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* JOY BUCHMAN, BRIAN TINGLEY, TAMMY FOURNIER, AND DAN AND JENNIFER MEAD IN SUPPORT OF PETITIONER AND REVERSAL

WISCONSIN INSTITUTE FOR LAW & LIBERTY

330 E Kilbourn Ave, #725
Milwaukee, WI 53202
(414) 727-9455
luke@will-law.org

LUKE N. BERG
Counsel of Record
RICHARD M. ESENBERG

Counsel for Amici Joy Buchman, Brian Tingley, Tammy Fournier, and Dan and Jennifer Mead

June 13, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

INTEREST OF *AMICI*[1]

Amicus curiae Joy Buchman is a Christian counselor who lives and works in the City of La Crosse, Wisconsin. Her faith informs her work, and she takes a Biblical and Christ-centered approach to counseling. Like Petitioner Kaley Chiles, all of her counseling is voluntary and client-driven; she never imposes goals on a client that the client does not share. And, also like Chiles, her counseling involves only speech.

Buchman has in the past seen minor clients who are experiencing same-sex attraction and/or gender incongruence. When she conducted counseling related to these issues, the mutually-agreed-upon goal of the counseling was to help the client change unwanted behaviors and to eliminate or reduce, if possible, unwanted feelings of same-sex attraction and/or gender incongruence. If potential clients did not share these goals, she would refer them elsewhere.

The City of La Crosse, however, adopted an ordinance nearly identical to Colorado's that prohibits such counseling. Buchman filed a lawsuit against the City, raising similar claims to those raised here, a case that has been pending for over two years.[2]

---

[1] As required by Supreme Court Rule 37.6, *Amici* state as follows: No counsel for a party authored this brief in whole or in part. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici* or their counsel made such a monetary contribution.

[2] *Buchman v. City of La Crosse*, No. 3:23-CV-105 (W.D. Wis., filed Feb. 23, 2023).

Amicus curiae Brian Tingley is a Christian counselor who practices in Washington State. He has been a counselor for over twenty years and has seen clients of all ages, on a broad range of topics. Like Buchman, Tingley's faith informs his work, which often involves helping his clients live out their own faith. He has in the past seen minor clients who are struggling with their gender and want to find comfort with their biological sex, as well as minor clients seeking to reduce unwanted same-sex attraction and behaviors. His counseling is entirely voluntary and never forced; the clients determine the goals of the counseling. And his counseling consists of speech and speech alone.

Tingley, however, is prohibited from counseling minor clients on these topics from a Christian perspective due to a censorship law in Washington that mirrors Colorado's.[3] Tingley filed a lawsuit challenging this law, but the district court and Ninth Circuit ruled against him, and this Court denied his cert. petition 6-3.[4]

Amicus curiae Tammy Fournier is a Wisconsin mom. In 2021, her then-12-year-old daughter began struggling with various mental-health issues, which eventually led to questioning her gender. With prodding from a mental-health professional and a school staff member, she decided, for a time, that she wanted to adopt a male identity at school. Tammy and her husband decided this would not be in her best interest given the other issues she was struggling

---

[3] Wash. Rev. Code §§ 18.130.020(4); 18.130.180(26).

[4] *Tingley v. Ferguson*, 47 F.4th 1055 (9th Cir. 2022); *Tingley v. Ferguson*, 144 S. Ct. 33 (2023).

with, and they asked the school to continue to address her by her female name and pronouns. The district, however, refused to respect their decision, forcing them to withdraw her from the school.

Within a few weeks of being removed from all "affirming" environments, the Fourniers' daughter realized her parents were right and changed her mind about wanting to transition. The Fourniers filed a lawsuit challenging the school district's policy to disregard parental decision-making authority over how their own children are addressed at school. A Wisconsin court held that the district violated their parental rights, after which the district changed its policy.[5]

Although the Fourniers' daughter is now confident in her identity as a girl, getting there took time, including a year of counseling. But when she looked for a counselor, Tammy did not find one who would proactively help her daughter resolve her gender confusion in favor of her biological sex.[6] The best solution Tammy could come up with was to direct the counselor *not* to speak with her daughter about gender, but to focus instead on her other mental-

---

[5] *T.F. v. Kettle Moraine Sch. Dist.*, No. 21-CV-1650, 2023 WL 6544917 (Wis. Cir. Ct. Oct. 3, 2023).

[6] At the time, multiple municipalities in Wisconsin had counseling bans like La Crosse's. *See* Associated Press, *Ban on conversion therapy stands in La Crosse* (June 15, 2022), https://bit.ly/4krAVv5 (noting that La Crosse became "the 14th city in Wisconsin to ban conversion therapy"). Wisconsin's Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board had also adopted a similar rule. It was temporarily paused by the Legislature but has since gone into effect statewide. Wis. Admin. Code MPSW § 20.02(25).

health issues. Tammy believes that, if more intentional counseling had been available for her daughter—like that prohibited by Colorado, Washington, and now Wisconsin—it could have hastened her daughter's healing process.

Amici Dan and Jennifer Mead, of Rockford, Michigan, went through a similar experience with their daughter. During her seventh- and eighth-grade years—when she was 13 years old—she was struggling with anxiety and depression, in part due to the deaths of Dan's parents. Around the same time, she was diagnosed with autism spectrum disorder. In the middle of this tumultuous period, she began questioning her gender and told a school staff member she wanted to use a male name and pronouns. For nearly two months, without notifying the Meads or obtaining their consent, school staff addressed their daughter as if she were a boy. The school district also actively concealed this from the Meads, altering records and reverting to her birth name in their presence. The Meads only discovered what was happening by accident, in a record the school forgot to alter. They were ultimately forced to withdraw her from public school, and they now have a lawsuit against the district for this policy.[7]

The Meads searched for a counselor who would help their daughter resolve her confusion about her gender, but they were unable to find one due to a Michigan law, like Colorado's, that prohibits such counseling.[8] Multiple counselors told Dan that,

---

[7] *Mead v. Rockford Pub. Sch. Dist.*, Case No. 1:23-CV-1313 (W.D. Mich., filed Dec. 18, 2023).

[8] Mich. Comp. Laws §§ 330.1100a(2), 330.1901a.

although they would like to help, the law prevented them from doing so. Some declined to see their daughter at all, even for her other mental-health issues, to avoid the risk of violating the law if gender identity came up during their conversations. Although the Meads eventually found a counselor, the solution was to focus the counseling on her other issues. While their daughter no longer wants to be a boy, the Meads believe her recovery would have significantly improved if she had access to a counselor who could directly address her struggles with gender.

SUMMARY OF ARGUMENT

Laws banning "conversion therapy," like Colorado's, Wisconsin's, Washington's, and Michigan's, pick one side in an ongoing debate about how best to help young people who are struggling with their gender. These laws permit counseling from the perspective that children should alter their body to match their present feelings or desires but prohibit counseling from the view that children can and should find comfort with their body, if possible. This is overt viewpoint discrimination, and this Court should hold it *per se* unconstitutional.

Colorado's law, and others like it, are also hopelessly vague, given that "gender identity" has no clear definition. The human mind is a complex mix of emotions, beliefs, desires, and perceptions, and there is often internal conflict among these. Without a precise definition, it is unclear whether counseling to bring these into alignment is "changing" "gender identity." And because many people do change their minds, it is impossible to know, in advance, whether counseling to change one of these components (feelings, for example) involves a "change" to "gender

identity" without knowing, ex post, where the client ultimately ends up. These two vagueness problems allow for discriminatory enforcement against disfavored viewpoints and exacerbate the chilling effect on professional speech.

ARGUMENT

I. Colorado's Law Discriminates Based on Viewpoint and Is Unconstitutional for That Reason Alone.

Viewpoint neutrality goes to the very "heart of the First Amendment's Free Speech Clause." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 187 (2024). "[V]iewpoint discrimination is uniquely harmful to a free and democratic society," *id.*, an especially "'blatant' and 'egregious form of content discrimination,'" *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 168–69 (2015) (quoting *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)). "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

Multiple of this Court's precedents indicate that viewpoint discrimination is *per se* unconstitutional, without any strict-scrutiny escape hatch. *See e.g.*, *Shurtleff v. City of Bos., Massachusetts*, 596 U.S. 243, 247, 258–59 (2022) (holding that the exclusion of Christian flags from a city flagpole constituted "impermissible viewpoint discrimination," without applying strict scrutiny); *Iancu v. Brunetti*, 588 U.S.

388, 393 (2019) (same with respect to the Lanham Act's ban on "immoral[ ] or scandalous" trademarks, noting that "viewpoint discrimination [also] doomed the disparagement bar."); *Minn. Voters All. v. Mansky*, 585 U.S. 1, 11 (2018) ("In a traditional public forum … restrictions based on content must satisfy strict scrutiny, and those based on viewpoint are prohibited."); *Rosenberger*, 515 U.S. at 829 ("[G]overnment must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."); *Members of the City Council of City of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984) ("[T]he First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others.").

This principle should apply just as forcefully to speech in a therapist's or doctor's office, "where information can save lives" and "candor is crucial." *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 771 (2018).

Colorado's law squarely violates the viewpoint neutrality principle; it picks one side in an ongoing debate about how to help young people who are questioning their gender. Gender incongruence is a mismatch between a person's biological sex and their feelings, beliefs, desires, or perceptions about their gender (which of these defines "gender identity" is unclear, as explained below, *infra* Part II). To resolve the distress that is frequently associated with this mismatch, those who experience this incongruence often want to change *something* to bring their body and present feelings (or beliefs, desires, or perceptions) into alignment. The question is what? Mind or body?

As multiple recent comprehensive reviews have noted, mental-health professionals have "conflicting views" about how to approach children and adolescents struggling with this.[9] Many believe that "psychotherapy can be an effective intervention" to help youth process what they are feeling and why and find comfort with the body they were born with.[10] Indeed, multiple studies have found that the vast majority of children who struggle with their gender (up to 80–90%) will ultimately "desist."[11] The Fourniers' and Meads' daughters provide just two recent examples.

At the other end of the spectrum is the so-called "affirmative" model, which promotes the view that children and adolescents should be "affirmed" in whatever they currently feel or believe about their gender and assisted in "transitioning" to that identity, socially, medically, or both.[12] Until recently, even WPATH (the "World Professional Association for Transgender Health"), a decidedly pro-transitioning organization, acknowledged that childhood

---

[9] *See* Cass H., *Independent Review of Gender Identity Services for Children and Young People* (hereafter "Cass Review") at 20 (Apr. 2024), available at https://bit.ly/4ju6kvh; U.S. Department of Health and Human Services, *Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices* (hereafter "HHS Report") at 206 (May 1, 2025) ("Experts within pediatric gender medicine hold sharply divergent views about best practices"), available at https://bit.ly/45BVOyO.

[10] HHS Report at 219, 239–60; Cass Review at 70, 150–57.

[11] HHS Report at 68–69; Cass Review at 67.

[12] HHS Report at 50–60; Cass Review at 70.

transitions are "a controversial issue" and that health professionals have "divergent views."[13]

Although some parts of the medical community in the United States have swallowed the "affirmative" model hook, line, and sinker, the rest of the world, led by Western Europe, is rapidly moving back to a psychotherapy-first approach, such that the United States has become an outlier.[14] There are many different reasons for this change,[15] including the explosion of adolescents (especially early teen and pre-teen girls) asserting transgender identities, as well as an "increasing number of detransitioners"[16]—often young girls who, like the Fourniers' and Meads' daughters, at one point wanted to identify as boys, but later changed their minds when they realized their gender incongruence was related to other issues.

In the midst this ongoing debate, so-called "conversion therapy" bans like Colorado's, Wisconsin's, Washington's, and Michigan's, permit one viewpoint and ban another. They prohibit counseling from the perspective that feelings and desires can and do change, and that, if possible, one should find comfort with one's body—even if that is the client's goal. But these laws permit counseling from the viewpoint that it is appropriate to change

---

[13] The World Professional Association for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* at 11 (Version 7, 2012), *available at* https://bit.ly/4knMDGJ.

[14] HHS Report at 60–62.

[15] *See* HHS Report at 57, 64–75.

[16] Cass Review at 187–89, 226–27; HHS Report at 71, 122–24.

one's *body* to align with current feelings or desires, however fleeting. Colo. Rev. Stat. § 12-245-202(3.5)(b) (exempting counseling that provides "[a]cceptance, support, and understanding for the facilitation of an individual's … identity exploration and development" and "[a]ssistance to a person undergoing gender transition."). This is viewpoint discrimination to a T. Bizarrely, the prohibited viewpoint is one of the very premises of psychotherapy: that feelings, beliefs, desires, and perceptions *can* change, even about oneself.

These laws have real and devastating consequences. Girls who are struggling with their gender and do not want to, like the Fourniers' and the Meads' daughters, cannot get the support they need to process what they are feeling and find comfort with their bodies. And even though there are many counselors who would do so—like Petitioner Chiles and *Amici* Joy Buchman and Brian Tingley—they cannot provide this help without risking their livelihoods.

II. Gender Identity Is Vague and Ill-Defined, Exacerbating the First Amendment Problem.

This Court has long recognized that vague restrictions on speech "raise[ ] special First Amendment concerns." *E.g.*, *Reno v. Am. C.L. Union*, 521 U.S. 844, 871–72 (1997); Vill. of *Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982). As Justice Brennan famously wrote, "First Amendment freedoms need breathing space to survive." *NAACP v. Button*, 371 U.S. 415, 432–33 (1963). The less clarity there is, the greater the risk of both "discriminatory enforcement" and a "chilling

effect on free speech." *Reno*, 521 U.S. at 872. Accordingly, this Court has invalidated restrictions that "lack[ ] the precision that the First Amendment requires." *Id*. at 874; *e.g.*, *Minn. Voters All. v. Mansky*, 585 U.S. 1, 16–22 (2018); *Coates v. City of Cincinnati*, 402 U.S. 611, 615–16 (1971); *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 597–604 (1967); *see also Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 806–13 (2011) (Alito, J., concurring).

Colorado's law (and others like it) are hopelessly vague because "gender identity" is such an elusive and ill-defined concept. Colorado's law turns on whether counseling "attempts or purports *to change* an individual's … gender identity." Colo. Rev. Stat. § 12-245-202(3.5)(a) (emphasis added). But to know whether counseling seeks to *change* gender identity, one first has to know what gender identity *is*.[17] There is no clear definition. Colorado's, like most, is circular: "gender identity," it says, is "an individual's innate

[17] Making the problem worse, many people do not even accept the idea that humans *have* a "gender identity" that is distinct from their biological sex. No one can dispute, of course, that some people experience feelings of discomfort with their sex or, for various reasons, choose to identify as a different sex. But whether this reflects some underlying, immutable trait that can be discovered about oneself is unknown and debated. *See* Cass Review at 117; HHS Report at 33–36.

sense of the individual's own gender."[18] Colo. Rev. Stat. § 2-4-401(3.5).

But there is a much deeper problem, even setting the circularity aside. Human beings are a complex mix of emotions, desires, beliefs, and perceptions, and these are rarely all in alignment. When there is internal conflict among these, how is one to decide which determines an individual's "gender identity"? For example, if an adolescent girl *feels* like a boy, but does not *believe* she is a boy or *desire* to be a boy, what is her "gender identity"? Do her feelings—however temporary or transient—dictate her "gender identity," or do her beliefs and desires predominate? Does counseling to help her feelings align with her desires and beliefs violate the law or not?

Or what if she *desires* to be a boy, but does not *feel* like one or *believe* she is one? Again, would counseling to help her bring her desires into alignment with her feelings and beliefs violate the law, or not? And what if there is a conflict among all of these? What if a potential client sometimes feels like a boy, and other

---

[18] To give one other example, WPATH's latest document defines "gender identity" as "a person's deeply felt, internal, intrinsic sense of their own gender," but then defines "gender" by reference back to "gender identity": "Depending on the context, gender may reference gender identity, gender expression, and/or social gender role." World Professional Association for Transgender Health, *Standards of Care for the Health of Transgender and Gender Diverse People*, Version 8, 23 International J. Trans. Health 2022 S1–S258, at S252 (2022), available at https://bit.ly/4jsZwy1. The circularity explains why, in the view of this ideology, "gender identity" can be virtually anything, including "transgender, nonbinary, genderqueer, gender neutral, agender, gender fluid, and 'third' gender, among … many other genders … recognized around the world." *Id.*

times a girl; sometimes believes she is a boy, and other times a girl; and sometimes desires to be a boy, and other times a girl? Defining "gender identity" by reference to one's "innate sense" does not begin to capture all the nuances and complexities.

Even the supposed "experts" on gender identity do not have clear answers to these questions. In Joy Buchman's case, the City of La Crosse offered Dr. Jack Drescher[19] as their expert, yet he was unable to answer simple hypothetical questions about how to define gender identity when there is a mismatch between a person's feelings, beliefs, desires, and perceptions. When asked about "a biological boy [who] feels like a girl, but does not believe, does not think that he is a girl," Dr. Drescher testified that such a person's gender identity would be "unclear," and agreed that he would be "unable to decide what that person's gender identity is." Dep. Tr. of Dr. Jack Drescher at 19:16–21:13, Dkt. 50, *Buchman v. La Crosse,* Case No. 3:23-CV-105 (W.D. Wis., Mar. 1, 2024). Likewise, a "biological boy [ ] [who] feels like a girl but does not want to adopt an identity as a girl," would, according to Drescher, have "an uncertain gender identity," such that he would not know what that person's gender identity is. *Id*. at 22:3–23:20.

At various points, Drescher asserted that gender identity is entirely "subjective," *id*. at 31:14–19, such that it "is whatever [a person] say[s] it is," *id.* at 25:14–16; *id*. at 20:2–3 ("[P]eople's gender identity is something that they ultimately decide what it is."). But then, inconsistent with a purely subjective

[19] https://www.columbiapsychiatry.org/profile/jack-drescher-md

definition, he also agreed that individuals can have "a false belief about their gender identity," and gave some examples. *Id*. at 38:3–16; 43:15–16 ("A person can have, as I said, a person can misunderstand what their gender identity is. Yes."); *id*. at 39:10–13 ("Q: But in terms of what a person's actual gender identity is, there is more to the story than what a person happens to think presently? A. Yes, that can be true. Yes."). When pressed about how these answers were consistent with an "entirely subjective" definition of gender identity, Dr. Drescher was unable to provide a coherent explanation, *id*. at. 34:18–22; 38:17–45:5, at one point defending the inconsistency as "expanding my definition" of gender identity. *Id*. at 43:2.

These are not merely hypothetical concerns. As noted above there are an "increasing number of detransitioners"[20]—young people who at one point wanted to identify as the opposite sex but then later changed their minds. The Meads' and the Fourniers' daughters provide two examples, with the latter changing her view just weeks after being removed from all "affirming" environments. Many of these young people later reflect that they "had mistaken ideas about gender dysphoria" and experienced "changes in their self-conceptualizations."[21] One study found that the "[f]actors most associated with detransition were internal factors, reflecting

[20] Cass Review at 187–89, 226–27; HHS Report at 71, 122–24.

[21] Littman, L, et al., *Detransition and Desistance Among Previously Trans-Identified Young Adults*, 53 Arch. Sex. Behav. 57, 74 (Jan. 2024), https://bit.ly/441UoMS.

psychological change, rather than external factors, such as family or social pressure."[22]

Any clients who seek counseling to resolve gender incongruence in favor of their biological sex necessarily have some internal conflict about their "gender identity"—at least between their feelings and desires—otherwise they wouldn't be seeking that counseling. Again, the counseling that *amici* Joy Buchman and Brian Tingley provide is never forced; the clients always define the goals. If "gender identity" is defined by one's present feelings (or beliefs or perceptions), counseling to reduce those feelings would be prohibited efforts to "change" gender identity. But if "gender identity" is defined by whatever one desires or chooses, then it may not be prohibited. The law is unclear in this regard.

There is yet another problem. Because some people can and do change their views about their own identity—that much is beyond dispute at this point—it is impossible to know, ex ante, whether counseling to reduce feelings of gender incongruence is "changing" a person's "gender identity." It depends on what happens afterwards. If clients ultimately come to identify with their biological sex, then counseling to help them get there did not "change" their identity so much as allow them to *find* their identity.

In Joy Buchman's case, Dr. Drescher admitted this very point:

> "Q. So efforts to reduce feelings [about one's gender identity] wouldn't necessarily be changing that person's gender identity? …

---

[22] *Id.*

> A. Well, if your goal is to help someone not have gender dysphoric feelings anymore, you might be trying to change their gender identity.
>
> Q. But you might not?
>
> A. You might not. Absolutely.
>
> Q. You don't know until you know what the person's gender identity ultimately is?
>
> A. That is absolutely true."

Dep. Tr. of Dr. Jack Drescher at 47:7–22, Dkt. 50, *Buchman v. La Crosse,* Case No. 3:23-CV-105 (W.D. Wis., Mar. 1, 2024).

Take the Fourniers' and Meads' daughters, for example. Both at one point felt like boys and wanted to identify as such but later changed their minds. Knowing what we know now about their ultimate development, if any counseling could be characterized as "changing" their gender identity, it would have been counseling to "assist[ ] … [a] gender transition" or to "facilitat[e]" their "exploration" of a different gender identity. Colo. Rev. Stat. § 12-245-202(3.5)(b). Yet that kind of "change" is permitted.

Laws like Colorado's are hopelessly vague about all of this, leaving it to "policemen, judges, and juries" to decide "on an ad hoc and subjective basis" when counseling crosses the line into prohibited "conversion therapy." *See Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972). And if experts like Dr. Drescher cannot even define "gender identity" precisely enough to decide when it is changing, how are non-expert government officials tasked with enforcing these laws supposed to? The vagueness allows the enforcers to

punish viewpoints they disfavor and to suppress speech. And given the serious risks to their livelihoods, many counselors will steer clear of the issue altogether, preventing girls like the Fourniers' and the Meads' daughters from getting the help they desperately need.

CONCLUSION

This Court should reverse the Tenth Circuit's decision and hold that Colorado's law violates the First Amendment.

Dated: June 13, 2025.

Respectfully submitted,

WISCONSIN INSTITUTE FOR LAW & LIBERTY
330 E Kilbourn Ave, #725
Milwaukee, WI 53202
(414) 727-9455
luke@will-law.org

LUKE N. BERG
Counsel of Record
RICHARD M. ESENBERG

Counsel for Amici Joy Buchman, Brian Tingley, Tammy Fournier, and Dan and Jennifer Mead