**Nos. 24-276, 24-279**

# In the Supreme Court of the United States

RYAN CROWNHOLM, ET AL., PETITIONERS
*v.*
RICHARD B. MOORE, IN HIS OFFICIAL CAPACITY AS EXECUTIVE OFFICER OF THE CALIFORNIA BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS, ET AL., RESPONDENTS

360 VIRTUAL DRONE SERVICES, LLC, ET AL., PETITIONERS
*v.*
ANDREW L. RITTER, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE NORTH CAROLINA BOARD OF EXAMINERS FOR ENGINEERS & SURVEYORS, ET AL., RESPONDENTS

*ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE NINTH AND FOURTH CIRCUIT*

## BRIEF OF *AMICI CURIAE* JOHN ROSEMOND, MATS JÄRLSTRÖM, BRENT MELTON, AND AKHILA MURPHY IN SUPPORT OF PETITIONERS

JENNIFER H. PAVELEC
*Counsel of Record*
GRACE L. HILL
MATTHEW R. SKANCHY
WILKINSON STEKLOFF LLP
*2001 M St. N.W., 10th Flr.*
*Washington, DC 20036*
(202) 847-47000
*jpavelec@wilkinsonstekloff.com*

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES**

**Cases**



**Statutes**

## INTEREST OF *AMICI CURIAE*[*]

These petitions for certiorari present important questions about the legal standard that applies when a state's occupational-licensing law regulates speech. *Amici Curiae* are individuals who have personally experienced violations of their First Amendment rights under the guise of state occupational licensing. Based on their own experiences, *Amici* understand the toll that overbroad occupational-licensing regimes can exact on personal freedom and one's ability to earn a livelihood. *Amici* work in a range of industries and recognize that the questions presented by these petitions have broad implications. *Amici* thus file this brief in support of certiorari in Case No. 24-276 and/or Case No. 24-279, so that this Court may rectify the growing confusion in courts across the country about how to evaluate First Amendment claims in this context.[†]

*Amicus* **John Rosemond** is an author, public speaker, and family psychologist in the State of North Carolina. For over 40 years, Mr. Rosemond also published a popular syndicated advice column on parenting, which appeared in newspapers nationwide. In 2013, his column caught the attention of the Kentucky Attorney General

---

[*] Pursuant to Supreme Court Rule 37.2(a), on October 15, 2024 *Amici Curiae* gave notice to counsel for the parties at their respective email addresses as shown on the docket. Pursuant to Supreme Court Rule 37.6, *Amici* state that no party or counsel for a party authored this brief in whole or in part. *Amici* are represented pro bono by Wilkinson Stekloff LLP. No other person or entity has made any monetary contribution to this brief's preparation or submission.

[†] Because the petitions for certiorari in Case Nos. 24-276 and 24-279 involve similar questions presented, *Amici* submit this single brief in support of granting certiorari in either or both case(s).

and the state psychology licensing board, who jointly sent Mr. Rosemond a letter ordering him to cease publication of the column, accusing him of the unlicensed practice of psychology. Mr. Rosemond filed suit in federal court to enjoin the threatened censorship. After two years of litigation, Mr. Rosemond prevailed on his First Amendment claim.

*Amicus* **Mats Järlström** is an individual who used his experience and knowledge of engineering to develop an improved mathematical formula for the timing of traffic signals. Mr. Järlström sought to raise awareness for his improvement by communicating his findings with the public and relevant policymakers. As a result of those efforts, the Oregon State Board of Examiners for Engineering and Land Surveying fined Mr. Järlström for the unlicensed practice of engineering. Mr. Järlström filed suit in federal court alleging certain provisions of Oregon's licensing laws governing the practice of engineering violated the First Amendment. After a year and a half of litigation, the district court found in favor of Mr. Järlström on nearly all claims.

*Amicus* **Brent Melton** is the CEO and founder of Vizaline, LLC, a Mississippi-based company that creates detailed digital imagery of real estate for financial institutions. Using publicly available legal descriptions of property parcels, Vizaline generates geospatial maps that banks can use for their assessments of real-estate assets. In 2017, the Mississippi Board of Licensure for Professional Engineers and Surveyors sued the company for unlicensed surveying, seeking an injunction and disgorgement of all profits. Vizaline responded by filing suit in federal court. After three years of litigation and a favorable ruling from the U.S. Court of Appeals for the Fifth Circuit, the company entered a consent agreement with the

Board, making clear that its mapping activities were legal.

*Amicus* **Akhila Murphy** is an end-of-life doula, the co-founder of the non-profit Full Circle of Living and Dying in Nevada County, California, and a proponent of home funerals. Along with other volunteers at Full Circle, Ms. Murphy supports dying individuals and their loved ones with the transition from life to death, including through hands-on support during at-home funerals and one-on-one consultations for individualized end-of-life planning. In 2019, the California Cemetery and Funeral Bureau cited Full Circle for acting as a funeral establishment without a license, and ordered them to cease operations. Full Circle and Ms. Murphy filed suit in federal court, arguing that the Bureau's enforcement action infringed on their First Amendment rights. After several years of litigation, Full Circle and Ms. Murphy prevailed on nearly all of their claims.

*Amici* file this brief solely as individuals; institutional affiliations are given for identification purposes only.

## SUMMARY OF ARGUMENT

Overzealous enforcement of occupational-licensing laws has become a growing threat to the First Amendment. Despite this Court's instruction in *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018), that ordinary First Amendment principles apply to the professional context, the Courts of Appeals have adopted divergent standards for assessing First Amendment challenges to occupational-licensing requirements. That legal confusion has serious practical consequences for real people, as *Amici*'s experiences demonstrate.

**John Rosemond** is a family psychologist who authored a popular advice column for over 40 years. His column was printed and distributed in newspapers nationwide, and offered readers commonsense solutions to parenting problems. In 2013, the Kentucky Attorney General ordered Mr. Rosemond to cease publication of his column, accusing him of the unlicensed practice of psychology. Mr. Rosemond filed a First Amendment lawsuit in federal court, and ultimately prevailed against Kentucky's attempted censorship.

**Mats Järlström** is an electrical engineer by training and a problem-solver by nature. He noticed a problem with the timing of traffic lights, developed a mathematical formula that would improve that timing, and presented his ideas to the public and policymakers in Oregon. In response, the State of Oregon fined him $500 for the unlicensed practice of engineering. Mr. Järlström filed a First Amendment lawsuit in federal court, and prevailed on most of his claims.

**Brent Melton** is a former banker turned technology entrepreneur. His company, Vizaline, LLC, uses publicly

available property descriptions to generate detailed digital imagery of real estate for financial institutions. The State of Mississippi attempted to shut down his business and to order the disgorgement of his profits, alleging that Vizaline engaged in unlicensed surveying. Mr. Melton filed a First Amendment lawsuit in federal court, and ultimately obtained a consent agreement with the State, confirming that Vizaline's activities were lawful.

**Akhila Murphy** is an end-of-life doula and the founder of the non-profit Full Circle of Living and Dying. Ms. Murphy supports dying individuals, as well as their friends and family, with the transition from life to death, including by assisting with home funerals. The State of California attempted to prevent Ms. Murphy and Full Circle from providing end-of-life services, claiming that they were acting as a funeral establishment without a license. Ms. Murphy filed a First Amendment lawsuit in federal court, and ultimately prevailed.

Although *Amici* were ultimately successful in vindicating their First Amendment rights, they endured years of litigation and professional, financial, and personal hardship while their cases were pending. Cases like theirs will continue to arise unless and until the Court takes up the questions presented in these petitions. For the reasons given here and in the petitions themselves, the Court should grant certiorari to address these important questions.

## ARGUMENT

### I. DESPITE THIS COURT'S CLEAR DIRECTIVES, THE STATES HAVE DIVERGED IN THEIR TREATMENT OF PROFESSIONAL SPEECH.

*Amici* urge the Court to grant certiorari to address the important question presented in these two petitions: namely, how courts should evaluate First Amendment challenges to occupational-licensing laws that regulate speech.

To be sure, this Court's precedent instructs that absent a clear historical exception, ordinary First Amendment principles govern speech in the professional setting. *See Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 767 (2018) ("[T]his Court has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.'"). Despite that instruction, the Courts of Appeals have persisted in applying a different set of First Amendment principles in the occupational context.

As a result of confusion in the Courts of Appeals, speech in the professional context is sometimes protected, sometimes permissibly regulated, and sometimes excluded entirely from the First Amendment's purview. As Petitioners explain, courts disagree about how to determine whether a law regulates speech or only conduct that incidentally involves speech. Even after determining that speech is implicated, courts apply different tiers of scrutiny to assess its regulation. And some courts persist in suggesting that to the extent "professional speech" is involved, only the most minimal guardrails limit the state's ability to dictate who can speak and what they can say.

The practical effect of that legal confusion is that the

breadth of a person's First Amendment rights in their profession is determined by where they live and work. The courts have allowed state governments to restrict professionals' speech, so long as those restrictions are nominally tied to occupational licensing. Worse, those restrictions are often enforced by the threat of civil penalties, fines, and even potential criminal liability. *See, e.g.*, Cal. Bus. & Prof. Code § 8792(a) and (i) (land surveying without a license is a misdemeanor); *see also Holder v. Humanitarian L. Project*, 561 U.S. 1, 45 (2010) (BREYER, J., dissenting) ("Indeed, where, as here, a statute applies criminal penalties and at least arguably does so on the basis of content-based distinctions, I should think we would scrutinize the statute and justifications 'strictly[.]'").

A wide range of industries is potentially affected by this body of law. As this Court has recognized, the so-called "professional-speech doctrine" could apply to "doctors, lawyers, nurses, physical therapists, truck drivers, bartenders, barbers," even "fortune tellers," and "many others." *NIFLA*, 585 U.S. at 773. Indeed, *Amici* here include a family psychologist, an electrical engineer, a tech entrepreneur, and an end-of-life doula.

As *Amici* experienced firsthand, the legal uncertainty surrounding First Amendment rights in the professional context has effectively freed states to curtail speech now and litigate later. The unfortunate reality is that state regulators are incentivized to stretch their occupational-licensing regimes to their outermost limits, even when doing so tramples on free speech. Individuals and small businesses pay the price, forced to wait years for resolution as federal courts wrestle with constitutional questions made unduly complicated by the patchwork of caselaw in the federal courts.

This Court could short-circuit that dysfunction now.

Granting certiorari in one or both of these cases would provide the Court with the opportunity to offer the much-needed reminder that so-called "professional speech" is guaranteed ordinary First Amendment protections, and that states cannot circumvent the Constitution by labeling their censorship "occupational licensing."

## II. AMICI CURIAE HAVE EXPERIENCED FIRSTHAND THE NEGATIVE IMPACT OF OCCUPATIONAL-LICENSING REGIMES ON FREE SPEECH.

Like the Petitioners here, *Amici* John Rosemond, Mats Järlström, Brent Melton, and Akhila Murphy have experienced firsthand the profound negative impact of occupational-licensing regimes on free speech. *Amici* practice in different industries but share similar stories. Each of them necessarily engaged in speech in their work, and each of them had their free speech rights restricted by overzealous state regulators. Although *Amici* have since vindicated their First Amendment rights, those victories were hard-fought. Moreover, *Amici* endured professional, financial, and personal hardship for years while their cases were pending.

### A. John Rosemond's parenting advice column was censored by the Kentucky Attorney General.

For over 40 years, John Rosemond was the author of a popular syndicated advice column that advocated a commonsense approach to parenting. At its peak, Mr. Rosemond's column appeared weekly in approximately 750 different newspapers nationwide. In 2013, however, the State of Kentucky ordered him to cease publication of the column—or risk thousands of dollars in fines and even criminal penalties. The problem, according to Kentucky,

was that Mr. Rosemond's advice column amounted to the unlawful practice of psychology.

Mr. Rosemond's career has been dedicated to helping parents and families. He is a renowned parenting expert, best-selling author, public speaker, and family psychologist in the State of North Carolina. He holds a master's degree in psychology and has worked with families, children, and parents for over five decades. Over his career, he has written over a dozen books on parenting, hosted parenting seminars, and regularly appeared on television to discuss parenting and family psychology.[1]

In 1976, Mr. Rosemond began publishing a weekly advice column on parenting. *See* Compl. ¶ 19, *Rosemond v. Conway*, No. 13-cv-42-GFVT (E.D. Ky.) [hereinafter "Rosemond Compl."]. The column was syndicated and distributed to approximately newspapers across the country, including newspapers such as the *Atlanta Journal Constitution*, the *Charlotte Observer*, and the *Pittsburgh Tribune*. *Id.* ¶ 22. Through syndication, the column also regularly appeared in newspapers throughout Kentucky, including the *Lexington Herald-Leader*, the *Paducah Sun*, and the *Danville Advocate-Messenger*. *Id.* Mr. Rosemond's column was published with a tagline that truthfully identified him as a "psychologist." *Id.* ¶ 21.

Despite his background in psychology, Mr. Rosemond's column consistently advocated a commonsense approach to parenting, including the principle that parents should provide children with clear rules and boundaries. *Id.* ¶ 13. About half of Mr. Rosemond's columns were

---

[1] *See generally About John Rosemond*, https://rosemond.com/about-john-rosemond (last visited Oct. 26, 2024).

in a question-and-answer format (similar to the popular "Dear Abby" advice column). For those Q&A segments, Mr. Rosemond accepted real questions from readers, and printed both the questions and his answers to those questions in the column. *Id.* ¶¶ 25–27. His purpose was both to provide useful advice to the questioner, and to educate and entertain his broader readership. *Id.* ¶ 28.

For decades, Mr. Rosemond's column was published without incident. But in 2013, one of his Q&A columns published in the *Lexington Herald-Leader* angered a retired psychologist in Kentucky, who filed a formal complaint with the Kentucky Board of Examiners of Psychology. *See Rosemond v. Markham*, 135 F. Supp. 3d 574, 579 (E.D. Ky. 2015). According to that complaint, Mr. Rosemond's advice column constituted the unlicensed practice of psychology under Kentucky law. *Id.*

The purportedly objectionable column was titled "Living with Children" and had been published in many newspapers nationwide. *Id.* at 578. In it, a reader sought advice on how to better parent a seventeen-year-old "highly spoiled underachiever" who was "failing two classes." Rosemond Compl. Ex. B. In response, Mr. Rosemond urged that the teenager was "in dire need of a major wake-up call" and gave the fairly anodyne recommendation that the parents impose consequences (such as taking his cellphone away) until his grades improved. *Id.* As with Mr. Rosemond's other columns, the tagline at the bottom of the article identified him as a psychologist: "Family Psychologist John Rosemond." *Id.*

In what the district court later dubbed an "exercise of regulatory zeal," the Kentucky Attorney General sent Mr. Rosemond a letter demanding that he cease publication of his column in Kentucky. *Rosemond*, 135 F. Supp. 3d at

578. The letter identified two alleged violations of Kentucky law. *See* Rosemond Compl. Ex. A. First, it concluded that Mr. Rosemond was unlawfully using the title "psychologist," because he was not licensed to practice psychology in Kentucky. *Id.* at 3. Second, it concluded that in publishing the column, Mr. Rosemond had engaged in the unlicensed practice of psychology, because his "response to a specific question from a parent about handling a teenager was a psychological service to the general public." *Id.* The letter asked Mr. Rosemond to sign a document called "Cease and Desist Affidavit and Assurance of Voluntary Compliance" to avoid further legal action. *Id.*

In Kentucky, both the unlicensed practice of psychology and the use of the word "psychologist" by an unlicensed person are crimes punishable by up to six months' imprisonment, or a $500 fine, or both. *See* Ky. Rev. Stat. § 319.990(1). Each violation is a separate offense. *Id.* Thus, if Kentucky were to have pursued the allegations set out in the letter, Mr. Rosemond could have been liable for up to $1,000 (or even imprisoned) for each column disseminated in Kentucky ($500 for his use of the label "psychologist" and $500 for the advice shared in the column).

Despite the threat of sanctions, Mr. Rosemond refused to voluntarily cease publication of his column. Instead, he responded to Kentucky's letter, explaining why his column did not amount to the unlicensed practice of psychology. *See* Rosemond Compl. Ex. E. He noted that in recent decades, there had been a proliferation of many other advice personalities with national reach, including high-profile parenting experts like television's Dr. Phil McGraw and radio's Dr. Laura Schlessinger. *Id.* at 2–3. Under Kentucky's theory, Mr. Rosemond argued, Dr. Phil and Dr. Laura (not to mention countless other advice

columnists) were likely in violation of state law. Mr. Rosemond's response went unanswered.

Shortly thereafter, Mr. Rosemond filed suit in federal court, alleging that Kentucky's threatened censorship of his column violated his rights under the First Amendment. *See* Rosemond Compl. After a little over two years of litigation, the district court entered judgment in Mr. Rosemond's favor. The court held that the Board had violated Mr. Rosemond's First Amendment rights, and permanently enjoined the Board from continuing to enforce the laws in an unconstitutional manner against Mr. Rosemond and others. *See Rosemond*, 135 F. Supp. 3d at 590.

Although Mr. Rosemond ultimately prevailed, he nonetheless experienced the chilling effect of threatened censorship while the lawsuit was ongoing. Uncertain whether the court would decide in his favor, every column that Mr. Rosemond published was potentially the source of additional fines, if not criminal liability.

### B. Mats Järlström was fined by the Oregon State Board of Examiners for Engineering and Land Surveying for publicly criticizing traffic light timing.

Mats Järlström has spent a lifetime studying the intricacies of electronic devices in order to improve them. From airplane cameras in the Swedish Airforce to home and computer electronics at Luxor Electronics—a Swedish company later acquired by Nokia—Mr. Järlström has applied his electrical engineering expertise to discover inefficiencies and implement creative improvements. Starting in 2013, Mr. Järlström employed his knowledge to examine an issue of local, state, and national concern: the safety and fairness of traffic lights and traffic-light cameras. Mr. Järlström ultimately developed an

improvement to the outdated mathematical formula used in traffic lights, and shared his analysis with the public through outreach to media outlets, policymakers, and organizations interested in the issue. But the Oregon State Board of Examiners for Engineering and Land Surveying (Board) took issue with Mr. Järlström's public speech. Consistent with its "history of overzealous enforcement actions," *Järlström v. Aldridge*, 366 F. Supp. 3d 1205, 1217 (D. Or. 2018), the Board fined Mr. Järlström and warned him against making further public and private comments about his analysis because it (allegedly) amounted to the unlicensed practice of engineering.

Mr. Järlström is a lawful permanent resident of the United States and has lived in Washington County, Oregon for over twenty years. Compl. ¶¶ 8, 15, *Järlström v. Aldridge*, No. 3:17-cv-00652 (D. Oregon) [hereinafter "Järlström Compl."]. A citizen of the Kingdom of Sweden, Mr. Järlström obtained the equivalent of an American Bachelor of Science in electrical engineering and served as an airplane-camera mechanic for the Swedish Airforce before joining Luxor Electronics' research and development team. *Id.* ¶¶ 13–14. In 1992, Mr. Järlström moved to the United States and applied his engineering expertise to lead the electronics department of Triad Speakers, a Portland-based company specializing in bespoke audio products. *Id.* ¶ 15. While in that role, Mr. Järlström helped develop new lines of professional and consumer products. Although he is not a licensed engineer in any state and has never held himself out as such, he has extensive training, experience, and expertise in electrical engineering.

In May 2013, Mr. Järlström developed an interest in the timing of traffic lights when his wife received a ticket based on a red-light camera. *Id.* ¶ 10. For the next three years, Mr. Järlström analyzed the standard method for

calculating the timing of yellow lights and determined that it failed to account for the extra time drivers need to slow down when making legal turns. *Id.* ¶ 17. By way of example, Mr. Järlström compiled data illustrating that the majority of red-light-camera tickets issued by the City of Beaverton, where he lives, captured drivers turning right on a red light. *Id.* ¶ 40. Mr. Järlström developed a mathematical formula that would solve this discrepancy and serve as a better basis for timing yellow traffic lights.

To raise awareness of this issue and advocate for improvements, Mr. Järlström shared his analysis and ideas in various ways with media outlets, policymakers, and others interested in the issue. Mr. Järlström's efforts were successful. *Id.* ¶¶ 18, 32. In 2016, a local television station ran two pieces about his ideas, and he presented his findings at a conference for the Institute of Transportation Engineers, which later adopted his new formula in 2022. *Id.* ¶¶ 21–22. Mr. Järlström also corresponded with one of the physicists who developed the original formula used in the timing traffic lights, and emailed the Sheriff of Washington County, Oregon advising him of the issue and suggesting changes to the calculations used for the County's traffic signal timing. *Id.* ¶¶ 32, 40.

In September 2014, Mr. Järlström also emailed the Board seeking its support and assistance in furthering his research and disseminating his findings. *Id.* ¶ 24. The Board responded two days later, informing Mr. Järlström that he had violated the law by referring to himself as an engineer or electrical engineer in his communications with the Board, the Sheriff of Washington County, and others. *Id.* ¶¶ 26–30. It further advised Mr. Järlström to refrain from using those titles until licensed with the Board. *Id.* Mr. Järlström continued sharing his ideas and analysis, and on some occasions, including in further

emails with the Board, described himself as an engineer.

In February 2015, the Board opened a "law enforcement case" against Mr. Järlström. *Id.* ¶ 43. After another year and a half of investigation, in November 2016 the Board issued Mr. Järlström a civil penalty and fined him $500 for critiquing the traffic light timing formula, sharing those critiques with the public, and asserting at various points that he was an engineer. *Id.* ¶¶ 69–78. The Board concluded that by conducting an analysis of the timing of traffic signals using science and mathematics and sharing that analysis publicly, Mr. Järlström had engaged in the unlicensed practice of engineering. *Id.* Mr. Järlström paid the penalty and in January 2017 the Board issued its final order finding Mr. Järlström in violation of various Oregon licensing laws. *Id.* ¶¶ 79–81.

The Board's actions forced Mr. Järlström to refrain from engaging in further speech about these issues for a significant period of time. Mr. Järlström feared that his continued communications about his analysis would subject him to additional investigation and punishment. Although Mr. Järlström had started drafting a paper about his analysis intended for publication in the *ITE Journal*, he was forced to pause work on that paper and delay any publication of his analysis. *Id.* ¶ 87.

Shortly after the Board's final order, Mr. Järlström sued in federal court alleging that the relevant engineering licensing laws violate the First Amendment. After a year and a half of litigation, the district court entered judgment in favor of Mr. Järlström on most claims, including a declaration that certain Oregon licensing requirements violated the First Amendment on their face and as applied to Mr. Järlström. *Järlström*, 366 F. Supp. 3d at 1223. The court also entered a permanent injunction permitting Mr. Järlström to speak freely about traffic-light

timing and to identify himself as an "engineer." *Id.*

### C. Brent Melton's mapping technology start-up was sued by the Mississippi Attorney General.

Similarly to Petitioners here, Brent Melton found himself on the wrong side of a state surveyor-licensing law. Mr. Melton is the co-founder of Vizaline, LLC, a start-up that provides innovative geospatial imaging services to banks. Vizaline takes publicly available legal descriptions of real estate and turns them into computer-generated maps of the property. Vizaline then sells those maps to banks as a lower-cost alternative to formal land surveys. According to the Mississippi Attorney General, Vizaline's mapping technology constituted the practice of surveying without a license—a civil and criminal offense under Mississippi state law. *See* Miss. Code § 73-13-95.

Mr. Melton worked as a banker in Mississippi for over 40 years before his retirement. *See* Compl. Ex. A ¶ 18, *Vizaline v. Tracy*, No. 18-cv-00531-TBM (S.D. Miss.) [hereinafter "Vizaline Compl."]. From his time in banking, he realized that banks needed a better way to assess certain real estate properties in their asset portfolios. *Id.* ¶ 20. When a bank accepts a large or expensive piece of property as collateral for a loan, it makes sense to have a formal land survey conducted. But when a bank accepts a smaller or less expensive piece of property as collateral, conducting a survey may not be financially feasible. *Id.* ¶ 19. For that latter category, Mr. Melton thought that technology could be the solution.

Vizaline uses proprietary software to convert existing metes-and-bounds legal descriptions of property into geospatial maps. *Id.* ¶¶ 44–45. Using the existing descriptions of property, Vizaline's software creates a graphical rendering which it overlays onto satellite images of the

property. Vizaline then sells the resulting maps to community banks, who in turn may use the maps to assess their property assets. *Id.* ¶¶ 39–40.

In short, Vizaline's work consists of taking existing public information about property boundaries and converting that information to more user-friendly visualizations. Vizaline does not conduct land surveys, locate or establish boundary lines, or otherwise set survey reference points. *Id.* ¶ 36. Vizaline thus does not market its services as a substitute for formal land surveys. *Id.* ¶ 52. On the contrary, Vizaline's website includes the prominent disclaimer: "[F]or visualization and general reference purposes only. It is not a Legal Survey, nor is it intended to be or replace a Legal Survey." *Id.* ¶¶ 53–54.

Despite that disclaimer, the Mississippi Board of Licensure for Professional Engineers and Surveyors sued Vizaline for "unlicensed surveying." *Id.* ¶ 73. Specifically, the Board alleged that by producing geospatial maps, Vizaline had engaged in the practice of surveying without a license. *See* Miss. Code § 73-13-95. Under Mississippi law, unlicensed surveying is both a civil and criminal offense, subject to penalties of up to $10,000 and jail time up to a year for repeat offenders. *Id.* The Board sought an injunction to block Vizaline's map-making, as well as disgorgement of its compensation for maps sold to date. Vizaline Compl. Ex. A ¶¶ 74–75.

In response, Vizaline and Mr. Melton countersued and removed the action to federal court, arguing that the Board's enforcement action violated the First Amendment. *See id.* Vizaline contended that its creation and sale of the geospatial maps—which were visual depictions generated from existing legal property descriptions—was protected speech under the First Amendment. *Id.*

The district court dismissed Vizaline's complaint, concluding that occupational-licensing restrictions are categorically exempt from First Amendment scrutiny. *See Vizaline LLC v. Tracy*, 2018 WL 11397507 at *4 (S. D. Miss. 2018). The Fifth Circuit reversed that holding, emphasizing that occupational-licensing requirements are *not* exempt from the First Amendment, and remanded for further proceedings. *See Vizaline, LLC v. Tracy*, 949 F.3d 927, 929 (5th Cir. 2020). Ultimately, Vizaline and the Board reached a consent agreement, which clarified that Vizaline's activities were legal under state law.[2]

Notwithstanding that favorable resolution, Vizaline and Mr. Melton had endured over three years of litigation, which threatened the existence of the start-up. Left unchecked, licensing regimes like Mississippi's could squelch innovation and discourage entrepreneurship, particularly in technology sectors that use speech and images in novel ways.

### D. Akhila Murphy was prevented from providing end-of-life support to families conducting home funerals in rural California.

After two devastating suicides in her family, Akhila Murphy dedicated herself to the home-funeral movement. In 2013, Ms. Murphy co-founded Full Circle of Living and Dying ("Full Circle"), an organization that specializes in home funerals and end-of-life care in Nevada County, California. Since then, Ms. Murphy has volunteered as an end-of-life doula through Full Circle, providing practical and emotional support for the dying and their families.

---

[2] *See Mississippi Mapping,* Inst. for Justice, https://ij.org/case/mississippi-mapping (last accessed Oct. 26, 2024).

But in 2019, the California Cemetery and Funeral Bureau tried to shut Full Circle down, citing the organization for "advertising and operating as a funeral establishment" without a license. *See* Compl. ¶ 170, *Full Circle of Living & Dying v. Sanchez*, No. 20-cv-01306 (E.D. Cal. Jun. 30, 2020) [hereinafter "Full Circle Compl."].

Home funerals are legal in all 50 states, including California. *Id.* ¶ 30.[3] Home funerals allow family and friends to privately care for the remains of the deceased and to hold a ceremony in the home to honor the deceased, prior to final disposition of the remains at a mortuary, burial site, or cremation facility. There are many reasons people choose home funerals, including privacy, religious or spiritual beliefs, or simply personal choice. The practice is consistent with religious traditions like the Catholic Wake and Jewish Shemria, and has a long history in the United States and globally. *Id.* ¶¶ 47–50. Proponents contend that home funerals can ease the pain of loss, help affirm the reality of death, and promote healthier grieving. But very few funeral homes (and none in Nevada County, California) offer home-funeral services. *Id.* ¶¶ 64–65.

Ms. Murphy became an advocate for home funerals after witnessing her own family struggle with the aftermath of two suicides—the second one the result of unresolved grief from the first. *Id.* ¶ 54. Ms. Murphy had worked as a hospice volunteer for 10 years and decided to obtain training to become an end-of-life doula. *Id.* ¶ 53.

End-of-life doulas provide support in the final stages of life, focusing on the practical and emotional needs of the

---

[3] *See, e.g.*, Cal. Dept. of Consumer Affairs Consumer Guide to Funeral & Cemetery Purchases at 8, https://www.cfb.ca.gov/consumer/consumer_guide.pdf (last accessed Oct. 26, 2024).

dying and their families. End-of-life doulas may provide moral support during the final moments of a dying person's life, or offer assistance and support during a home funeral. Critically, end-of-life doulas do not provide medical or other technical care—they assist with end-of-life care to the same extent a layperson might. *Id.* ¶¶ 68, 72.

In 2013, Ms. Murphy and two other doulas founded Full Circle to offer advice, counseling, and other services to families and loved ones of those who are dying. *Id.* ¶ 56. Full Circle is largely staffed by volunteers, many of them retired like Ms. Murphy, and has operated as a non-profit since 2018. *Id.* ¶ 57. Its annual budget is roughly $11,000. *Id.* ¶ 208. Full Circle does not require payment for its home-funeral services, instead accepting voluntary donations; for its other services, Full Circle accepts payments based on ability to pay. *Id.* ¶¶ 98–102.

Full Circle's work includes public education about home funerals and end-of-life topics; one-on-one consulting services to help develop individualized end-of-life care plans; and hands-on assistance at home in the time preceding or following death. *Id.* ¶¶ 74–85. As Full Circle's website explains: their "calling is to be of service at end of life with dignity and grace" and "to empower families and communities by bringing back the tradition of home death care[.]"[4]

Despite these broad offerings, Full Circle is not a licensed funeral home and its doulas are not licensed funeral directors. *Id.* ¶ 87. Full Circle's website includes

---

[4] *About Us*, Full Circle of Living and Dying, https://www.fullcirclelivingdyingcollective.com/about-uscontact.html (last accessed Oct. 26, 2024).

prominent disclaimers alerting the public to this distinction. *Id.* ¶ 158. Full Circle does not provide medical treatment or advice, declare death, embalm remains, provide formal counseling or therapy, or transport remains. For those other services, Full Circle directs the family and friends of the deceased to work with a local mortuary or other licensed provider. *Id.* ¶ 88.

In California, the state's Cemetery and Funeral Bureau regulates all death-care services. *See* Cal. Bus. & Prof. 15 Code §§ 7600–7746. The Bureau acknowledges that "use of a funeral establishment and funeral director is not required by law," and that funerals may occur at home.[5] But certain services—including preparing for the final burial or disposal of human remains—may only be provided by a licensed funeral director or licensed funeral home. *See, e.g., id.* § 7615(a)–(b).

Full Circle has always striven to comply with all applicable laws and to maintain positive relationships with the Bureau. *See* Full Circle Compl. ¶ 139. To that end, Ms. Murphy had a call with one of the Bureau's field representatives in September 2019 to confirm Full Circle's compliance with California's rules respecting home funerals. *Id.* ¶ 141. During that conversation, the representative answered Ms. Murphy's questions and never suggested that Full Circle was doing anything that violated California law. *Id.* ¶ 152. However, the representative told Ms. Murphy that he had received an anonymous complaint about Full Circle operating without a license. *Id.* ¶ 155. The representative further explained that he had personally examined Full Circle's website and found only

---

[5] *See supra* n.3.

one potentially troublesome statement: "We may assist in a washing ceremony." *Id.* ¶ 159. Out of an abundance of caution, Ms. Murphy agreed to change the language on the website, and asked the representative to let her know if any other changes were needed. *Id.* ¶ 160.

Despite making those changes, Full Circle received a citation from the Bureau a few weeks later for "advertising and operating as a funeral establishment" without a license. *See* Full Circle Compl. Ex. E. The citation ordered Full Circle to "immediately discontinue advertising and operating as a funeral establishment until a license [was] issued by the Bureau." *Id.*, at 33. The citation further warned that the law permitted fines of up to $5,000 for violations of the licensing requirements. *Id.* at 32.

The next month, Ms. Murphy met with the Bureau to discuss the citation. Full Circle Compl. ¶ 174. At that meeting, Ms. Murphy sought to clarify why Full Circle's work did not fall under the funeral-establishment licensing requirements. In response, the Bureau refused to identify what specific offending speech or conduct gave rise to the citation. *Id.* ¶¶ 180, 188. Ultimately, the Bureau affirmed its decision to cite Full Circle for operating without a funeral-establishment license. *Id.* ¶ 197.

Full Circle then filed suit in federal court, arguing that the Bureau's regulation of Full Circle's individualized advice and advertisements of its services violated the First Amendment. *See* Full Circle Compl. After more than two years of litigation, the district court entered summary judgment for Full Circle on its central First Amendment claims. *See Full Circle of Living & Dying v. Sanchez*, 2023 WL 373681, at *22 (E.D. Cal. Jan. 24, 2023).

Although Ms. Murphy and Full Circle ultimately prevailed in court, the Bureau's citation left them in a legal

gray zone for the years it was pending. Ms. Murphy and Full Circle operated under fear and threat of enforcement. Moreover, because the Bureau refused to explain what specific speech or conduct had led to the citation, Ms. Murphy and Full Circle were uncertain as to what speech might lead to a new investigation or enforcement action.

* * * * *

*Amici*'s experiences demonstrate the real-world harm that occurs when overzealous regulators use occupational-licensing regimes to restrict speech. Cases like theirs will continue to arise unless and until the Court takes up this important issue.

## CONCLUSION

For the reasons given here and in the petitions themselves, the Court should grant certiorari to address these important questions.

Respectfully submitted.

JENNIFER H. PAVELEC
*Counsel of Record*
GRACE L. HILL
MATTHEW R. SKANCHY
WILKINSON STEKLOFF LLP
*2001 M St. N.W., 10th Flr.*
*Washington, DC 20036*

OCTOBER 28, 2024