No. 24-539

In the Supreme Court of the United States

KALEY CHILES,

Petitioner,

v.

PATTY SALAZAR, et al.,

Respondents.

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

AMICI BRIEF OF WASHINGTON, CALIFORNIA, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, HAWAIʻI, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, AND WISCONSIN IN SUPPORT OF RESPONDENTS

NICHOLAS W. BROWN
Attorney General
State of Washington

NOAH G. PURCELL
Solicitor General

CRISTINA SEPE
Deputy Solicitor General
Counsel of Record
1125 Washington St. SE
Olympia, WA 98504-0100
360-753-6200
Cristina.Sepe@atg.wa.gov

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Washington, California, Connecticut, Delaware, District of Columbia, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, and Wisconsin (Amici States) are among the over twenty-five states that have exercised their police power to prohibit or restrict the practice of conversion therapy on minors by state-licensed professionals, including counselors and therapists.

Amici States have powerful interests in exercising their long-standing authority to regulate the practice of health care, including care relating to mental health, within their boundaries to protect public health and safety. *See Goldfarb v. Va. State Bar*, 421 U.S. 773, 792 (1975) (recognizing the States' "broad power to establish standards for licensing practitioners and regulating the practice of professions"); *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997) (recognizing State interests "in protecting the integrity and ethics of the medical profession"). Amici States additionally share compelling interests in protecting the health, safety, and well-being of children and youth, and in affirming the dignity and equal worth and treatment of LGBTQI+ minors. Amici States seek to safeguard their authority to prevent a practice from being provided to minors under the auspices of a state-issued license that extensive evidence shows, and all leading professional medical organizations agree, is not a safe or effective treatment for any condition, puts minors at risk of serious harms, and accordingly fails to meet acceptable standards of professional

practice. Amici States thus share significant interests in ensuring the appropriate application of the First Amendment to professional conduct regulations, like Colorado's law challenged here.

SUMMARY OF ARGUMENT

Conversion therapy, also referred to as sexual orientation and gender identity change efforts, encompasses a range of interventions directed at the specific outcomes of changing a person's sexual orientation or gender identity. Interventions may include aversive physical therapies, such as electric shock treatment or the use of nausea-inducing drugs, as well as non-aversive therapies, which may incorporate approaches such as psychoanalysis and counseling. *See* Am. Psych. Ass'n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* 22, 31 (Aug. 2009), https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf.

Like many States, Colorado prohibits licensed mental health practitioners from practicing conversion therapy on minors. Colo. Rev. Stat. § 12-245-202(3.5)(a); Colo. Rev. Stat. § 12-245-224(1)(t)(V). In so doing, Colorado appropriately relied on the evidence-based professional consensus that conversion therapy falls below the standard of care for mental health practitioners because it is not a safe or effective treatment for any condition and puts minors at risk of serious harms, including increased risks of suicidality and depression. At issue in this

case is whether Colorado validly exercised its police power to regulate professional conduct that falls below well-accepted medical standards of care. As Amici States lay out below, Colorado did.

This Court should affirm the decision below for at least three reasons. First, the Free Speech Clause does not immunize mental health practices that have been found to be dangerous and ineffective from regulation, nor does it allow mental health professionals to operate below the standard of care by implementing such dangerous and ineffective practices. Rather, First Amendment jurisprudence has consistently held that States may regulate professional conduct, even if that regulation incidentally impacts speech. Second, States have a long history of regulating professional standards of care. Prohibiting licensed healthcare professionals from providing conversion therapy—a "treatment" resoundingly found to not be an acceptable medical or professional practice because it is ineffective and harmful—is consistent with this tradition and does not run afoul of the First Amendment. Third, a contrary conclusion would likely lead to significant consequences for States' authority to regulate professional practices within their borders, to the detriment of public health and safety. For these reasons and more, this Court should affirm the decision below.

ARGUMENT

A. States Across the Country Have Protected Youth from a Harmful and Discredited Practice that Falls Below Medical Standards of Care

Colorado's law is not an outlier. Over twenty-five States and the District of Columbia have similar statutes, regulations, or executive orders prohibiting or restricting licensed healthcare professionals from providing conversion therapy for minors, many enacted on a bipartisan basis.[1] *See* Exec. Order by Gov. Katie Hobbs, No. 2023-13 (Ariz. Dec. 15, 2023); Cal. Bus. & Prof. §§ 865.1, 865.2; Colo. Rev. Code § 12-245-224(1)(t)(V); Conn. Gen. Stat. § 19a-907a; Del. Code Ann. tit. 24, §§ 1731(b)(24), 1922(a)(12), 3009(a)(11), 3514(a)(13), 3915(a)(11); D.C. Code § 7-1231.14a; Haw. Rev. Stat. § 453J-1; 405 Ill. Comp. Stat. 48/20, 48/30; Me. Stat. tit. 32, §§ 2112, 2600-D, 3300-G, 3837-B, 6223, 7006, 13800-B, 17311; Md. Code Ann., Health Occ. § 1-212.1; Mass. Gen. Laws ch. 112, § 275; Mich. Comp. Laws § 330.1901a; Minn. Stat. § 214.078; Nev. Rev. Stat. § 629.600; N.H. Rev. Stat. Ann. § 332-L:2; N.J. Stat. Ann. § 45:1-55; N.M. Stat. Ann. § 61-1-3.3; N.Y. Educ. Law §§ 6509-e, 6531-a; Exec. Order by Gov. Roy Cooper, No. 97 (N.C. Aug. 2, 2019); N.D. Admin. Code § 75.5-02-06.1; Or. Rev. Stat. § 675.850; Exec. Order by Gov. Tim Wolf, No. 2022-02 (Pa. Aug. 16, 2022), 49 Pa. Code §§ 16.63, 21.416, 25.218, 47.5; 23 R.I. Gen. Laws § 23-94-3; Utah Code Ann. § 58-1-511; Vt. Stat. Ann. tit. 3, § 129a(a)(24), Vt. Stat. Ann. tit. 18, §§ 8351-53, Vt. Stat. Ann. tit. 26, §§ 1354(a)(40),

[1] These laws and orders are described in the Addendum.

1842(b)(13), 3210(a)(13), 3271(a)(8), 4042(a)(7), 4062(a)(7), 4132(a)(11); Va. Code Ann. §§ 54.1-2409.5, 115-20-130(b)(14); Wash. Rev. Code § 18.130.180(26); Wis. Admin. Code MPSW § 20.02(25).

States took these actions under their authority to regulate health professions to protect children and youth from a "treatment" that—as demonstrated by extensive evidence and the consensus view of leading medical professional organizations—is not therapeutic under established medical standards but, rather, poses a significant risk of harm. Such actions fall comfortably within States' police powers to protect public health and welfare generally. *See Barsky v. Bd. of Regents of Univ. of State of N.Y.*, 347 U.S. 442, 451 (1954); *id.* at 449 (recognizing that a "vital part of a state's police power" is the "broad power to establish and enforce standards of conduct within its borders relative to the health of everyone there[,]" including "the regulation of all professions concerned with health").

In adopting these laws and policies, States relied on well-documented evidence demonstrating that conversion therapy for children and youth causes substantial mental and physical harms and is not an accepted medical practice. The overwhelming scientific and professional consensus is that conversion therapy is ineffective and harmful, and so should not be provided by licensed healthcare professionals as a form of treatment. This conclusion also applies to non-aversive, non-physical conversion therapy, which can cause serious harms including emotional trauma, depression, anxiety, suicidality, and self-hatred. *See* Am. Psych. Ass'n, *Report of the American Psychological Association Task Force*

on Appropriate Therapeutic Responses to Sexual Orientation. Indeed, every major professional health association has advocated against and repudiated the use of conversion therapy on minors because it is ineffective and increases the risk of suicidality and lifelong mental illness in its attempt to "cure" a person's sexuality or gender identity. *See Tingley v. Ferguson*, 47 F.4th 1055, 1064 (9th Cir. 2022). Based on the extensive evidence and professional consensus that conversion therapy is ineffective and harmful, and therefore is not consistent with medical standards of care, many States have enacted laws or policies preventing it from being provided to youth by practitioners operating under the imprimatur of a state license.

California was the first state to enact legislation prohibiting licensed professionals from practicing conversion therapy on children and youth. In enacting Senate Bill 1172, the California Legislature "relied on the well-documented, prevailing opinion of the medical and psychological community that [conversion therapy] has not been shown to be effective and that it creates a potential risk of serious harm to those who experience it." *Pickup v. Brown*, 740 F.3d 1208, 1223 (9th Cir. 2014) (describing the passage of Senate Bill 1172), *abrogated in part by Nat'l Inst. of Fam. & Life Advocs. v. Becerra* (*NIFLA*), 585 U.S. 755 (2018). California's legislature relied on extensive expert opinion that conversion therapy is neither effective nor safe, including position statements, articles, and reports from the American Psychological Association, the American Psychiatric Association, the American School Counselor Association, the American Academy

of Pediatrics, the American Medical Association, the National Association of Social Workers, the American Counseling Association, the American Psychoanalytic Association, the American Academy of Child and Adolescent Psychiatry, and the Pan American Health Organization. *Id.* at 1224. Based on these materials, the legislature concluded that conversion therapy "can pose critical health risks to lesbian, gay, and bisexual people"; is "based on developmental theories whose scientific validity is questionable"; is "against fundamental principles of psychoanalytic treatment and often result[s] in substantial psychological pain by reinforcing damaging internalized attitudes"; and "lack[s] medical justification and represent[s] a serious threat to the health and well-being of affected people," among numerous other findings. 2012 Cal. Legis. Serv. ch. 835, §§ 1(b), (d), (j), and (l). California stressed its interests in "protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by sexual orientation change efforts." *Id.* at § 1(n).

New Jersey relied on a similar body of evidence when it enacted Assembly Bill A3371 the following year. 2013 N.J. Sess. Law Serv. ch. 150; *King v. Governor of New Jersey*, 767 F.3d 216, 221–22 (3d Cir. 2014), *abrogated in part by NIFLA*, 585 U.S. 755. The New Jersey legislature made "numerous legislative findings" regarding the ineffectiveness and harmful impact of conversion therapy. *King*, 767 F.3d at 221–22. (discussing A3371). In hearings on the bill, legislators heard "horror stories" of conversion therapy, including from a woman who testified that

she underwent electric shocks and was given drugs to induce vomiting at age 14 at a conversion therapy camp. Jim Melwert, *New Jersey Gov. Christie Signing Ban on 'Gay Conversion' Therapy*, CBS News, Aug. 19, 2013, https://www.cbsnews.com/philadelphia/news/new-jersey-gov-chris-christie-to-sign-ban-on-gay-conversion-therapy/. In signing the bill into law, then-Governor Chris Christie stated that "on issues of medical treatment for children we must look to experts in the field" and that the "American Psychological Association has found that efforts to change sexual orientation can pose critical health risks including, but not limited to, depression, substance abuse, social withdrawal, decreased self-esteem and suicidal thoughts." *Governor's Statement Upon Signing Assembly Bill No. 337* (Aug. 19, 2013), https://pub.njleg.state.nj.us/Bills/2012/A3500/3371_G1.PDF. Governor Christie concluded that "exposing children to these health risks without clear evidence of benefits that outweigh these serious risks is not appropriate." *Id.*

Washington's legislature likewise "considered evidence that demonstrated a 'scientifically credible proof of harm' to minors from conversion therapy." *Tingley*, 47 F.4th at 1078 (quoting *Pickup*, 740 F.3d at 1232). Washington legislators were aware of the "fair amount of evidence that conversion therapy is associated with negative health outcomes such as depression, self-stigma, cognitive and emotional dissonance, emotional distress, and negative self-image," and legislators "relied on the fact that 'every major medical and mental health organization'

has uniformly rejected aversive and non-aversive conversion therapy as unsafe and inefficacious." *Id.* (citation modified).

Since Colorado enacted its conversion therapy law in 2019, research has further cemented the medical consensus that conversion therapy risks grave harms to children and teens. For example, in 2020, a peer-reviewed study found that conversion interventions performed on LGBT minors were associated with depression, suicidal thoughts, suicide attempts, less educational achievement, and lower weekly income. Caitlin Ryan, et al., *Parent-Initiated Sexual Orientation Change Efforts with LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment*, 67 J. OF HOMOSEXUALITY 159 (2018), https://doi.org/10.1080/00918369.2018.1538407. That study found that lesbian, gay, and bisexual minors who had been subjected to conversion efforts had attempted suicide at a rate nearly three times higher than other lesbian, gay, and bisexual minors. *Id.* at 168. For transgender and gender-nonconforming youth, conversion therapy posed an even greater risk of harm; another peer-reviewed study found that more than 60% of transgender minors subjected to conversion therapy before age 10 attempted suicide. Jack L. Turban, et al., *Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults*, 77 JAMA PSYCHIATRY 68, 74 (2020), doi:10.1001/jamapsychiatry.2019.2285.

In March 2023, the U.S. Department of Health and Human Services emphatically stated that sexual orientation and gender identity "change efforts in

children and adolescents are harmful and should *never* be provided." U.S Dep't of Health & Hum. Servs., Substance Abuse & Mental Health Servs. Admin., *Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth* 8 (2023), https://www.govinfo.gov/content/pkg/GOVPUB-HE20_400-PURL-gpo195344/pdf/GOVPUB-HE20_400-PURL-gpo195344.pdf (emphasis added). Instead, effective therapeutic approaches provided by health professionals "support youth in identity exploration and development without seeking predetermined outcomes related to sexual orientation, gender identity, or gender expression." *Id.* at 51.

Indeed, even the Cass Review (upon which Petitioner extensively relies) agrees. The Cass Review rejects conversion therapy, explaining that "no LGBTQ+ group should be subjected to conversion practice." Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People: Final Report* 150 (Apr. 2024). The Cass Review acknowledges that "[n]o formal science-based training in psychotherapy, psychology or psychiatry teaches or advocates conversion therapy." *Id.* at 151. And should a licensed practitioner engage in conversion therapy, the Review asserts "they would be acting outside of professional guidance, and this would be a matter for the relevant regulator." *Id.*

B. The First Amendment Does Not Exempt Mental Health Professionals from Following Standards of Care

Petitioner contends that the First Amendment right to free speech allows her to engage in a dangerous practice that harms minors simply because

that practice is implemented with words. Not so. Though the practice of medicine often requires spoken or written word, prohibiting a particular practice from being provided as a treatment by licensed healthcare professionals does not violate the right to free speech. A decision to the contrary would allow mental health professionals to circumvent the professional conduct standards and limit States' powers to regulate licensed professionals.

1. States have broad authority to regulate professional conduct consistent with the First Amendment

States bear a special responsibility for maintaining standards among licensed professionals in order to protect the public from substandard care. *See Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483 (1955). It is well-settled that "longstanding torts for professional malpractice . . . fall within the traditional purview of state regulation of professional conduct" without running afoul of the First Amendment. *NIFLA*, 585 U.S. at 769 (citation modified). Likewise, "'it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language . . . .'" *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978). Thus, this Court has approved of regulations preventing attorneys from soliciting new clients in-person, *id.* at 457-58, and professional malpractice laws, *NAACP v. Button*, 371 U.S. 415, 438 (1963).

These principles extend to the doctor-patient relationship and counselor-client relationship. "Most, if not all, medical and mental health treatments require speech, but that fact does not give rise to a First Amendment claim when the state bans a particular treatment." *Pickup*, 740 F.3d at 1229. Accordingly, States may lawfully regulate professional conduct by health care providers, even if it incidentally impacts their speech. This Court has approved of, for example, state informed consent laws that required speech specific to abortions. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 884 (1992) (joint opinion of O'Connor, Kennedy, and Souter, JJ.), *overruled on other grounds by Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022). In *NIFLA*, this Court re-emphasized that regulations facilitating informed consent to medical treatments are permissible "as part of the *practice* of medicine, subject to reasonable licensing and regulation by the State." *NIFLA*, 585 U.S. at 769–70. (quoting *Casey*, 505 U.S. at 884). It follows that the First Amendment does not deprive States of authority to regulate the medical treatment itself, so long as States otherwise act within our Constitution's constraints, including due process and equal protection of the laws. So whether a doctor physically gives a patient the wrong medication or instead tells the patient to take the wrong medication, she can be disciplined for misconduct; it does not matter that in the latter example her harmful act is performed by speaking.

These principles are well illustrated in this Court's *NIFLA* decision. In that case, the Court addressed a First Amendment challenge to a California law requiring that licensed facilities

offering pregnancy or family planning services post notices informing patients that subsidized reproductive health care services were available from the State. *NIFLA*, 585 U.S. at 760–61. This Court held that the notice law was not a regulation of professional *conduct*, reasoning that the required notice was "not tied to a [medical] procedure at all," but applied to all interactions between a facility and its clients. *Id.* at 770. This Court explained that States may not "treat[] professional speech as a unique category that is exempt from ordinary First Amendment principles." *Id.* at 773. But "States may regulate professional conduct, even though that conduct incidentally involves speech." *Id.* at 768. Thus, a law (like the notice requirement) is subject to strict scrutiny if it "regulates speech as speech," but by contrast, a law that "'impos[es] incidental burdens on speech'" triggers "less protection." *Id.* at 768–69 (citation omitted); *see id.* at 769 (discussing with approval cases about malpractice, anticompetitive agreements, client solicitation, and informed consent). "While drawing the line between speech and conduct can be difficult'" in individual cases, it is a "'long familiar'" exercise. *Id.* at 769 (citation omitted).

Other cases outside of the medical practice realm do not call this principle into question. *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010), for example, examined a federal statute that prohibited providing material support, including "expert advice or assistance," to designated terrorist organizations. This Court held that although the statute at issue "may be described as directed at conduct," strict scrutiny applied as to the plaintiffs because "the conduct triggering coverage under the statute

consist[ed] of communicating a message." *Id*. at 28. This holding does not support Petitioner's challenge to Colorado's law or otherwise invalidate state regulation of health care practices, because such treatments are not plausibly described as "communicating a message." They are instead a form of *conduct*—a practice that attempts to alter the state of the patient's mental health. Such psychotherapeutic practices are properly subject to state regulation even though they may be "'carried out by means of language.'" *See Ohralik*, 436 U.S. at 456 (citation omitted). While a different analysis might apply if a State attempted to prohibit a mental health counselor from "communicating a message" outside of a therapy session, such as expressing the counselor's personal views on conversion therapy, Colorado's law explicitly does *not* impose any such restriction. *See* Colo. Rev. Stat. § 12-245-202(3.5) (defining what conversion therapy is and is not). The law regulates only (1) therapeutic treatment by (2) licensed mental health professionals acting within the confines of the counselor-client relationship.

2. Lower courts have consistently upheld state regulations of medical practices against First Amendment challenges

Consistent with this Court's precedents, lower courts around the country have upheld laws regulating medical practice in the face of First Amendment challenges.

For example, in *EMW Women's Surgical Center, P.S.C. v. Beshear*, the Sixth Circuit upheld a state law requiring that abortion providers perform ultrasounds, and then display and explain the ultrasound images to patients before abortion procedures, as a lawful regulation of medical practice with incidental impact on speech. 920 F.3d 421, 424, 429–32 (6th Cir. 2019). Even though the statute required doctors to speak on a particular topic, the Sixth Circuit relied on *NIFLA* to explain that this type of regulation fell "on the conduct side of the line" because it "regulate[s] speech 'only "as part of the *practice* of medicine, subject to reasonable licensing and regulation by the State."'" *Id.* (citation omitted).

In *National Association for the Advancement of Psychoanalysis v. California Board of Psychology* (*NAAP*), the Ninth Circuit concluded that a state law that required health practitioners to have certain training to practice within the State did not run afoul of the First Amendment. *NAAP*, 228 F.3d 1043, 1054 (9th Cir. 2000). The court reasoned that because the key component of psychoanalysis is "'the treatment of emotional suffering and depression, *not* speech[,]'" the challenged licensing regulations were related to conduct, not speech. *Id.* The court further concluded that "[i]t is properly within the state's police power to regulate and license professions, especially when public health concerns are affected." *Id.* The court specifically noted that "'the state may have an interest in shielding the public from the untrustworthy, the incompetent[] or the irresponsible . . . .'" *Id.* (quoting *Thomas v. Collins*, 323 U.S. 516, 544 (1945)); *see also Conant v. Walters*, 309 F.3d 629, 634-37 (9th Cir. 2002) (distinguishing

between laws prohibiting doctors from treating patients with marijuana—conduct the government could regulate—from prohibiting doctors from simply speaking about marijuana outside of the provision of treatment—speech the government could not regulate).

And in *Pickup* and *Tingley*, the Ninth Circuit upheld California and Washington laws materially similar to Colorado's law. The Ninth Circuit reasoned that laws prohibiting licensed professionals from practicing conversion therapy on minors regulated professional conduct and had only an incidental impact on speech. *Pickup*, 740 F.3d at 1227–29. The court concluded that mental health counselors and therapists are not entitled to special First Amendment protections merely because their practice involves the spoken word. *See Tingley*, 47 F.4th at 1077.[2]

[2] Every federal court to consider a state law restricting conversion therapy as part of professional licensing schemes has upheld the law. *See Cath. Charities of Jackson v. Whitmer*, 764 F. Supp. 3d 623, 631 (W.D. Mich. 2025), *appeal filed*, No. 25-1105 (6th Cir.); *Chiles v. Salazar*, 116 F.4th 1178 (10th Cir. 2024) (Pet. App. 1a–125a); *Tingley*, 47 F.4th 1055; *Doyle v. Hogan*, 411 F. Supp. 3d 337 (D. Md. 2019), *vacated on immunity grounds*, 1 F.4th 249 (4th Cir. 2021); *Welch v. Brown*, 834 F.3d 1041 (9th Cir. 2016); *Doe ex rel. Doe v. Governor of New Jersey*, 783 F.3d 150 (3d Cir. 2015); *King*, 767 F.3d 216; *Pickup*, 740 F.3d 1208. By contrast, the local ordinances struck down in *Otto v. City of Boca Raton*, 981 F.3d 854 (11th Cir. 2020), were entirely untethered from the state's system for licensing healthcare practitioners and were "not connected to any regulation of separately identifiable conduct." *Id.* at 865.

3. Colorado's law is a lawful regulation of professional conduct

Colorado's law is a lawful regulation of professional conduct that is rationally related to a legitimate government interest.

The law targets conduct that only incidentally impacts speech. Amici States agree with Petitioners that a State cannot relabel disfavored speech as conduct in order to make an end-run around the First Amendment. *See* Br. for Pet'r 33. But health care—including mental health treatment like talk therapy—necessarily involves the use of speech and the verbal exchange of words as an integral part of treatment. *See Tingley*, 47 F.4th at 1082 ("What licensed mental health providers do during their appointments with patients for compensation under the authority of a state license is treatment."); Pet. App. 46a (decision below explaining Colorado's law "prohibits a particular mental health treatment provided by a healthcare professional to her minor patients"). In other words, the use of words as a course of treatment does not automatically trigger heightened First Amendment scrutiny. *See Casey*, 505 U.S. at 884 ("To be sure, the physician's First Amendment rights not to speak are implicated [by an informed consent statute] . . . but only as part of the practice of medicine, subject to reasonable licensing and regulation by the State[.]" (citation omitted)). Otherwise, heightened scrutiny would apply to state regulation of a physician who fails to provide information necessary for informed consent or a certified nutritionist who counsels starvation diets to pre-teen anorexic clients. The First Amendment does not compel such outcomes.

Colorado law generally regulates the practices of mental health practitioners like therapists, counselors, and psychologists to ensure that they abide by professional standards of care. *See, e.g.*, Colo. Rev. Stat. §§ 12-245-203 (stating that no practitioner is authorized to practice outside of their area of training, experience, or competence), 12-245-224 (detailing prohibited activities that fall outside the standards of professional practice). The law is just one part of this scheme, making it unprofessional conduct for a licensed, certified, or registered mental health care provider to engage in conversion therapy with a minor patient. Colo. Rev. Stat. §§ 12-245-202(3.5) (defining "conversion therapy"); 12-245-224(1)(t)(V) (prohibiting conversion therapy for minor clients). Colorado's law does not prevent mental health care providers from communicating with the public about conversion therapy, expressing their personal views to minor patients about conversion therapy, sexual orientation, or gender identity, or referring minors seeking conversion therapy to "[a] person engaged in the practice of religious ministry[.]" *Id.* § 12-245-217(1). Rather, it restricts only professional conduct that consists of practicing conversion therapy on minors and only incidentally impacts the means of that professional practice. *Ohralik*, 436 U.S. at 456; *Tingley*, 47 F.4th at 1077.

Applying the long-settled standard for regulating professional conduct, Colorado's law is permissible because it regulates professional conduct that only incidentally impacts speech and is rational. Colorado's law is rationally related to the legitimate government interests in protecting the mental and physical health of children and youth and in

regulating the mental health profession. The medical consensus is that conversion therapy is neither effective nor safe for the treatment of any mental health condition and should never be used on minors. The decision to codify the standard of care and ensure that licensed healthcare professionals are not providing a treatment that falls below standards of care and actively causes harm is rationally related to the legitimate interest of protecting the health and safety of patients. *See Tingley*, 47 F.4th at 1077–79; Pet. App. 63a–67a; *cf. United States v. Skrmetti*, 145 S. Ct. 1816, 1836 (2025) (state law banning certain treatments for gender dysphoria based on "ongoing debate among medical experts" was rational).

Under Petitioner's view, acts of unprofessional conduct—like the practice of conversion therapy—should always be subject to the highest level of constitutional protection merely because the professional uses words. But this would severely hinder the States' ability to regulate the many professionals whose treatments involve words. This Court should reject such an extreme and harmful conclusion.

C. States Have a Long-Recognized History and Tradition of Regulating Health Care Provider Conduct

This Court reaffirmed in *NIFLA* that laws regulating speech "'as part of the *practice* of medicine'" are lawful. 585 U.S. at 770 (quoting *Casey*, 505 U.S. at 884). This Court specifically noted that "longstanding" historical practices supported this conclusion, including informed consent laws and torts

for professional malpractice. *Id.* at 769. This Court explained that while its precedents do not support a free-floating exemption for any and all regulation of professional speech, the Court considers whether a particular law falls within such a "tradition" of regulation. *See id.* at 768–69; *see also Tingley*, 47 F.4th at 1080 ("There is a long (if heretofore unrecognized) tradition of regulation governing the practice of those who provide health care within state borders." (applying standard derived from *NIFLA*, 585 U.S. at 767)); *Vidal v. Elster*, 602 U.S. 286, 295, 299 (2024) (history and tradition may "inform[]" First Amendment analysis of "longstanding" regulations).

States that restrict the practice of conversion therapy on children by licensed professionals do so in accordance with their power to regulate medical practice; to enforce professional standards; and to protect their residents from harm, fraud, discrimination, and abuse. "[F]rom time immemorial," States have exercised this power to protect public health and safety and to enact standards for obtaining and maintaining a professional license, without running afoul of the Constitution. *Dent v. West Virginia*, 129 U.S. 114, 122 (1889); *see also L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 473 (6th Cir. 2023), *aff'd sub nom. United States v. Skrmetti*, 145 S. Ct. 1816 (2025) (noting States "have long played a critical role in regulating health and welfare"). Regulation of conduct that affects public health is a core area of traditional state concern. *See Gonzales v. Oregon*, 546 U.S. 243, 270–71 (2006) (States have "'great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.'" (quoting

Medtronic, Inc. v. Lohr, 518 U.S. 470, 475(1996))); *Watson v. Maryland*, 218 U.S. 173, 176 (1910) (explaining that "[i]t is too well settled to require discussion at this day that the police power of the states extends to the regulation of certain trades and callings, particularly those which closely concern the public health[,]" and acknowledging that "[t]here is perhaps no profession more properly open to such regulation than that which embraces the practitioners of medicine[]").

Regulations on the practice of medicine are long-standing, and predate ratification of the First Amendment. The first American laws to control the quality of medical service were enacted in the mid-1600s. For example, in 1649, the Massachusetts Bay Colony restricted physicians, surgeons, and midwives from working "at any time about the bodye of men, women or children, for preservation of life, or health . . . without the advice and consent of such as are skillful in the same Art." David A. Johnson & Humayun J. Chaudry, *Medical Licensing and Discipline in America: A History of the Federation of State Medical Boards* 4 (2012). In the late colonial and early independence periods, States passed a variety of licensing laws for doctors. S. David Young, *The Rule of Experts: Occupational Licensing in America* 12 (1987). Deprofessionalization in the Jacksonian era led many States to repeal penalties for the unlicensed practice of medicine and laws curtailing the operation of proprietary medical schools, but States later came out of the regulatory "dark ages," passing a second wave of licensing laws shortly after the Civil War. Johnson & Chaudry, 21. By 1910, nearly all States had instituted or reinstituted licensing laws for

medical professionals. David Johnson & Humayun J. Chaudry, *The History of the Federation of State Medical Boards*, 98 J. OF MED. REG. 20, 22 (2012); *see, e.g.*, *Crane v. Johnson*, 242 U.S. 339, 340, 343 (1917) (upholding medical licensing requirement challenged by "drugless practitioner" who "d[id] not employ either medicine, drugs, or surgery in his practice" but instead "employ[ed] faith, hope, and the processes of mental suggestion and mental adaptation").

Colorado's law is part of a long tradition and history of States regulating the professional practice of medicine consistent with the First Amendment.

D. Petitioner's Position that Health Care Treatments Using Speech Are Not Conduct-Based Would Lead to Dangerous Outcomes

States do not lose their power to regulate medical treatments "merely because those treatments are implemented through speech rather than through scalpel." *Tingley*, 47 F.4th at 1064. Accepting and upholding Petitioner's position that talk therapy cannot be regulated as a health care practice and is instead pure speech—the regulation of which must survive strict scrutiny—risks eliminating critical guardrails on this form of health care, in effect leaving children and adults unprotected from treatments that violate generally accepted standards of care.

1. State determinations that conversion therapy practiced on minors fall below the standard of care for health care providers comport with state disciplinary processes

Traditionally, state governments have exercised their power to regulate health care providers by setting minimum educational and professional standards for licensing. *Barsky*, 347 U.S. at 451 ("[P]ractice is a privilege granted by the State under its substantially plenary power to fix the terms of admission."). States legislate the scope of practice and minimum "standard of care" for the professions and investigate and discipline providers whose practice falls outside the scope of their profession or below the standard of care. *See, e.g.*, Colo. Rev. Stat. §§ 12-245-203 (defining scope of practice for licensed mental health professionals); 12-245-303 (defining scope of practice for a psychologist). Colorado's law easily fits within this paradigm.

States may also discipline licensed professionals operating within their borders for engaging in conduct that is unprofessional, unethical, improper, as well as for specific forms of misconduct such as sexual misconduct, discrimination, fraud or misrepresentation, conviction of a crime related to the profession, or betrayal of the practitioner-patient privilege. *See, e.g.*, Colo. Rev. Stat. § 12-245-224. States may also discipline a health care provider for professional conduct that is incompetent, negligent, or rises to a level of malpractice that violates the standards for the profession. *See, e.g.*, *id.* § 12-245-224(1)(g)(I) (stating that a professional violates the

law if she acts or fails to act in a manner that does not meet the generally accepted standards of the profession).

Based on the consensus view of established medical organizations, over twenty States have codified the conclusion that the practice of conversion therapy on minors *always* falls below the standard of care for the mental health professions. This determination is based on voluminous studies demonstrating the practice's harms to children and the consensus of all leading medical and mental health organizations that conversion therapy should not be conducted on children. Accordingly, state professional boards may discipline providers for using conversion therapy on minors under States' general laws requiring providers to adhere to the standard of care, even in the absence of a specific law prohibiting this practice. *See, e.g.*, Ohio Board of Psychology, *Conversion Therapy Advisor* (Apr. 14, 2016), https://psychology.ohio.gov/laws-rules-resources/advisories-resources/conversion-therapy-advisory; 49 Pa. Code § 47.5 (Pennsylvania State Board of Social Workers, Marriage and Family Therapists and Professional Counselors' policy on conversion therapy, which makes clear using conversion therapy on minors can be considered unethical and unprofessional conduct). But by specifically identifying conversion therapy for children as a form of treatment that falls below the standard of care for mental health professions, States provide notice and clarity to practitioners that this treatment is unprofessional conduct and increase efficiency for the state licensing disciplinary process.

Clear protections for minors are particularly important in the context of counseling because children and youth often lack the degree of agency that adults have. The vast majority of children's counseling is initiated by parents or caregivers, with a counselor selected by the parent or caregiver. Anna M. de Haan et al., *A meta-analytic review on treatment dropout in child and adolescent outpatient mental health care*, 33 CLINICAL PSYCH. REV. 698 (2013), https://doi.org/10.1016/j.cpr.2013.04.005. Youth may or may not have the right to refuse this care. Given the significant risk that a child could be placed into conversion therapy without their consent, and the documented risks of harm such treatment poses, States' decisions to regulate conversion therapy on minors by state-licensed professionals are of the utmost importance.

Petitioner's arguments misunderstand the scope of the role of a counselor and the responsibilities that accompany the privilege of being a state-licensed mental health practitioner. The regulation of health professions like Petitioner's therapy practice occurs in a context where there is a desired outcome in treating the patient for the patient's benefit, and where the speech that occurs is already limited to that which supports this purpose. Colorado law defines psychotherapy to include the "treatment, diagnosis, testing, assessment, or counseling in a professional relationship . . . to alleviate behavioral and mental health disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors that interfere with effective emotional,

social, or intellectual functioning." Colo. Rev. Stat. § 12-245-202(14)(a). Likewise, the "practice of licensed professional counseling" "means the application of mental health, psychological, or human development principles through cognitive, affective, behavioral, or systematic intervention strategies that address wellness, personal growth, or career development, as well as pathology." *Id.* § 12-245-603. In order to lawfully practice, one must have a license from the state and comply with certain training and education requirements. *See, e.g.*, Colo. Rev. Stat. §§ 12-245-604 (minimum qualifications for licensure as licensed professional counselor); 12-245-605 (rights and privileges of licensure for licensed professional counselors); 12-245-606 (duty of continuing professional competency for licensed professional counselors). Colorado's law is thus limited only to licensed practitioners' conduct, and even then only to conduct that seeks to change a child's sexual orientation or gender identity. Medical and mental health practices like those engaged in by Petitioner are concerned with the treatment of a condition or disorder. Laws prohibiting conversion therapy for minors as practiced by licensed professionals are a lawful extension of a state's duty to regulate professions to protect the public.

And thus, Petitioner's arguments that Colorado's law is content and viewpoint discriminatory are seriously flawed. Counseling is not directed toward the outward expression of the counselor's ideas. The law's regulation of health professions takes place in a context where there is a desired health *outcome*—behavioral or physical—in treating the patient, for the patient's benefit, and

where providers must engage in evidence-based practices in order to achieve this end. In that context, a state-licensed professional acts with the authority of a state license, which indicates knowledge of and adherence to such evidence-based practices, and acts "to advance the welfare of the clients, rather than to contribute to public debate." *Pickup*, 740 F.3d at 1228; *cf. Lowe v. SEC*, 472 U.S. 181, 232 (1985) (White, J., concurring) ("One who takes the affairs of a client personally in hand and purports to exercise judgment on behalf of the client in the light of the client's individual needs and circumstances is properly viewed as engaging in the practice of a profession.").

2. Accepting Petitioner's argument would endanger the public by hindering States' abilities to discipline medical and mental health professionals for providing treatment that falls below the standard of care

Petitioner's position that talk therapy is speech that should be afforded the highest levels of constitutional protection is legally wrong for the reasons set forth above. It also carries significant practical risks, as it would "make talk therapy virtually 'immune from regulation.'" *Pickup*, 740 F.3d at 1231 (quoting *NAAP*, 228 F.3d at 1054). And it would require strict scrutiny be applied to state efforts to regulate any statements by health care providers, no matter how unrelated to the provision of evidence-based health care or how harmful to patients.

Examples of States' lawful regulation of harmful speech-related health care provider conduct abound. For example, in Colorado, the State Board of Psychologist Examiners revoked a psychologist's license for disclosing confidential information about his patients to a third party and soliciting loans from patients. *Davis v. State Bd. of Psych. Exam'rs*, 791 P.2d 1198 (Colo. App. 1989). These acts were undoubtedly carried out through speech and would presumably be protected from disciplinary action under Petitioner's argument. In Ohio, the State Board of Psychology revoked a psychologist's license for, among other things, making seductive statements to a patient, misrepresenting the professional qualifications of a colleague, and breaching the confidentiality of a client by discussing her health issues with another client. *Althof v. Ohio State Bd. of Psych.*, No. 05AP-1169, 2007 WL 701572 (Ohio Ct. App. Mar. 8, 2007) (unpublished). In Washington, the Medical Commission disciplined a psychiatrist for violating the standard of care for his profession, where he "deviated from . . . traditional psychotherapy" and failed to maintain an appropriate doctor-client relationship by encouraging his minor patient's "unhelpful dependency" on the psychiatrist and communicating with the patient's parents in a way that alienated family members from each other. *Huffine v. Wash. Dep't of Health Med. Quality Assurance Comm'n*, 148 Wash. App. 1015 (2009) (unpublished). Under Petitioner's framing, the state's authority to regulate a provider's conversations with the minor and their parents that fall below the standard of care for the profession would be subject to strict scrutiny.

In Petitioner's view, medical professionals can cloak themselves in First Amendment protection based on the notion that their medical practice merely entails "conversations." *See, e.g.*, Br. for Pet'r i, 2, 3, 5, 21. Yet "doctors are routinely held liable for giving negligent medical advice to their patients, without serious suggestion that the First Amendment protects their right to give advice that is not consistent with the accepted standard of care." *Pickup*, 740 F.3d at 1228. Petitioner's position—unsupported by precedent and state practice—would undermine many regulations on the practice of medicine where speech is part of the treatment. It could leave doctors, psychologists, and counselors who perpetuate substandard care unchecked and state residents at risk of serious harms.

Petitioner never addresses how, under her view, young people can be protected from treatments that are deeply harmful, ineffective, and repudiated by all leading medical and mental health organizations. Her position would hinder the States' ability to *prevent* injury to children from practices that have been widely recognized as harmful. At best, a State could potentially discipline a provider *after* she causes the expected harm. But the law does not require States to wait for harm to occur before they may regulate professional practice and conduct. *See Ohralik*, 436 U.S. at 464 (professional regulation prohibiting client solicitation was a permissible "prophylactic measure[] whose objective is the prevention of harm before it occurs[]"); *id.* ("[T]he State has a strong interest in adopting and enforcing rules of conduct designed to protect the public from harmful [professional practices] by [professionals]

whom it has licensed."). Nor does Petitioner explain how State professional boards should discipline a mental health provider for malpractice (or what Petitioner characterizes as speech fully protected by the First Amendment). Petitioner's position stands at odds with the States' responsibility to protect their people from substandard care and ensure public health and safety.

3. Petitioner's position threatens to upend State regulation of professions more broadly

Accepting certain aspects of Petitioner's arguments could also imperil the longstanding state regulation of the professions generally. Many professional regulations to some degree turn on the content of "speech" within the everyday meaning of that word. For example, laws regulate how lawyers speak with their clients, doctors give medical opinions to their patients, pharmacists dispense medication, and on and on. *See, e.g.*, *Ohralik*, 436 U.S. at 456–57, 468 (rejecting First Amendment challenge to regulation that prohibited lawyers from soliciting clients in person); *Casey*, 505 U.S. at 884 (rejecting First Amendment challenge to requirement that doctors inform patients about the risks of abortion). Longstanding laws also regulate what kinds of professional activities require a license in the first place. *See, e.g.*, 3*60 Virtual Drone Servs LLC v. Ritter*, 102 F.4th 263, 278 (4th Cir. 2024), *cert. pet. pending*, No. 24-279 (rejecting First Amendment challenge to North Carolina land-surveying licensing law); *Del Castillo v. Sec'y, Fla. Dep't of Health*, 26 F.4th 1214, 1216 (11th Cir. 2022) (applying *NIFLA* and upholding a Florida licensing law requiring licensure of

dieticians against a free speech challenge as a regulation of professional conduct, although the dietician's practice involved communication of nutrition and diet advice via spoken word). Ruling for Petitioner here on the basis that the mere presence of spoken words triggers strict scrutiny could thus jeopardize not only laws that treat conversion therapy as unprofessional conduct in over twenty States, but also professional regulations for occupations that exist in every State.

CONCLUSION

This Court should affirm the decision below.

RESPECTFULLY SUBMITTED.

NICHOLAS W. BROWN
Attorney General
State of Washington

NOAH G. PURCELL
Solicitor General

CRISTINA SEPE
Deputy Solicitor General
Counsel of Record

1125 Washington Street SE
Olympia, WA 98504-0100
360-753-6200

August 26, 2025

[Counsel listing continues on the following page.]

ROB BONTA
Attorney General
State of California
1515 Clay Street
Oakland, CA 94612

WILLIAM TONG
Attorney General
State of Connecticut
165 Capitol Avenue
Hartford, CT 06106

KATHLEEN JENNINGS
Attorney General
State of Delaware
820 N. French Street
Wilmington, DE 19801

BRIAN L. SCHWALB
Attorney General
District of Columbia
400 6th Street, NW,
Suite 8100
Washington, D.C. 20001

ANNE E. LOPEZ
Attorney General
State of Hawai'i
425 Queen Street
Honolulu, HI 96813

KWAME RAOUL
Attorney General
State of Illinois
115 South LaSalle Street
Chicago, IL 60603

AARON M. FREY
Attorney General
State of Maine
6 State House Station
Augusta, ME 04333

ANTHONY G. BROWN
Attorney General
State of Maryland
200 Saint Paul Place
Baltimore, MD 21202

ANDREA JOY CAMPBELL
Attorney General
Commonwealth of
Massachusetts
One Ashburton Place
Boston, MA 02108

DANA NESSEL
Attorney General
State of Michigan
P.O. Box 30212
Lansing, Michigan 48909

KEITH ELLISON
Attorney General
State of Minnesota
102 State Capitol
75 Rev. Dr. Martin
Luther King Jr. Blvd.
St. Paul, MN 55155

AARON D. FORD
Attorney General
State of Nevada
100 North Carson St.
Carson City, NV 89701

MATTHEW J. PLATKIN
Attorney General
State of New Jersey
25 Market Street
Trenton, NJ 08625

RAÚL TORREZ
Attorney General
State of New Mexico
408 Galisteo Street
Santa Fe, NM 87501

LETITIA JAMES
Attorney General
State of New York
28 Liberty Street
New York, NY 10005

JEFF JACKSON
Attorney General
State of North Carolina
P.O. Box 629
Raleigh, NC 27602

DAN RAYFIELD
Attorney General
State of Oregon
1162 Court Street NE
Salem, OR 97301

PETER F. NERONHA
Attorney General
State of Rhode Island
150 South Main Street
Providence, RI 02903

CHARITY R. CLARK
Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609

JOSHUA L. KAUL
Attorney General
State of Wisconsin
17 West Main Street
Madison, WI 53703

ADDENDUM

State	Citation	Description
Arizona	Exec. Order by Gov. Katie Hobbs, No. 2023-13 (Ariz. Dec. 15, 2023)	Executive order prohibiting use of state and federal funds for conversion therapy for minors
California	Cal. Bus. & Prof. §§ 865.1, 865.2	Statute prohibiting conversion therapy for minors as unprofessional conduct
Colorado	Colo. Rev. Code § 12-245-224(1)(t)(V)	Statute prohibiting conversion therapy for minors as unprofessional conduct
Connecticut	Conn. Gen. Stat. § 19a-907a	Statute prohibiting conversion therapy for minors as unprofessional conduct
Delaware	Del. Code Ann. tit. 24, §§ 1731(b)(24), 1922(a)(12), 3009(a)(11), 3514(a)(13), 3915(a)(11)	Statute prohibiting conversion therapy for minors
District of Columbia	D.C. Code § 7-1231.14a	Statute prohibiting conversion therapy for minors

State	Citation	Description
Hawai‘i	Haw. Rev. Stat. § 453J-1	Statute prohibiting conversion therapy for minors
Illinois	405 Ill. Comp. Stat. 48/20, 48/30	Statute prohibiting conversion therapy for minors
Maine	Me. Stat. tit.32, §§ 2112, 2600-D, 3300-G, 3837-B, 6223, 7006, 13800-B, 17311,	Statute prohibiting conversion therapy for minors
Maryland	Md. Code Ann., Health Occ. § 1-212.1	Statute prohibiting conversion therapy for minors
Massachusetts	Mass. Gen. Laws ch. 112, § 275	Statute prohibiting conversion therapy for minors
Michigan	Mich. Comp. Laws § 330.1901a	Statute prohibiting conversion therapy for minors
Minnesota	Minn. Stat. § 214.078	Statute prohibiting conversion therapy for minors
Nevada	Nev. Rev. Stat. § 629.600	Statute prohibiting conversion therapy for minors

State	Citation	Description
New Hampshire	N.H. Rev. Stat. Ann. § 332-L:2	Statute prohibiting conversion therapy for minors
New Jersey	N.J. Rev. Stat. § 45:1-55	Statute prohibiting conversion therapy for minors
New Mexico	N.M. Stat. Ann. § 61-1-3.3	Statute prohibiting conversion therapy for minors
New York	N.Y. Educ. Law §§ 6509-e, 6531-a	Statute prohibiting conversion therapy for minors
North Carolina	Exec. Order by Gov. Roy Cooper, No. 97 (N.C. Aug. 2, 2019)	Order prohibiting use of state and federal funds for conversion therapy for minors
North Dakota	N.D. Admin Code. § 75.5-02-06.1	Ethics regulation prohibiting licensed social workers from practicing conversion therapy
Oregon	Or. Rev. Stat. § 675.850	Statute prohibiting conversion therapy for minors

State	Citation	Description
Pennsylvania	Exec. Order by Gov. Tim Wolf, No. 2022-02 (Pa. Aug. 16, 2022);	Order restricting conversion therapy for minors
	49 Pa. Code §§ 16.63, 21.416, 25.218, 47.5	Boards of Medicine; Osteopathic Medicine; Nursing; and Social Workers, Marriage and Family Therapists, and Professional Counselors; Psychology statements of policy explaining conversion therapy for minors may be unethical, immoral, or unprofessional conduct
Rhode Island	23 R.I. Gen. Laws § 23-94-3	Statute prohibiting conversion therapy for minors
Utah	Utah Code Ann. § 58-1-511	Statute prohibiting conversion therapy for minors

State	Citation	Description
Vermont	Vt. Stat. Ann. tit. 3, § 129a(a)(24); Vt. Stat. Ann. tit. 18, §§ 8351-53; Vt. Stat. Ann. tit. 26, §§ 1343(a)(40), 1842(b)(13), 3210(a)(13), 3271(a)(8); 4042(a)(7), 4062(a)(7), 4132(a)(11)	Statute prohibiting conversion therapy for minors
Virginia	Va. Code Ann. §§ 54.1-2409.5, 115-20-130(b)(14)[3]	Statute prohibiting conversion therapy for minors
Washington	Wash. Rev. Code § 18.130.180(26)	Statute prohibiting conversion therapy for minors
Wisconsin	Wis. Admin. Code MPSW § 20.02(25)	Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board licensing rule prohibiting conversion therapy

[3] *But see* Consent Decree, *Raymond v. Va. Dep't of Health*, Case No. CL2006296-00 (Va. Cir. Ct. June 4, 2025) (Virginia defendants agreeing not to enforce law as to plaintiffs and similarly-situated counselors in their provision of talk therapy).