NO. 24-539

In the
Supreme Court of the United States

KALEY CHILES,

Petitioner,

v.

PATTY SALAZAR, in her official capacity as Executive Director of the Department of Regulatory Agencies, et al.,

Respondents.

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

BRIEF OF *AMICI CURIAE* ERIN BREWER, NATE OYLOE, AND CHRISTIAN COUNSELORS FREEDOM ALLIANCE IN SUPPORT OF PETITIONER

Renee K. Carlson
Counsel of Record
Douglas G. Wardlow
TRUE NORTH LEGAL
525 Park Street, Suite 460
St. Paul, MN 55103
(612) 789-8811
rcarlson@truenorthlegalmn.org

Counsel for Amici Curiae

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Amici curiae are two individuals, and an association of fifty-five counselors residing in Minnesota, all of whom have grave concerns about counseling-restriction laws, like Colorado's, that seek to censor professional speech between counselors and clients to the detriment of minor children and adolescents seeking to overcome their gender distress. Colo. Rev. Stat. § 12-240-121(1)(ee). Amici can attest to the impact that counseling-restriction laws have on both counselors and clients. Minnesota's similar law prohibits client access to self-selected counseling goals for minors and vulnerable adults when those goals deviate from a gender-affirming approach. Minn. Stat. § 214.078.

Amici Erin Brewer and Nate Oyloe are individuals who overcame gender dysphoria through talk therapy with a licensed counselor.

Erin Brewer, Ph.D., is the founder of Compassion Coalition. As a young child, she struggled with gender dysphoria and identified as a transgender male. She was rescued from false reality through highly qualified counselors who employed cognitive therapy to help her realize that her hatred for her female body was the result of a horrific sexual assault at age six and her desperation to escape reality instead of dealing with the pain. As a result of her life experience,

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[1] No counsel for any party to this case authored this brief in whole or in part. No party to this case and no counsel for any party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici*, their members, and their counsel made such a monetary contribution.

Erin is now a dedicated advocate for children and individuals who have been preyed upon by the gender-ideology industry. She has testified in legislative hearings across the country about the necessity to protect counseling access for individuals struggling with gender distress.

Nate Oyloe is the founder and Executive Director of Agape First Ministries, a ministry that helps individuals struggling with gender distress and unwanted same-sex attraction. Nate started this ministry years after his journey to healing from gender dysphoria and unwanted same-sex attraction. Regular meetings with licensed Christian counselors in Minnesota helped him overcome his same-sex desires by addressing underlying mental-health challenges stemming from physical and emotional abuse as a child, and an intense family divorce. Nate is a pastor and trained biblical counselor who has ministered to the sexually and relationally broken for over two decades. He speaks both national and internationally on issues relating to gender distress and the redemptive power of God. Nate's greatest joy is the wholeness that has allowed him to be faithfully married to his wife and become the father of three children.

Christian Counselors Freedom Alliance ("CCFA") is a group of Minnesota-based licensed counselors and mental health professionals whose mission is to honor God and advocate for the constitutional rights and freedoms of Christian counselors and mental health professionals in Minnesota. All members currently hold an active mental health license in Minnesota or are pursuing a graduate degree in mental health with the intent to obtain licensure. CCFA members firmly

believe that Christian counselors should be allowed to practice counseling in alignment with biblical principles, and that all clients deserve access to counseling that aligns with their faith- and self-determined counseling goals. Due to Minnesota's counseling-restriction law, however, CCFA members cannot honor their faith-based convictions in the counseling room without facing severe legal penalties.

SUMMARY OF ARGUMENT

Counseling-restriction laws such as Colorado's Minor Conversion Therapy Law are one of the atrocious legal scandals of our day. Colo. Rev. Stat. § 12-245-202(3.5). Under the guise of professional regulation, the Colorado law tramples on the First Amendment-protected expression of counselors and their clients. Counseling restrictions like Colorado's bar licensed counselors from talking with their young clients about their gender distress or struggles with sexual orientation on pain of serious legal penalties, including steep fines and loss of licensure. *Id.* § 12-245-225.

Colorado's law is an unconstitutional viewpoint-based ban on any counseling speech that expresses ideas with which the government disagrees. The nearly identical Minnesota law suffers from the same constitutional infirmities. *See* discussion *infra* Section I; Minn. Stat. § 214.078.

These speech bans leave adolescents and children without the mental health help they need and desire. By denying much-needed access to talk therapy and limiting their ability to explore underlying causes of gender distress, counseling restrictions also push

young people toward highly experimental, dangerous, and often irreversible "gender-affirming" medical procedures. *See* Dep't of Health & Hum. Servs., *Treatment for Pediatric Gender Dysphoria* (2025), https://opa.hhs.gov/sites/default/files/2025-05/gender-dysphoria-report.pdf. This, when many individuals, like Amici Brewer and Oyloe, have greatly benefited from the opportunity to talk about their gender dysphoria with licensed counselors.

Quite simply, every individual, especially adolescents and children, should be free to access counseling that addresses areas of distress they are experiencing. Laws like those in Colorado, Minnesota, and over twenty others across the country, dramatically curtail that right.[2]

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[2] *See* Cal. Bus. & Prof. Code § 865.1; Conn. Gen. Stat. §§ 19a-907a, 19a-907b; Del. Code. Ann. tit. 24 § 3915(a)(11); D.C. Code § 7-1231.14a(a); Haw. Rev. Stat. Ann. § 453J-1(a); 405 Ill. Comp. Stat. 48/20, 48/25; Me. Rev. Stat. Ann. tit. 32, § 2600-D; Md. Code. Ann. Health Occupations § 1-212.1(b); Mass. Gen. Laws ch. 112, § 275 (2020); Mich. Comp. Laws Ann. § 330.1901a; Minn. Stat. § 214.078; Nev. Rev. Stat. Ann. § 629.600; N.H. Rev. Stat. Ann. § 332-L:2; N.J. Stat. Ann. § 45:1-55; N.M. Stat. Ann. § 61-1-3 (2017); N.Y. Education Law § 6531-a; Or. Rev. Stat. § 675.850(1); 23 R.I. Gen. Laws § 23-94-3(a); Utah Code Ann. § 58-1-511(2); Vt. Stat. Ann. tit. 18, § 8352 (2016); Va. Code Ann. § 54.1-2409.5; Wash. Rev. Code § 18.130.180(26).

ARGUMENT

I. The counseling restrictions violate constitutional guarantees of free speech and free exercise of religion under the First and Fourteenth Amendments.

The Tenth Circuit's decision allows Colorado to regulate licensed counselors' speech on a topic of "fierce public debate"—namely, how to best "help minors with gender dysphoria." *Tingley v. Ferguson*, 144 S. Ct. 33, 33 (2023) (Thomas, J., dissenting from denial of certiorari). Colorado's law prohibits licensed counselors from expressing viewpoints in the counseling room on the subjects of gender identity and sexual orientation that do not conform to the state's preferred point of view. Colo. Rev. Stat. § 12-245-202(3.5). This kind of viewpoint-based censorship strikes at the very heart of the First Amendment. As this Court famously stated in *West Virginia State Board of Education v. Barnette*, "[i]f there is any fixed star in our constitutional constellation, it is that no official . . . can prescribe what shall be orthodox in matters of politics, . . . religion, or other matters of opinion or force citizens to confess by work or act their faith therein." 319 U. S. 624, 642 (1943).

This Court should hold, once and for all, that the First Amendment's protection does not stop at the counseling room's door. Failing to do so would severely and negatively impact licensed counselors and young people seeking help for gender dysphoria and unwanted same-sex attraction not only in Colorado, but also in numerous states across the country that have similar statutory counseling restrictions.

Amicus Nate Oyloe and the licensed-counselor members of Amicus CCFA reside in the State of Minnesota, which has enacted counseling restrictions very similar to the Colorado law. Indeed, much of the two statutes' operative language is identical.

The Colorado statute bans "any practice or treatment by licensee registrant, or certificate holder that attempts or purports to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex." Colo. Rev. Stat. § 12-245-202(3.5). Likewise, Minnesota's counseling restriction bars mental health practitioners and professionals from "any practice . . . that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender." Minn. Stat. § 214.078, subdiv. 1(b). Because these formulations are identical in all relevant respects, all the constitutional infirmities discussed herein below that plague the Colorado law apply with equal force to the Minnesota statute.

The Minnesota counseling restriction, however, contains additional provisions that the Colorado statute does not, exacerbating its impact on counselors and clients. For one, the Minnesota counseling restriction applies not only to counselors engaging with clients under the age of 18, but also to licensed counselors speaking to clients who are "vulnerable adults"

regardless of age. *Id.* § 214.078, subdiv. 2(a).[3] Moreover, the Minnesota legislation modified Minnesota's Deceptive Trade Practices Act to forbid any "person or entity, while conducting any trade or commerce" from, among other things, "offering conversion therapy services that could reasonably be interpreted or inferred as representing homosexuality as a mental disease, disorder, or illness. . .." *Id.* § 325F.69, subdiv. 7(b). It is not clear how this vague language might be applied. However, by classifying as a deceptive trade practice talk therapy that *could be interpreted* as conveying a particular message, this provision undoubtedly expands the Minnesota counseling restriction's chilling effect on the speech of licensed counselors, clients, and potential clients.

The members of CCFA should not be foreclosed by law from engaging in counseling-room speech that does not match the orthodoxy prescribed by the Minnesota legislature. Moreover, young people who desire talk therapy that aligns with their sincerely held religious beliefs concerning sexual orientation and gender identity in each of the more than twenty states with similar laws should not be barred from the counseling that they want and need.

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[3] Minnesota's statutory definition of vulnerable adult includes any such person 18 years of age or older who, by definition, could be a mentally and emotionally competent individual merely possessing "physical or mental infirmity" requiring assistance. Minn. Stat. § 626.5527, subdiv. 21(a)(4)(i)–(ii)(b). Thus, Minnesota's counseling-restriction law extends its reach over the choices of otherwise competent adults and prevents them from accessing the counseling they need to achieve their desired results. *See id.*

A. The counseling restrictions regulate speech, not conduct.

The Colorado counseling-restriction law (and the similar laws in Minnesota and many other states across the nation) run afoul of the First Amendment in multiple ways, leading to significant negative impacts for both licensed counselors and young people seeking counseling. The Tenth Circuit incorrectly held that Colorado's counseling restrictions "do[] not regulate expression." *Chiles v. Salazar*, 116 F.4th 1178, 1208 (10th Cir. 2024). Repeatedly, the court below invoked Chiles's counseling license and status as a mental health professional as a means to transform her spoken words into conduct. *See id.* at 1204–11. But no label applied to a category of speech can be used as a talisman to escape the limitations of the First Amendment. *See N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964) (speech categorized as "libel can claim no talismanic immunity from constitutional limitations" but rather "must be measured by standards that satisfy the First Amendment"). It follows that "[s]peech is not unprotected merely because it is uttered by 'professionals.'" *Nat'l Inst. of Fam. & Life Advocates v. Becerra*, 585 U.S. 755, 767 (2018). Rather, the line between speech and conduct depends on what the challenged law regulates in the case at hand, not what label or categorization the state applies. *See Hines v. Pardue*, 117 F.4th 769, 777 (5th Cir. 2024) (quoting *Thomas v. Collins*, 323 U.S. 516, 536 (1945)) (relevant consideration is the law's "'effect, as applied, in a very practical sense,'" not "whatever label a state professes"). When the challenged law regulates *only* the message conveyed by verbal language, the law undoubtedly runs headlong into the First Amendment's

guarantee of free speech. *See Holder v. Humanitarian L. Project*, 561 U.S. 1, 28 (2010) (in challenge to statute prohibiting the provision of material support to certain organizations, holding that advice provided to organizations was speech and not conduct: the only "conduct triggering coverage under the statute consist[ed] of communicating a message"); *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 752 (8th Cir. 2019) ("speech is not conduct just because the government says it is").

Here, the counseling restriction regulates talk therapy—an activity that involves nothing other than verbal expression. Because there is no "separately identifiable conduct" regulated by the counseling restriction, the Colorado law (and similar laws in Minnesota and other states) does not merely impose a burden on speech that is incidental to the regulation of conduct. *Cohen v. California*, 403 U.S. 15, 18 (1971). It regulates speech and not conduct, rendering it presumptively invalid under the First Amendment and subjecting it to strict scrutiny. *See id.* The Tenth Circuit's erroneous holding to the contrary should be reversed.

B. The counseling restrictions discriminate on the basis of viewpoint in violation of the Free Speech Clause.

The Tenth Circuit's decision not only flouts this Court's jurisprudence governing the distinction between speech and conduct but also runs afoul of the well-established principle that the First Amendment protects *all* speech uttered by *all* persons—not merely "*some* messages and *some* persons." *303 Creative LLC v. Elenis*, 600 U.S. 570, 602 (2023). The Colorado law,

like those in Minnesota and other states, prohibits licensed counselors from verbally expressing certain views on the topic of sexuality and gender. For example, because the law bans "any practice"—including talk therapy—that "attempts to change an individual's . . . gender identity," Colo. Rev. Stat. § 12-245-202(3.5), a licensed counselor would run afoul of the law by merely telling a client about research indicating that gender-affirming care is not a viable approach for treating gender dysphoria. At the same time, the law expressly permits speech that aligns with the State's preferred viewpoint.

To determine whether a licensed counselor has violated the law, the government official enforcing the law would need to examine the content of the speech at issue and determine whether it expresses a permissible viewpoint or an impermissible one. Such blatant viewpoint discrimination is an "egregious" violation of the Free Speech Clause. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). The First Amendment requires that the government "abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Id.* Licensed counselors and their clients should be able to direct their conversations in the counseling room free from state-imposed ideological restrictions.

C. The counseling restrictions violate the Free Exercise Clause.

The Colorado and Minnesota counseling restrictions also violate the free-exercise rights of Christian counselors. Chiles and the members of Amicus CCFA practice as Christian counselors, and many of

their clients seek their services because they, too, are Christians, and they desire counseling consistent with their sincerely held religious beliefs about sexuality and gender. The Colorado and Minnesota counseling restrictions ban their sincerely held religious beliefs from the counseling room.

Even "slight suspicion that" the government acts out of "animosity to religion or distrust of its practices" is "inconsistent with the First Amendment's guarantee that our laws be applied in a manner that is neutral toward religion." *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 584 U.S. 617, 638–40 (2018). In the case of the Colorado and Minnesota counseling restrictions, the legislatures of those states have painted their animosity toward religion on the face of the respective statutes.

The Colorado and Minnesota laws impose the state's views into an area of profound religious debate, excising religious beliefs held by Christians, Jews, and Muslims from the permissible domain of talk therapy. For many hundreds of years, these faiths have upheld the beauty of marriage and procreation between one man and one woman. As the Supreme Court recognized in *Obergefell v. Hodges*, "[t]his view long has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world." 576 U.S. 644, 657 (2015). And yet the Colorado and Minnesota laws label talk therapy that upholds this set of religious beliefs as so dangerous that a licensed professional—a person who is trained to be sensitive about how words can impact a counseling client—may not engage in it. And, in the case of Minnesota, the law labels those widely held and cherished

religious beliefs as fraudulent and deceptive trade practices, potentially subjecting counselors who violate the law's vague, viewpoint-based prohibitions to civil suits and damages. The Colorado and Minnesota laws thus reject Justice Kennedy's counsel in *Obergefell* that "religious organizations and persons [be] given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths." *Id*. at 2607. Indeed, the clear and evident hostility of these laws toward religion requires that they be "'set aside'" "without further inquiry." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 n. 1 (2022) (citation omitted).

D. The counseling restrictions are impermissibly vague.

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). The language of the Colorado counseling restriction (and the near-identical language of its Minnesota equivalent) does not "provide explicit standards for those who apply [it]," raising the specter of "arbitrary and discriminatory enforcement." *Id.*

The statutory language impermissibly prohibits speech by licensed counselors that "attempts or purports to change an individual's sexual orientation or gender identity. . .." Colo. Rev. Stat. § 12-245-202(3.5); Minn. Stat. § 214.078, subd. 1(b) (prohibiting expression that "seeks to change an individual's sexual orientation or gender identity"). But the statutory language has no guidelines or definitions that specify what conversations and messages would constitute an impermissible attempt to bring about such a "change."

This leaves counselors and clients confused about what is specifically prohibited, chilling protected speech in violation of the First Amendment. *See Grayned*, 408 U.S. at 109 ("where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of [those] freedoms'") (first quoting *Baggett* v. *Bullitt*, 377 U.S. 360, 372 (1964); then quoting *Cramp* v. *Bd. of Pub. Instruction*, 368 U.S. 278, 287 (1961)). Christian counselors including members of CCFA thus feel pressure to refrain entirely from talk therapy on matters concerning gender identity and sexual orientation. Young people seeking vitally important counseling on those subjects that conforms to their Christian worldview cannot find counselors willing to provide it or are fearful of discussing those issues for fear of jeopardizing their counselors' licenses. *See* discussion *infra* Section II. The counseling restrictions thus chill the speech of counselors, clients, and would-be clients, violating the Free Speech clause and negatively impacting the health and well-being of young people across Colorado, Minnesota, and more than twenty other states with similarly egregious laws.

II. Counseling restrictions use impermissibly vague and subjective terminology resulting in the denial of client access to critical mental health care, preventing counseling professionals from helping their clients achieve self-selected outcomes.

Generally, counseling restrictions, like Colorado's and Minnesota's, only permit "counseling that provides assistance. . .acceptance, support, and understanding. . .or facilitates an individual's coping,

social support and identity exploration and development" if that person seeks to change their sex or gender identity." Colo. Rev. Stat. § 12-245-202(3.5); Minn. Stat. § 214.078. While proponents of these laws claim that they are necessary to protect minors (as well as vulnerable adults in Minnesota) from egregious therapy practices, the plain language of these laws leave no question that the intent is not to ban egregious therapy practices associated with conversion therapy—such as electric shock therapy and nausea-inducing drugs—as such legislation would pass with bipartisan support, not only in Minnesota but across the globe. *See, e.g.*, *Children or vulnerable adult conversion therapy prohibited, medical assistance coverage prohibited for conversion therapy, and misrepresentation of conversion therapy services or products prohibited: Hearing on H.F. 16 Before the H. Com. Fin. & Pol'y Comm.*, 2024 Leg., 93rd Sess. (Minn. 2024) (Testimony of David Kirby, Psy.D.); Stella O'Malley & Joseph Burgo, *Saving Psychotherapy from Conversion Therapy Bans*, Genspect (Feb. 28, 2023), https://genspect.org/saving-psychotherapy-from-conversion-therapy-bans/ (accessed June 4, 2025).

However, as the gender-affirming approach to counseling has been the subject of increasing controversy, the flawed reasoning of counseling restrictions is clear. Counseling restrictions are merely the government's mechanism to silence anyone who believes it is possible to live in conformity with one's biological sex despite struggles with one's sexual identity, or anyone who believes that health and healing from gender distress are possible through counseling and watchful waiting. Such laws result in

the denial of access to critical mental health care and mental health professionals, to the detriment of those in need of counseling services.[4] Rather than protect access to mental health care based on a client's self-selected[5] counseling goals, these laws impermissibly "stifle[] speech on account of its message. . .requir[ing] the utterance of a particular message favored by the Government." *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994) (citing *Simon & Schuster, Inc. v.*

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[4] *See* Lisa Littman, *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners*, 50 Archives Sexual Behav. 3353, 3360 (available at https://link.springer.com/content/pdf/10.1007/s10508-021-02163-w.pdf) (accessed June 4, 2025) (Research shows that far too many young people, and particularly teenage girls, are being steered towards transgender identification before receiving adequate psychological evaluation and counseling).

[5] England's National Health Service (NHS) U.K. recommends psychotherapy for children rather than pharmacological and surgical interventions as "treatments" under sixteen years old. *See Treatment: gender dysphoria*, Nat'l Health Servs. (May 28, 2020) https://www.nhs.uk/conditions/gender-dysphoria/treatment/ (accessed June 4, 2025). According to NHS's guidelines regarding treatment for gender dysphoria "[m]ost treatments offered at this stage are psychological rather than medical. This is because in many cases gender variant behaviour or feelings disappear as children reach puberty." *Id.* NHS's approach corresponds with a 2008 study from the Netherlands reported nearly a decade ago in the New York Times, which found that 70% of boys who had gender dysphoria grew out of it within ten years. Richard A. Friedman, *How Changeable is Gender*, N.Y. Times, Aug. 22, 2015 (available at https://www.nytimes.com/2015/08/23/opinion/sunday/richard-a-friedman-how-changeable-is-gender.html) (accessed June 4, 2025). Laws that prohibit individuals from reconciling their emotions and sexuality deny medical care for many individuals.

Members of N. Y. State Crime Victims Bd., 502 U. S. 105, 116 (1991)). Thus, "'pos[ing] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.'" *Otto v. City of Boca Raton*, 981 F. 3d 854, 861 (11th Cir. 2020) (emphasis added) (quoting *Nat'l Inst. of Fam. & Life Advocs. v. Becerra,* 585 U.S. 755, 771 (2018)). This muzzling not only drives diverse views out of the marketplace and the public square but also creates a vacuum of care as licensed counselors and other mental health professionals are confused about which approaches are legal and self-censor out of fear of losing their license. *Id.* at 863-64 (". . .what good would it do for a therapist whose client sought SOCE therapy to tell the client that she thought the therapy could be helpful, but could not offer it? It only matters that some words about sexuality and gender are allowed, and others are not. . ."). In Minnesota, these overly broad and vague, restrictions affect both counselors and individuals, leaving many hurting young people without the hope and help they are voluntarily seeking.

A. Counseling restrictions are harmful to licensed counselors and mental health professionals.

Over the last decade, the United States has experienced an uptick in youth who identify as transgender or non-binary. *See* Abigail Shrier, *Irreversible Damage: The Transgender Craze Seducing Our Daughters* 42 (2020). CCFA members have observed this increase among client populations in Minnesota. Resultantly, CCFA counselors are in the crosshairs of these nebulous laws and have

firsthand experience dealing with the laws' onerous, harmful limitations on talk therapy.

Practically, CCFA members are confused about the confines of the statute. What constitutes an "effort" to "change" ones "sexual orientation or gender identity"? Minn. Stat. § 214.078(1)(b). Could the law be applied to counselors who do not affirm a client's perceived gender or sexual expression? Will penalties result from conversations about the origin of a client's gender confusion and sexual preferences if there is an implication or inference that they are not innate? May a counselor legally discuss whether gender confusion or sexual preferences may have been triggered by an underlying cause, such as desiring to fit into a social network, protecting against the vulnerabilities associated with one's biological sex based on past trauma, strained parental relationships, and other underlying causes for self-hatred? What are the legal consequences for counselors who discuss the raw implications of pediatric medical transition, or affirm a client's desire to desist and embrace their biological sex?

Asking questions is foundational to the counseling profession. Questions help clients peel back layers of emotions to discover the causes of physical and emotional distress. Counselors must also be able to recognize and interrupt dysfunctional patterns of belief, thought, emotion and behavior, tasks most often accomplished through sharing new information or offering alternative perspectives.

CCFA counselors assert it is not uncommon for clients to have untrue beliefs about themselves. For example, an anorexic person truly believes they are

overweight. Highly intelligent people hold real beliefs about their own incompetence. Someone with body dysmorphic disorder obsesses about imperfections to a degree not in line with reality. In these cases, counselors and other mental health professionals consider it best practice to respectfully and gently assist these individuals in aligning their perceptions with reality.

Yet when it comes to the current epidemic of gender dysphoria, counselors are instructed to do precisely the opposite of all they have been trained to do. Rather than becoming curious or asking questions about the origin of gender confusion, they are told that gender identity is innate to a person. They are further told that any attempt to gently align a person with the reality of their biological sex or encourage love for their true self is a clear violation of "conversion therapy bans", or worse, could increase a client's suicidality.[6] This abrupt change in how counselors are instructed to approach delusions in clients is not based in scientific study, but in ideological activism.

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[6] See Joshua E. Lewis et al, *Examining gender-specific mental health risks after gender-affirming surgery: a national database study*, 22 J. Sexual Med. 645, 645–51 (2025) (available at https://academic.oup.com/jsm/advance-article-abstract/doi/10.1093/jsxmed/qdaf026/8042063) (accessed June 4, 2025) (from a 107,583 sample size: "Primary outcomes were differences in mental health disorders, specifically depression, anxiety, suicidal ideation, body-dysmorphic disorder, and substance use disorder, among transgender individuals' post-surgery.") Although this study focused on adults, the results warrant concerns relating to suicidal ideation resulting from pediatric medical transition.

Without clear guidelines about what constitutes "conversion therapy" and what constitutes a violation of the law, humane, helpful, and at times, crucial conversations between counselors and their clients are suppressed, severely limiting a counselor's ability to serve his or her clients. Much-needed opportunities for children and adolescents to freely process their thoughts and beliefs in a setting where various viewpoints should be allowed are foreclosed.

This suppression extends beyond the counselor's office as these bans also limit professional discourse. The mental health field has always valued professional discourse as a means of refinement. For CCFA counselors, allowing a diversity of viewpoints and investigating various treatment models often results in the best quality of care for their clients. However, when confronted with gender distress, such as Rapid Onset Gender Dysphoria ("ROGD"), arguably a new epidemic occurring in frequency like never before, *Study of 1,655 Cases Supports the "Rapid-Onset Gender Dysphoria" Hypothesis*, Soc'y for Evidence Based Gender Med. (March 30, 2023), https://segm.org/study-of-1655-cases-lends-support-to-ROGD (quoting Suzanna Diaz, J. Michael Bailey, *RETRACTED ARTICLE: Rapid Onset Gender Dysphoria: Parent Reports on 1655 Possible Cases*. 52 Archives Sex Behav. 1031–43 (2023), medical professional organizations like the American Academy of Pediatrics, American Psychological Association, and the American Psychiatric Association, to name just a few, have rushed to endorse only one inadequate

approach[7]: so-called "gender-affirming care."[8] No other alternatives are tolerated. This strong

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[7] The National Health Services (NHS) U.K. is just one example of the substantial reversals of clinical protocols when treating children and adolescents for gender dysphoria. *Treatment: Gender Dysphoria*, Nat'l Health Servs. (May 28, 2020) https://www.nhs.uk/conditions/gender-dysphoria/treatment/ (accessed June 4, 2025) ("Puberty suppressing hormones are not available to children and young people for treatment of gender dysphoria or gender incongruence. This is because there is not enough evidence of their clinical safety and effectiveness."); *Referral pathway for Children and Young People's Gender Services*, Nat'l Health Servs. (Sept. 5, 2024) https://www/england.nhs.uk/long-read/refferal-pathway-for-children-and-young-peoples-gender-services-mental-health-services/ (accessed June 4, 2025) ("In March 2024 the NHS adopted a policy that puberty suppressing hormones are not to be prescribed to gender variant children outside of a clinical study because of the limited evidence about risks, benefits and outcomes."); *Id.* ("It is a criminal offence for a pharmacist, doctor or any other individual in Great Britian to sell or supply puberty suppressing hormones to children and young people under the age of 18 except in prescribed circumstances, and for an individual to possess the medications outside of the prescribed exceptions. This is described on the gov.uk website."); *See* Dep't of Health & Hum. Servs., *Treatment for Pediatric Gender Dysphoria* 63 (2025), https://opa.hhs.gov/sites/default/files/2025-05/gender-dysphoria-report.pdf (citing Cass, Hilary, *Independent Review of Gender Identity Services for Children and Young People: Final Report* 157 (2024) (explaining the preferred approach for treating gender dysphoria is "a multidisciplinary, developmentally-informed model of care for youth and GD that prioritizes psychological support and the development of 'an explicit clinical pathway…for non-medical interventions")).

[8] *See* Alyson Sulaski Wyckoff, *AAP reaffirms gender-affirming care policy, authorizes systematic review of evidence to guide update* (Aug. 4, 2023)

alignment between state governments and these medical associations amplifies the already significant suppression of alternative pathways and dissenting voices within the mental health field.[9]

But there is a price to pay for activism leaving science in the dust. Major medical associations were

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https://publications.aap.org/aapnews/news/25340/AAP-reaffirms-gender-affirming-care-policy?autologincheck=redirected (accessed June 4, 2025); *APA adopts groundbreaking policy supporting transgender, gender diverse, nonbinary individuals*, Am. Psych. Ass'n (Feb. 28, 2024) https://www.apa.org/news/press/releases/2024/02/policy-supporting-transgender-nonbinary (accessed June 4, 2025); *Gender Affirming Therapy*, Am. Psychiatric Ass'n https://www.psychiatry.org/psychiatrists/diversity/education/transgender-and-gender-nonconforming-patients/gender-affirming-therapy (accessed June 4, 2025).

[9] *Chiles v. Salazar*, 116 F.4th 1226 (Hartz, J. Dissenting) ("…the second question, which the majority opinion did not need to address because of the way it resolved the first issue, is whether a court should treat as 'science' the pronouncements of prestigious persons or organizations that are not supported by sound evidence. Science has enjoyed tremendous respect because of the great advances it has made since the beginning of the scientific revolution. But is has not made those advances by respecting 'authority.' To give just one illustration, although Albert Einstein is widely recognized as the greatest of physicists, virtually all theoretical physicists, then and now, have rejected his views of the nature of quantum mechanics. Only in a very weak moment would a true scientist say 'I am science'…But for each field, there are appropriate standards for collecting and analyzing data and experience that are objective—that is, independent of the prestige of the persons expressing the view. Applying those objective standards, whether this application be called strict review, exacting review, rigorous review, or some other term, is an essential task of the judiciary when 'science' is invoked to justify restrictions on free speech.").

quick to adopt the Standards of Care ("SOC") endorsed by the World Professional Association of Transgender Health ("WPATH"), which have become increasingly radical in their demand for gender-affirmation-only approaches. Counselors, endocrinologists, and other medical professionals with diverging views are increasingly posed as a threat to a client's full medical transition.[10] Therefore, a thoughtful counselor who asks challenging questions, offers new perspectives, or shares real risks about pediatric medical transition, is considered an obstacle to these large associations' goals. However, as science catches up with the devastating effects of "gender-affirming care" and countries like Finland, Sweeden, England, Norway, and Australia, have renounced the WPATH's SOC, a broader discussion regarding treatment of gender-distressed individuals is not only inevitable but required. *See* Dep't of Health & Hum. Servs., *Treatment for Pediatric Gender Dysphoria* 143–45 (2025), https://opa.hhs.gov/sites/default/files/2025-05/gender-dysphoria-report.pdf. These discussions

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[10] Jamie Reed, *I Thought I Was Saving Kids. Now I'm Blowing the Whistle*, The Free Press (Feb. 9, 2023) https://www.thefp.com/p/i-thought-i-was-saving-trans-kids (describing her performance review following her public statements regarding her concerns about the ethical and medical implications of the gender clinic where she worked, whistleblower Jamie Reed recalled "…In all my years at the Washington University School of Medicine, I had received solidly positive performance reviews. But in 2021, that changed. I got a below-average mark for my 'Judgment' and 'Working Relationships/Cooperative Spirit'"); Dep't of Health & Hum. Servs., *Treatment for Pediatric Gender Dysphoria* 193–208 (2025), https://opa.hhs.gov/sites/default/files/2025-05/gender-dysphoria-report.pdf.

will only be possible if vague, speech-suppressing counseling restrictions are struck down by this Court.

Under the guise of protecting youth, Minnesota's law threatens to punish counselors not only for adhering to their own professional and ethical obligations but also forces them to abandon their Christian beliefs in order to exist in the marketplace of counseling options, sidelining both counselors and clients.

As Christian counselors, CCFA members cannot compartmentalize their biblical convictions, nor do they desire to do so. Like many devout religious people, CCFA members' worldview shapes how they understand and respond to a client's presenting concerns. It is harrowing for these trained counseling professionals to possess a perspective and information that could set a client free from a lifetime of painful confusion but be unable to share it with them out of fear of violating the law. In these situations, CCFA counselors are unable to do what is truly best for their client. As one member reflected, "It's a constant puzzle to determine how I can abide by Minnesota's 'conversion therapy ban' while also not being compelled to say things that are untrue, like affirming a person's preferred gender or using their preferred names or pronouns." Given the vague statutory language, refusing to cooperate with a client's delusions could be considered an unlawful attempt to "change" them. Not just Christian counselors, but counselors of diverse faith backgrounds who hold a specific belief about men, women, and human sexuality must be allowed the freedom to practice in

line with their deeply held beliefs and core convictions. *Oberegfell*, 576 U.S. at 679–80.

B. Counseling restrictions harm adolescents and children who desperately need an alternative to "gender-affirming care."

Recently, a CCFA member and counselor in private practice received a call from a Minnesota parent seeking counseling for an adolescent child struggling with gender distress. The parent explained that navigating gender distress and sexuality exploration from a Christian perspective was vital. Another counselor in Minnesota had turned them down, reasoning that because Minnesota's conversion-therapy ban mandates a gender-affirming approach, he could not provide the desired counseling. While the restrictions impact counselors, only permitting them to reflect back on and affirm the client's experience regardless of the counselor's clinical assessment, clients are left hopeless by a law that makes them the perpetual victim.

Another CCFA member encountered a family in her practice whose daughter struggles with gender distress. It became clear that her gender distress was related to other underlying mental health conditions and that medication may be helpful. Sadly, in order to locate a psychiatrist who could be trusted not to practice gender-affirming care or suggest puberty blockers or cross-sex hormones, this client family was forced to search for services in a neighboring state.

Surely, these narratives are not unique to Minnesotans or Coloradans. Counselors across the

country living under brazen speech bans are precluded from offering critical mental health care to children and adolescents at a formative time when they need it most. Thus, both young people and counselors are the victims of these boldfaced laws because counseling restrictions are entirely unclear about what counselors can say when clients are searching or questioning. That a counselor's greatest tool—words—is being used as a weapon against them spells destruction for the counseling and mental health profession—and for children, adolescents and even some adults who desperately need their care.

III. Licensed counselors help young people resolve gender dysphoria by addressing past experiences and psychological trauma that lead to false beliefs about being inherently flawed or born in the wrong body.

When Amicus Erin Brewer was in kindergarten, she and her brother were abducted by two men and taken to a public restroom. Erin was brutally sexually assaulted. Her brother was not.

As a child processing this horrific experience, Erin sought to protect herself, reasoning that being a boy, like her brother, would have kept her safe. The horrific sexual assault was a catalyst for Erin's hatred of her female body.

It is not surprising, then, that Erin soon began insisting that she *was* a boy. She had what would now be considered a transgender identity: she started dressing in her brother's clothes; she did her best to act like a boy; and she even practiced urinating standing up.

The following school year, Erin's first grade teacher noticed that she was verbally and physically aggressive toward other students, faculty, and staff at school. She struggled with academic and social skills. Both her demeanor and her dress changed. Someone who was described as a quirky and happy little girl the previous year became withdrawn and easily upset. Erin's teacher realized that her mental health was unstable and sought an evaluation from the school psychologist. During a meeting between Erin's mother and the school psychologist, the psychologist shared her conclusion—Erin wanted to be a boy.

Fortunately, rather than affirming Erin's false belief about being a boy, the school psychologist offered recommendations for her teacher and parents to help alleviate the hatred Erin was developing for her female body, such as engagement with strong, talented female role models, and activities that offered positive reinforcement about her body and being a girl. Exposure to other girls who had a healthy view of their own body helped Erin to understand, embrace, and eventually appreciate her unique female physiology.

As Erin recalled, "I have no doubt that if the option to take puberty-blockers and cross-sex hormones had been available, I would have done everything I could to obtain them, *including threatening suicide*. *It would have been so much easier to kill myself as a girl and become the boy I thought I was rather than work though the underlying issues, suffering a brutal sexual assault as a kindergartener, that triggered my gender dysphoria.* Perhaps testosterone would have provided me some immediate relief, as most people who take testosterone initially feel a sense of euphoria. But a

boost in confidence and increased energy would have buried the underlying psychological trauma that triggered my gender distress."

Through talk therapy—conversations with a licensed counselor—Erin was able to openly divulge the fears that daily engulfed her psyche. Talking about her trauma with a qualified, trained mental-health professional helped her realize that her quest to become another sex was really an attempt to dissociate from her true, female self. By creating a new persona, she could pretend that the horrible trauma of sexual assault that triggered her gender dysphoria hadn't happened.

But, disassociating would only result in a short-term solution reinforcing all the mistaken beliefs that caused her to develop gender dysphoria: that she was responsible for the assault by the very nature of being female; that her body was a mistake; and, that *it was too dangerous be a girl.* Claire Blaze, *Embracing the Uncomfortable*, Genspect, (May 6, 2025) https://genspect.org/embracing-the-uncomfortable/ (accessed June 4, 2025) (explaining that gender non-conforming and same-sex-attracted females struggle with being female due to factors that often include being a victim of sexual abuse). Had Erin been medically transitioned, her fears, shame and anxiety would have been validated, buttressing her self-hatred instead of addressing the deeper trauma that precipitated her gender distress. Through counseling, Erin realized that neither she nor her female body are inherently flawed. Counseling helped her understand that her transgender identity was merely a coping mechanism

based on the false belief that the only way to survive was to become a different person.

Now, Erin is living a peaceful and whole life married to her husband, and enjoys being a mother and soon, a grandmother. She is thankful that she was not encouraged to medically transition, because puberty blockers combined with cross-sex hormones would have sterilized her, depriving her of one of the greatest joys in her life.

Over the last ten years, Erin has met others who also struggled with gender distress. Unfortunately, for many of these individuals, it was too late. The damage done by puberty blockers, cross-sex hormones, and elective cosmetic surgery such as double mastectomy is often irreversible.[11] Many of them are detransitioners who can attest to the unimaginable pain and betrayal –from medical and mental health professionals as the cause of their desire to become someone else was never addressed. *Gender-affirming care health plan and medical assistance coverage requirement*

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[11] Puberty blockers prohibit normal child and adolescent growth and development. Cross-sex hormones cause an otherwise healthy body to become dysfunctional. The combination of both puberty blockers and cross-sex hormones often results in sexual dysfunction and sterility. In the short term, these medical interventions allow children to avoid the difficulties they are facing, which might include struggling with autism, or trying to recover from a significant trauma. *See Treatment: gender dysphoria*, Nat'l Health Servs. (May 28, 2020) https://www.nhs.uk/conditions/gender-dysphoria/treatment/ (accessed June 4, 2025); Friedman, *supra* note 5.

clarification: Hearing on S.F. 2209 Before the Health & Hum. Servs. Comm., 2024 Leg., 93rd Sess. 1–2 (Minn. 2024) (Testimony of Camille Kiefel, President of Detrans Help). Rather than confronting and exploring the psychological conditions that precipitated their gender dysphoria, they were rushed into experimental medicine and protocols that are now being reversed in most countries. *See* Dep't of Health & Hum. Servs., *Treatment for Pediatric Gender Dysphoria* 143–45 (2025), https://opa.hhs.gov/sites/default/files/2025-05/gender-dysphoria-report.pdf. The very people who were supposed to help them caused the most harm.

Erin fears that laws like Colorado's and Minnesota's, which restrict counseling clients—young children, adolescents, and families—from discussing painful emotions, will create more victims.

Like Erin, Amicus Nate Oyloe also experienced gender distress resulting from significant events that happened during his formative years coalescing into an emotional storm that generated his struggle with same-sex attraction. Nate grew up in a home prevalent with domestic abuse. In third grade he was subjected to a very intense divorce between his parents where allegations of abuse sent him and his siblings into foster care. Around this time, as a young boy, Nate felt an increasing sense of instability. Living in the daily dysfunction of an unstable home environment advanced developing attachment disorders. Although his parents' divorce was necessary for his safety, the truth did not compensate for the loss and pain of a stable, two-parent household. Nate longed for the stability of a mother and father.

The abuse and harassment continued when other boys and even men, bullied Nate on the playground at school. As early as third grade, Nate can recall feeling out of place in the world of men. This lack of belonging caused him to hold on to a great deal of shame and ask questions about his identity.

Nate's confusion over his sexual orientation and gender identity peaked around eleven years old, as an adolescent, creating an intense internal dilemma between his strong Christian faith and convictions while simultaneously experiencing same-sex attractions. Initially, he tried to manage the intensity of the conflict on his own. But isolation only exacerbated his gender distress. Nate realized that he needed help—someone he could *talk to* without fear of judgment who could help him sort out the source of a deep internal agony.

Nate deeply desired to reconcile his same-sex attraction with his religious beliefs about how God created males and females. Although his internal struggle was powerful, Nate desired to live a life holy and pleasing to God and believed he did not have to endure the pain resulting from his same-sex attraction.

Growing up in a small town made it difficult for Nate to find a licensed counselor who shared his biblical convictions. As young as sixth grade, Nate sought help for his gender distress. But, it wasn't until Nate moved to Minneapolis, Minnesota, for college that he gained access to qualified mental health professionals. Nate describes his therapeutic journey as "wonderful and freeing." For the first time in his life, he was able to *talk* with someone who was compassionate, possessing real, tangible tools to help him achieve *his*

goals, which included overcoming his same-sex attraction.

Working with a qualified mental health professional facilitated a significant reduction in anxiety and shame around his identity as a man. Through talk therapy Nate was able to untangle what was true about himself from the false messages he received growing up. Although he was well past third grade, his experiences both in his home and on the playground were not gone, they were buried. Through counseling Nate discovered hurts that needed healing, relationships that needed restoring, experiences that needed reframing, and abusers who needed forgiving. He learned that there were many events in his childhood that worked to cause confusion and insecurity in his sense of self, and perceptions he held on to because of past traumatic experiences needed to be identified and reframed. Counseling prompted him to address each of those issues. Understanding and reframing his childhood trauma and abuse experiences ultimately led him to discover freedom to be his true authentic self, without suppression or denial. Now, he lives with a sense of wholeness and belonging in the goodness of his biological sex.

Nate's counseling also consisted of regular meetings with his pastor, reading books, curricula, and even attending conferences that supported his desire to bring his same-sex attractions into agreement with his religious beliefs. Reflecting back thirty years ago, Nate appreciates the resources that were available to him—all of which helped him find answers to his questions of causation regarding his same-sex attraction.

To be clear, Nate was never forced, coerced, or abused as a counseling client. He was honored and loved in that he was given the power of *choice* and the dignity to ordain his own self-determined counseling goals.

After years of counseling, Nate no longer believes he was born gay. Rather, he can point to many events throughout the early years of his childhood development that set him up for a struggle with same-sex attractions. Although he was the victim of horrible abuse, those experiences no longer define him or dictate his life patterns. Counseling therapy helped him regain what Nate calls "his power of choice." When people experience trauma and abuse, they often lose their voice—their agency. Talk therapy with licensed practitioners was the counseling modality that led Nate to find his voice and his power to choose outcomes, strengthening his resolve to follow Jesus with all of his heart, soul, and mind.

Almost thirty years later (after a healing journey that began in January of 1997) Nate is truly at peace. He has found fulfillment being married to a woman for over twenty years and is the father of three children. Nate understands that there are many young people in the world today with similar stories of abuse and broken homes who desire to adhere to the only constant and sure promise, their faith in God. Nate's most fervent hope is for this Court to uphold their rights to talk with qualified licensed counselors and mental health professionals who will help them work towards *their* counseling goals, not the goals of the state.

The Court should fulfill the hope of Nate and so many others similarly situated by reversing the

decision below and abolishing viewpoint-based censorship in the counseling room.

CONCLUSION

The judgment of the Tenth Circuit should be reversed.

Respectfully submitted.

Renee K. Carlson
Counsel of Record
Douglas G. Wardlow
TRUE NORTH LEGAL
525 Park Street, Suite 460
St. Paul, MN 55103
(612) 789-8811
rcarlson@
truenorthlegalmn.org

Counsel for Amici Curiae

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