aside and ask about your interpretation of the statute at this stage in the litigation.

And let me give you this example. Suppose an adolescent male comes to a licensed therapist and says he attracted -- he's attracted to other males but feels uneasy and guilty about those feelings, and he wants to end or lessen them and asks for the therapist's help in doing so.

Under your interpretation of the statute, is that banned?

MS. STEVENSON: So, Your Honor, our -- our interpretation of the statute turns entirely on whether the purpose of the therapy is to change the -- the person's sexual orientation or gender identity. If that minor --

JUSTICE ALITO: Yeah, what's the answer to -- what is the answer to my question? Is that banned or is it not banned?

MS. STEVENSON: If the therapist told him or he asked can you help me become straight, the answer would be it would be

banned. If it was can you help me cope with my feelings as to how I am and how I want to live my life, that's permitted.

And all of that comes from --

JUSTICE ALITO: Why doesn't that fall -- why doesn't the situation that I've just described fall squarely within the terms of the statute, which says that conversion therapy includes "efforts to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex"?

MS. STEVENSON: If those things are undertaken with the purpose of changing orientation or identity, then they violate the statute.

JUSTICE ALITO: But that's not what your statute says.

MS. STEVENSON: This is the way we've interpreted the statute from the beginning of this case. It's the way both of the lower courts interpreted the statute. It's the way every state that has this statute interprets it.

And the reason why is because the harms from conversion therapy come from when

you tell a young person you can change this innate thing about yourself, and they try and they try and they fail, and then they have shame and they're miserable, and then it ruins their relationships with their family or --

JUSTICE ALITO: Well, I know, I understand all that.

MS. STEVENSON: This is where the harm comes from. And so, if the --

JUSTICE ALITO: I understand -- I understand all of those arguments. What I don't understand is how you can square your interpretation with the plain meaning of this statute.

Are -- are you suggesting that everything beginning with the word "including" is irrelevant?

MS. STEVENSON: It --

JUSTICE ALITO: That just -- you just want all of that deleted from the statute?

MS. STEVENSON: No, it's -- it's illustrative. And so, for example, one of the ways that people try to engage in -- conversion therapy would be by saying, look, you need to start dressing like a boy and then that will

make you change your gender identity. That's a way you could go about that.

But, if the -- if the minor wants to start dressing like a boy to match his gender identity not because --

JUSTICE ALITO: Well, that -- that's just not the --

MS. STEVENSON: -- he thinks it's going to change --

JUSTICE ALITO: -- that's just not the way language works. Suppose that -- I mean, there's a sign -- there's a rule that says you may not bring any dangerous animals in the park, including pit bulls.

Doesn't that definitively provide you can't bring a pit bull into the park?

MS. STEVENSON: Yes, because a pit bull is a subsidiary of a dangerous animal. But I don't think you can read "and including" to contradict the -- the anchor term. So, here, "conversion therapy" is an effort to change orientation or -- or identity.

If you read it -- read it to not mean that, then -- then you've ruined that part of the statute.

JUSTICE ALITO: All right. Let me --
MS. STEVENSON: I can't say --
JUSTICE ALITO: I -- I'm sorry. Go ahead.
MS. STEVENSON: I was just going to say I -- I can't say I like meat, including tomatoes and celery. That doesn't make any sense. And that's how we read the statute and, again, have been -- consistently read the -- the statute that way from the beginning of this case in every pleading that we've filed.
JUSTICE ALITO: I -- if you recall the example that I gave you -- I'll -- I'll give it to you again because I want to contrast it with another situation.
So, in the first situation, an adolescent male comes to a licensed therapist and says he's attracted to other males, but he feels uneasy and guilty about those feelings, he wants to end or lessen them, and he asks for the therapist's help in doing so.
The other situation is a similar adolescent male comes to a licensed therapist, says he's attracted to other males, feels uneasy and guilty about those feelings, and he

wants the therapist's help so he will feel comfortable as a gay young man.

It seems to me you're interpret -- your statute dictates opposite results in those two situations based on the view -- based on the viewpoint expressed. One viewpoint is the viewpoint that a minor should be able to obtain talk therapy to overcome same-sex attraction if that's what he -- or he or she wants. And the other is the viewpoint that the minor should not be able to obtain talk therapy to overcome same-sex attraction even if that is what he or she wants.

Looks like blatant viewpoint discrimination.

MS. STEVENSON: As I heard your examples, I think they would both be permissible because it didn't sound like in either case the goal was to actually change sexual orientation. And -- and, again, that's the touchstone because that's where the harms come from. And if there is no goal being reached --

JUSTICE KAGAN: I guess I -- I don't quite -- I -- I -- I guess I have the same kind

of question that Justice Alito had. I mean, if we assume, for example -- and this will -- is a big assumption on your part -- but just assume that we're in normal free speech land rather than in this kind of doctor land. And if a -- if a doctor says, I know you identify as gay and I'm going to help you accept that, and another doctor says, I know you identify as gay and I'm going to help you to change that, and one of those is permissible and the other is not, that seems like viewpoint discrimination in the way we would normally understand viewpoint discrimination.

MS. STEVENSON: I -- I don't disagree with that, Justice Kagan, and that's why medical treatment has to be treated differently, because anytime you exclude one harmful practice, you are by definition saying these things are allowed because they are not harmful and these things are excluded because they are harmful. That's the driving force behind regulating the -- the particular practice.

JUSTICE ALITO: Let me ask you about the -- the standing argument.

There's a statute on books, and if it prohibits what the Petitioner wants to do, why doesn't she have standing?

Why -- why is it an answer: Well, we haven't prosecuted her or anybody else under this statute?

MS. STEVENSON: I -- I think it would if she'd said that she wanted to do something that violated this statute. And I -- I think there's just been an ambiguity that has persisted in this case.

What I can say is, if she does not want to engage in a therapy for the purpose of changing a minor's sexual orientation or gender identity, then she is not violating the statute.

JUSTICE GORSUCH: Well, both the district court, which ruled for you, found standing, and the Tenth Circuit, which ruled for you, found standing.

And you didn't cross appeal on those. And -- not that you had to, it's standing. You didn't even put a Roman numeral in your brief on it or even a subsection. It's -- it's Footnote 18 on page 23.

That doesn't exactly suggest that you have great confidence in that argument, does it?

MS. STEVENSON: Well -- well, we recognize we lost it twice. And, again, it -- it is the Petitioner's burden. And it has been a persistent issue in the case, I think, in defining exactly what it is she wants to do.

And to come back to this conduct point --

JUSTICE GORSUCH: But, if she's -- if she does, consistent with a -- a patient's -- if I'm reading the verified complaint, if I understand that to mean, paragraphs 86, 87, that she wishes to help clients who voluntarily come and -- with the desire to change their behaviors, expressions, attractions, and identity, then that -- that would give her standing, wouldn't it?

MS. STEVENSON: Identity, yes.

JUSTICE GORSUCH: Only identity?

MS. STEVENSON: The -- the others not.

JUSTICE GORSUCH: The others not because of your peculiar reading of the statute.

But identity would? That would give her standing?

MS. STEVENSON: The change in sexual orientation or identity is the key to --

JUSTICE GORSUCH: And that would give her standing?

MS. STEVENSON: That would.

JUSTICE GORSUCH: Okay.

JUSTICE SOTOMAYOR: Because you're not disavowing that?

MS. STEVENSON: No.

JUSTICE SOTOMAYOR: Okay. So that settles the standing question.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Justice Thomas, anything further?

JUSTICE THOMAS: You rely on the history of regulating the medical profession quite a bit.

What's the history of regulating therapists? When did -- when did that begin?

MS. STEVENSON: Right. So I would say mental health and healthcare delivered through words, both were in full force at the founding of this country. At the time, that -- that was

done by people you might call physicians, and all of their practice was pretty much carried out through words and giving advice.

As time went on and specialties developed further and the mental health profession sort of came into existence, those same standards applied and governed psychologists and therapists.

And then I would say the -- the licensing of counselors as other professionals in the mental health field was sort of the second half of the -- 1900s.

JUSTICE THOMAS: With respect to this type of regulation that is a prior restraint on speech, what was the first example of that?

MS. STEVENSON: So, Justice Thomas, I -- I -- I want to push back on the notion that this is a prior restraint on speech. There -- there's no enforcement of this law unless somebody files a complaint with Petitioner's licensing board and she has an adjudicatory hearing, an opportunity for -- judicial review, and all those things. So it's like many other statutes in that way. It simply calls out a specific practice that

violates the standard of care.

And those types of statutes have been around for a very long time. They were -- in the late 1800s, those types of statutes governed medical professionals and then have been added over time as the mental health profession has developed and govern -- mental health profession -- professionals in every state.

CHIEF JUSTICE ROBERTS: Justice Alito?

JUSTICE ALITO: Your argument depends very heavily on the standard of care, which I take it is defined by the medical -- by a medical consensus, is that correct?

MS. STEVENSON: That's correct.

JUSTICE ALITO: Have there been occasions -- I mean, the medical consensus is usually very reasonable and it's very important. But have there been times when the medical consensus has been politicized, has been taken over by ideology?

MS. STEVENSON: We have no facts about that in this case, but I -- I wouldn't disagree --

JUSTICE ALITO: Well --

MS. STEVENSON: -- that that's possible. And I think it's a really --

JUSTICE ALITO: -- isn't it a fact that it's happened in the past?

MS. STEVENSON: I -- I -- I think that's --

JUSTICE ALITO: Three generations of idiots are enough?

MS. STEVENSON: I think that's certainly a concern. And if there were evidence of that in the record as to whether or not there were a standard of care that wasn't a -- really based on patient safety, that would be highly relevant evidence.

JUSTICE ALITO: Well, isn't that a -- a -- a reason to apply First Amendment scrutiny when what's being -- what is being regulated is pure speech and not just saying medical -- standard of care, medical consensus, that's the end of the day, rational basis review, anything goes?

MS. STEVENSON: No, Your Honor, because, again, when we're talking about words used to deliver medical treatment, those issues are the same whether you're talking about words

being used or whether you're talking about medical practices that don't involve words. Those issues are the exact same.

And there is nothing about this statute, for example, that stops anyone from sharing any opinion about conversion therapy or about how the consensus on that was reached.

And, again, in this case, there is just no evidence of any motive by either the Colorado legislature or any medical association to reach this conclusion on anything based on -- based on anything other than protection of -- of minors and -- and a decades-long record of research.

JUSTICE ALITO: Was there once -- was there a time when many medical professionals thought that certain people should not be permitted to procreate because they had low IQs?

MS. STEVENSON: I don't know that, but I -- I will accept the premise.

JUSTICE ALITO: When -- was there a time when there were many -- many medical professionals who thought that every child born with Down syndrome should be immediately put in

an institution?

MS. STEVENSON: I -- I -- I don't know that, Your Honor.

JUSTICE ALITO: Thank you.

CHIEF JUSTICE ROBERTS: Justice Sotomayor?

Justice Kagan?

JUSTICE KAGAN: If I could go back to your example about having high cholesterol and all the various things that a doctor could say.

And I -- I don't think, like, anybody wants to remove doctors from, you know, liability or any kind of professional sanction for giving utterly wrong medical advice just because the giving of that advice involves words, right?

So, if the doctor said you can lower your cholesterol by going out and eating dessert every meal, we would think that was, like, not a good thing for a doctor to say. And we wouldn't say, oh, the First Amendment has something to do with this.

But I -- I guess I have this feeling that that's a different kind of case, that that is a case where the speech is incidental to

whatever conduct it is that the doctor is offering, you know, whether it's, you know, you should take this pill or you should do these eating practices or so forth and so on.

And are you saying that there's no distinction between what we're dealing with here and the range of things that a doctor can tell you in her office about what kind of care is appropriate for any particular condition?

MS. STEVENSON: I -- I don't think there's any distinction because just like in the medical field, counseling is an evidence-based practice that Petitioner trained for thousands of hours to be qualified to do, and her advice and -- and counseling therapies through her words can be extremely harmful. And so there is no difference between that and the medical context.

And I wanted to come back to the first part of your question about calling out a specific practice that violates the standard of care. This is a thing that legislatures do not irregularly when you have a practice that although it's ineffective or although it's harmful, it persists anyway.

So, for example, in Colorado, there's a specific -- provision that says it's unprofessional conduct for medical doctors to prescribe anabolic steroids for sports performance.

Now, normally, something like that might die out, but you can understand why there are cultural -- cultural pressures that make this continue to be interesting to people even when they know there's harm. And this has been the problem with conversion therapy.

Although every theory that it's relied on has been debunked and debunked and debunked, people continue to seek it and to want it and to believe that they can make this change. And I think that's understandable. It's a challenge to find out that you're a gay or transgender person.

And then, finally, to -- to the issue of regulating a specific practice, we cited you a couple of cases about -- this false memory recovery. So there was a -- a practice going on in -- with psychotherapists in the 1990s where they were using a therapy that was causing children to come up with false memories

of sexual abuse, and there were several malpractice cases about it.

That -- that therapy died out on its own. But, if it hadn't and therapists had continued to do it -- and, again, it was done only with words -- surely, a state could step in and say that's unprofessional conduct, and that's exactly what Colorado and 25 other states have done here.

JUSTICE KAGAN: Thank you.

CHIEF JUSTICE ROBERTS: Justice Gorsuch?

Justice Kavanaugh?

Justice Barrett?

JUSTICE BARRETT: What is your best evidence on this record, thinking about the application of strict scrutiny, that this kind of talk therapy by a licensed professional, licensed therapist, to minors causes harm?

MS. STEVENSON: Sure. I would direct you, Your Honor, to JA 64 through 74. And I do want to note this particular argument about this specific study came up at -- for the first time at Tenth Circuit oral argument, and I think had we had an opportunity, we could

absolutely have put in even more evidence to nail this down in the district court.

But, if you look there, our expert walks through all of the research that's been done since 2009. Aversive practices have not been in use since the 1980s or before, so all of these studies do not concern aversive practices at all.

And then I would direct you specifically to the Green study and the Turban study. The Green study looked at 34,000 13- to 25-year-olds who had gone through conversion therapy and, after controlling for other factors, found there was a two times rate of attempted suicides among that group.

And in the Turban study, Dr. Turban looked at 27,000 participants. This was specifically on gender identity change efforts, including people who had received those efforts at -- under the age of 10. He looked specifically at childhood exposure and found association with adverse mental health outcomes in adulthood, including suicide ideation and attempts.

You know, I -- this question about

whether it's voluntary or not, that's just not -- not an issue that had ever been raised to focus on. And I -- you know, especially with children under 10, I don't even know how you would assess that.

I would also direct you to Dr. Turban's amicus brief, though, where he further describes the techniques that he used in his study to show how much they would align with I think -- what Petitioner would imagine that she would want to try to do.

And then you have to put it in the context of people have been trying to do conversion therapy for a hundred years with no record of success. There is no study, despite the fact that people tried to advance this practice, that has ever shown that it has any chance of being efficacious.

And, again, the -- the harm from it comes not from the -- from the aversive practice; it comes from telling someone there's something innate about yourself you can change, and then you spend all kinds of time and effort trying to do that, and you fail.

JUSTICE BARRETT: But you -- you bore

the burden. She didn't have to show that it was efficacious, right? You had to show that it was -- you had to show that it caused harm.

MS. STEVENSON: Right. But, in -- in light of a hundred years of studies that all point in the same direction, with no efficaciousness and evidence of significant risk of harm, we think we amply carried that burden.

JUSTICE BARRETT: Tell me more. You said that in the Tenth Circuit you wished -- because, if you had been back before the district court, you could have introduced more evidence? Did you not? It was a PI hearing.

Why didn't you have enough -- the opportunity to introduce all the evidence you wanted to?

MS. STEVENSON: Right. The -- there -- there was no hearing. We filed our response in -- in response to Petitioner's brief, where she had no evidence. We put in a, you know, 60-page expert declaration covering all of this and including not just the studies but the fact that all of the theories underlying conversion therapy have been

debunked. You know, initially it was homosexuality is a pathology that we need to treat. That's been debunked. Then it was homosexuality is caused by trauma. That's been debunked. Then it was homosexuality is caused by a relationship you had with your parents. That's been debunked. There's not even a working theory now.

JUSTICE BARRETT: So it -- but -- just on the very specific evidentiary question, are you representing then that if this went back, you want the opportunity to have a hearing to put in different evidence that it causes harm?

MS. STEVENSON: I -- I think, if there was -- if there's some, you know, argument that we need to show that these studies were done on people who engaged in voluntary therapy, I think you could potentially go to the study authors and get that.

But that particular critique was never raised. And, again, I just think, if -- if what Petitioner is saying is you have to have a randomized control trial on children in order to establish the -- you know, with respect to the particular thing that she wants to do, that

would be, I think, a study that would -- not even medicine would -- would require a study like that to come up with a standard of care.

CHIEF JUSTICE ROBERTS: Justice Jackson?

JUSTICE JACKSON: Can I just quickly get you to address Justice Alito's question about how you distinguish NIFLA? You -- you have definitely focused very clearly on the special relationship, the professional context, and the fact that this is medical care being provided in a counseling relationship.

But, as Justice Alito points out, we have addressed professional speech and the extent to which it should be treated differently, and it's -- has said no. So how -- how do you distinguish that case?

MS. STEVENSON: So professional speech as it was addressed in NIFLA is a much broader category than what we're talking about here. It would include things professionals are saying in -- in any professional capacity.

We are focused on the very narrow context where a healthcare provider is delivering healthcare to a patient. They are

under fiduciary duties to act in that patient's best interest, and they are subject to malpractice liability.

And that is just a different category of speech.

JUSTICE JACKSON: So you're -- you're -- you're saying that this is a very narrow carve-out, no matter what we sort of said other -- otherwise with respect to professional, that -- that you'd be advocating for a very narrow rule here?

MS. STEVENSON: Yes, it would be very narrow. And I think it's consistent with the precise doctrines that NIFLA called out as -- as not triggering heightened First Amendment scrutiny, like malpractice, like informed consent, because those are things that are taking place in the exact same -- the exact same relationship that we're talking about here.

JUSTICE JACKSON: Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

Rebuttal, Mr. Campbell?

REBUTTAL ARGUMENT OF JAMES A. CAMPBELL
ON BEHALF OF THE PETITIONER

MR. CAMPBELL: Thank you, Mr. Chief Justice.

On standing, Justice Gorsuch, in -- in response to your question, I heard the state say that they are not disavowing enforcement, particularly if the effort involves discussions that seek change on identity. On pages 216 to 217, Ms. Chiles talks about how she wants to have full conversations exploring issues of identity and gender, and that includes considering change.

On the issue of studies, there was a reference to the Green and Turban studies. All of those studies relied on biased sampling, self-reporting. They conflated aversive techniques with voluntary counseling. They did not isolate licensed counselors. And they did not purport even in their own study to prove causation.

Beyond that, Justice Thomas, in response to one of your question, the state conceded that it would be speech if it was a life coach, but it's for some reason not

protected speech if it is a professional. That is an attempt to revive the professional speech doctrine that this Court rejected in NIFLA.

This law's viewpoint discrimination is even worse than we've heard so far this morning because the State of Colorado would allow a 12-year-old without their parents' consent to enter into counseling that would go the opposite way on these issues of gender identity and sexual orientation. But -- if that same 12-year-old with their parents' consent want to seek counseling in the opposite direction, the kind that my client would provide, they are not able to do that. That kind of viewpoint discrimination must survive strict scrutiny.

This law harms gender-dysphoric kids because the statistics that we've cited in our verified complaint, as well as in the brief that we cited with this Court, indicate that 90 percent of young people who are struggling with gender dysphoria before puberty work their way through it and realign their identity with their sex, but if one of those children go to a counselor and they specifically say that is the help I want, realigning my identity with their

sex, they cannot receive that help from someone like my client.

Moreover, if they're continuing down the path of transition, then, unfortunately, they get locked into that path, and, eventually, it leads, over 90 percent of the time, once they start down the path of social transition, it will lead to the route of medicalized transition, which the Cass report tells us comes with a lot of harm and devastation.

And, lastly, there should be no remand in this case for all of the reasons that I just explained. In addition to that, I heard Ms. Stevenson say that they were aware below that we were arguing for strict scrutiny and that they had an opportunity to put studies in. So all remand would do in this case is continue to prolong the ongoing harm that's happening not only to my client but, more importantly, the kids who are struggling with gender dysphoria.

Thank you.

CHIEF JUSTICE ROBERTS: Thank you, counsel.

The case is submitted.

(Whereupon, at 11:31 a.m., the case was submitted.)

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