

No. 24-539

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IN THE  
**Supreme Court of the United States**

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KALEY CHILES,

*Petitioner,*

v.

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

*Respondents.*

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

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**BRIEF OF ERIN LEE, LEWIS JONES AND  
BRECKEN JONES, AS *AMICI CURIAE* IN  
SUPPORT OF PETITIONER  
KALEY CHILES**

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**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

Amici consist of Colorado parents whose children have previously needed, currently need, or may have need in the future of mental health services, including therapy from a Licensed Professional Counselor or other licensed mental health provider on the subjects addressed by the challenged statutes—specifically mental health treatment that would be supportive of sexual orientation or gender identity that matches their children’s biology. The children of the amici range in age from 9 to 15, with each having unique needs. One family has been particularly harmed by the Minor Conversion Therapy Law (the “MCTL”). In 2021, that family sought counseling for issues regarding their 12-year-old’s gender identity. The family looked for a faith-based counselor who openly aligned with their values. It took several weeks to find a counselor who was open about these views and who had availability. Eventually, they found a licensed professional who could treat their 12-year-old daughter. To the parents and daughter’s dismay, the counselor ultimately refused to address any aspects of gender identity or the child’s exposure to these ideas out of fear of losing her license because of the MCTL. As a result, the child’s emotional distress deepened. The delay in treatment availability, coupled with the counselor’s refusal to address her concerns, led to greater confusion, depression, and ultimately suicidal thoughts. While the child is now healing, she attributes much of her past depression to the inability

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no person other than amici and their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel were timely notified of this brief as required by Supreme Court Rule 37.2.

to freely discuss these issues with her counselor. She has since expressed a deep distrust of therapists.

Parents amici deserve the option to select a mental health professional for their children whose treatment approach aligns with their worldview and considers the biological realities of their children. This is not possible due to the constraints imposed by the MCTL. These parents and their children have encountered pressure for the children to undergo gender transition that has presented the kind of challenges that could lead to other or further need for a mental health professional whose therapeutic approach can accommodate their needs. Amici should be permitted to obtain therapy that is not required to direct their children toward gender transition regardless of their therapeutic needs and desires, including if their children have questions about their orientation, identity, feelings, or attractions. These parents have an interest in the state allowing therapists the freedom to engage their children in conversations that further their therapeutic goals, without artificial legislative limitations that fail to account for each child's unique experiences, needs, or directives.

### **SUMMARY OF THE ARGUMENT**

Colorado's MCTL creates significant barriers for parents and children seeking mental health support to navigate issues related to gender identity and same-sex attraction. Mental health professionals regulated by the MCTL are now prohibited from discussing these critical topics openly, even when clients request guidance on whether their feelings may be permanent—particularly if those feelings are linked to past trauma or are not aligned with their

biological sex. The challenged law imposes restrictions on therapists' free speech, undermining Constitutional protections that continue to be upheld in other parts of the country. The State of Colorado should not have authority to limit access to licensed professionals or to therapy that addresses the unique needs and goals of each family.

## ARGUMENT

### I. COLORADO PARENTS AND CHILDREN SHOULD HAVE CHOICES.

#### A. Parents in the Third and Eleventh Circuits can choose mental health treatment that comports with their children's needs, but the same is not true for parents in Colorado.

Since the passage of the MCTL, licensed mental health providers are limited in their discussions on these highly individualized topics and parents are limited in their options for providers. When faced with the need or desire for mental health treatment on issues of gender identity or same-sex attraction, parents in the Third and Eleventh Circuits can engage counselors that will help their children in a way that aligns with their worldview and has been shown to help other children. Parents throughout the nation look for *licensed* providers for a variety of reasons, including availability, coverage by insurance, and a perceived higher standard of treatment due to regulation of the profession. In other states, parents can find these professionals without sacrificing their religious beliefs and outlook, let alone the long-term health of their children. Parents in

Colorado, however, like parents amici, when presented with these obstacles, will either not seek therapy from licensed professionals or will seek help out of necessity, subject to legislative limitations upon the help they can receive, and have their directives ignored or refused like one of the families amici did. It should not be the case that parents in other states have more Constitutional protections than do parents in Colorado.

#### **B. The MCTL conflicts with other State law**

C.R.S. § 12-245-203.5 provides that children from the age of 12 own their mental health privilege. However, when children seek guidance from licensed therapists to explore whether their same-sex attraction or gender identity concerns are truly desired, which sometimes happens when those feelings stem from past sexual abuse, they must be denied the support they seek. Therapists are left with a difficult choice: either provide care that is consistent with the child's request but violates the MCTL or refuse or ignore the child's request. Both alternatives risk disciplinary action against the therapist's license. This state law conflict leaves parents and children without needed support.

## **II. THE CHALLENGED COLORADO LAW IS SUBJECT TO HEIGHTENED SCRUTINY UNDER THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT.**

“Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly

tailored to serve compelling state interests.” *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2226 (2015).

**A. The MCTL targets speech based on its communicative content.**

The MCTL applies to so-called “conversion” therapy, “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.” C.R.S. § 12-245-202(3.5)(a). At the same time, the law allows for practices or treatment that provide “[a]cceptance, support, and understanding for the facilitation of an individual’s coping...” C.R.S. § 12-245-202(3.5)(b)(I). For a regulatory body to determine whether a provider’s treatment includes efforts to change sexual orientation, it must look to the communicative content of the provider’s speech. The Tenth Circuit Opinion in the instant case opens the door for laws prohibiting licensed barbers from suggesting certain haircuts or licensed athletic trainers from offering advice on which sports an athlete might enjoy. Such restrictions should be subject to heightened scrutiny – which allows narrowly tailored speech regulations for compelling state interests, including the protection of minors. Notably, the MCTL expressly applies only to licensed therapists but not to other therapy arrangements, revealing that the legislature does not believe that there is a compelling need to regulate the speech at issue.

**B. The State has put itself in the shoes of parents.**

The MCTL is passed under the guise of protecting children but is not based in objective scientific



research with long-term studies. The MCTL forecloses discussions by licensed counselors about whether therapy that undertakes the gender transitioning of children or which affirms potentially transient desires in that regard is good for them in the long-term and in every case. The science is not conclusively in the MCTL's favor. Indeed, the now-exclusive method (in Colorado) of affirming a child's gender identity, when it differs from that child's biological sex, leads children down a path of state-mandated inculcation of ideas that may be contrary to the mental health treatment that patients seek and which points to a future marked by medical intervention and drug therapies, including puberty blockers, with long-term health complications. One study conducted in England demonstrated negative side effects of puberty blockers such as lowered bone density and stunted growth, without showing a change in the psychological well-being of the children studied. Carmichael et al., 2021, p. 18; Brown & Stathatos, 2022. Cross-sex hormones prescribed to children also demonstrated a plethora of side effects, including blood clots in veins and permanent infertility. CDC, n.d.; NHS England, 2016, p. 8; Brown & Stathatos, 2022.

There is a presumption that fit parents act in the best interests of their children. *Troxel v. Granville*, 530 U.S. 57, 68 (2000). The MCTL improperly determines that no Colorado parent—fit or unfit, and no child, should even have the option of pursuing any type of regulated therapy that might fall under the sweeping definition of “conversion therapy.” This restriction falls outside the State's purview.

## CONCLUSION

Colorado's challenged law aligns with political goals established by the majority party in the Colorado legislature. History is devoid of examples of legislative enactments that prescribe only certain mental health approaches and thereby disregard the needs, goals, and desires of patients or their parents. In fact, in the United States, medical treatment has historically been protected as private between the patient and the physician, including where minors are the patients. Here, Colorado seeks to accomplish one party's political goals at the expense of children and their parents' treatment goals, not to mention their rights. Certain other states, however, allow parents and children the opportunity to find medical treatment, including mental health treatment that aligns with their goals. This honorable Court should take up the issue to pronounce a consistent rule that honors the rights of parents and children to the mental health care they choose.

Respectfully submitted,

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DECEMBER 13, 2024