

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 COLORADO DEPARTMENT
OF REGULATORY AGENCIES, ET AL., RESPONDENTS

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT*

**BRIEF OF AMICUS CURIAE
SEXUALITY RESEARCH SCHOLAR
AMY E. HAMILTON
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

Amicus curiae Amy E. Hamilton is a Ph.D. scholar with professional and personal interest in the case. She is currently a Research Associate at the University of Texas, an adjunct professor for the Catholic Approaches to Sexuality and Gender Graduate Certificate program at the University of St. Thomas in Houston, a Fellow with the Nesti Center for Faith and Culture, and a Fellow at the Medical Institute for Sexual Health.

Amicus began researching and writing on the topics of sexual orientation, gender identity, and faith over 20 years ago. While a Sexuality Research Fellow with the Social Science Research Council (2003-2004), she collected and examined the life narratives of 55 Christians who had experienced conflicts between their spiritual and sexual identity.² Her academic expertise and personal experience will assist the Court's consideration of the issues presented by this case.

¹ No party's counsel authored any part of this brief. No person other than amicus and amicus' counsel contributed any money intended to fund the preparation or submission of this brief.

² Amy E. Peebles, *Sexual and Spiritual Identity Transformation Among Ex-gays and Ex-ex-gays: Narrating a New Self* (2004) (Unpublished doctoral dissertation) (on file at The University of Texas at Austin).

SUMMARY OF THE ARGUMENT

Under the guise of preventing harm from so-called “conversion therapy,” Colorado law manipulatively prevents counselors from providing the counsel that many minor clients need and desire. In order to advance its own policy interests and steer its youth toward the State’s predetermined goals, Colorado controls the viewpoint and perspective of counseling its youth are able to request and receive.

Colorado law prohibits a licensed counselor from engaging in “conversion therapy with a client who is under eighteen years of age.” Colo. Rev. Stat. § 12-245-224(1)(t)(V). “Conversion therapy” is defined as any talk therapy or counseling exploration that seeks to “change an individual’s sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex.” Colo. Rev. Stat. § 12-245-202(3.5)(a). However, counseling efforts are allowed for “[a]cceptance, support and understanding” or for “assistance to a person undergoing gender transition.” Colo. Rev. Stat. §12-245-202(3.5)(b).

On the surface, the law seems simple. However, it presumes that concepts such as “sexual orientation” and “gender identity” are static, stable, and universally understood. The scientific literature disagrees. Over the years, research has consistently shown that sexual behavior and identity, particularly among young people in their teens and 20s, are subject to considerable and even frequent change. Consequently, Colorado’s presumption that sexuality

can be easily and definitively identified and categorized is wrong. By assuming that sexual behavior and identity is fixed and thus cannot be the subject of any honest and open discussion that could result in unsanctioned change, Colorado purports to limit therapeutic choices to those that advance State-sanctioned goals. The State then compounds the error by imposing penalties on counselors who, by their profession and expertise, recognize the value of open-ended, non-judgmental conversation for youths who truly desire to understand and explore all sides of the internal conflict they are experiencing. A law that pre-determines and restricts treatment options and outcomes available to these vulnerable youths is unjust and can lead to tragic results.

If the motivation behind Colorado's law is to help vulnerable children and adolescents by keeping them from harmful therapeutic practices, the actual results of the law are the opposite. Under Colorado's restrictions on ethical talk therapy, the number of available providers is reduced, avenues of help are narrowed, and complex contributors to a young person's development are left unexplored by mandate. Moreover, the law uniquely burdens the freedom of any individual seeking to provide or to obtain counseling that recognizes and respects a worldview that is inconsistent with the State's mandated orthodoxy. Ironically, Colorado's counseling censorship leaves only one path wide open: gender transition, the most extreme and potentially harmful therapeutic intervention of all.

ARGUMENT

I. Colorado’s law presumes static and stable meanings for terminology and concepts that are impossible to define and effectively apply in such a rigid and simplistic way.

Colorado’s law is written simply, using words that presume universal understanding and application. Such a premise, however, does not reflect reality. Studies have consistently revealed that sexuality cannot be easily and definitively categorized and defined.

A. Colorado erroneously treats “sexual orientation” as a discrete, clearly defined, static category, when, in fact, “sexual orientation” is a multidimensional concept with definitions that are not uniformly agreed upon.

Colorado presents “sexual orientation” as a discrete and clearly defined category with a static and stable meaning. However, in the scientific literature, what is meant by “sexual orientation” has been difficult to operationalize for study. According to Professor of Psychology and sexuality researcher Lisa Diamond, “sexual orientation is not easy to define or measure. * * * Different researchers have emphasized different facets, and the facets themselves do not always coincide.”³

³ Lisa M. Diamond & Clifford J. Rosky, *Scrutinizing Immutability: Research on Sexual orientation and U.S. Legal*

After conducting award-winning research on adolescent sexual identity, Professor of Human Development and Family Science Christine Kaestle concluded, “evidence indicates that sexual orientation is not dichotomous (e.g., straight or gay) but is experienced along a continuum with many gradations and in-between experiences.”⁴ Professor Kaestle cautioned: “sexual orientation paradigms that are unidimensional * * * not on a continuum, that are static, or that assume identical male and female experiences may create limitations in research among sexual minority young people.”⁵ The study concluded “that no single measure of sexual orientation is sufficient to capture sexual minorities at any given point in time.”⁶ Another study in 2012 found that “mostly heterosexual” was the largest non-heterosexual identity category selected among those surveyed. Consequently, the study authors argued there is a need to be less rigid in describing sexuality

Advocacy for Sexual Minorities, 53 J. OF SEX RESEARCH (4-5) 363, 365 (2016),
<https://psych.utah.edu/resources/documents/people/diamond/Scrutinizing%20Immutability.pdf>.

⁴ Christine E. Kaestle, *Sexual Orientation Trajectories Based on Sexual Attractions, Partners, and Identity: A Longitudinal Investigation From Adolescence Through Young Adulthood Using a U.S. Representative Sample*, 56 J. OF SEX RESEARCH 811, 812 (2019),
<https://suarakita.org/wp-content/uploads/2019/05/Sexual-Orientation-Trajectories-Based-on-Sexual-Attractions-Partners-and-Identity-A-Longitudinal-Investigation-From-Adolescence-Through-Young.pdf> (Kaestle).

⁵ *Id.* at 811.

⁶ *Id.* at 823.

and to expand sexual orientation categories to include “mostly heterosexual” and “mostly gay/lesbian.”⁷

The three different dimensions of sexual orientation, namely, identity, attractions, and behavior, are not always congruent within an individual or at any given time.⁸ For instance, one 2019 study found that girls and boys self-reported different experiences of sexual fluidity in these dimensions over a three-year period. Girls reported experiencing fluidity in their self-labeled identity 26% of the time and their sexual attractions 31% of the time. Boys reported fluidity in identity and attractions at 11% and 10% respectively. The teens in the study also reported sexual behaviors that were discordant with reported identity and attractions at varying frequencies.⁹ Colorado correctly recognizes these dimensions but then fails to acknowledge their dynamic nature and seeks to control them by mandating, “thou shalt not change.” This constitutes an unwarranted interference in the therapy and goals of its minor citizens. How can Colorado hope to police

⁷ Zhana Vrangalova & Ritch C. Savin-Williams, *Mostly Heterosexual and Mostly Gay/Lesbian: Evidence for New Sexual Orientation Identities*, 41 ARCHIVES OF SEXUAL BEHAVIOR 85, 91, 99 (2012), <https://doi.org/10.1007/s10508-012-9921-y>.

⁸ Michelle L. Ybarra, Myeshia Price-Feeney & Kimberly J. Mitchell, *A Cross-sectional Study Examining the (In)congruency of Sexual Identity, Sexual Behavior, and Romantic Attraction Among Adolescents in the U.S.*, 214 J. PEDIATRICS 201 (2019), <https://doi.org/10.1016/j.jpeds.2019.06.046>.

⁹ J.L. Stewart et al., *Developmental Patterns of Sexual Identity, Romantic Attraction, and Sexual Behavior Among Adolescents Over Three Years*, 77 J. OF ADOLESCENCE 90 (2019), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6885553/>.

and enforce this, especially in a viewpoint-neutral manner?

The “identity” dimension of sexual orientation is also impossible to enforce or police in the counseling context. The language and descriptors used to quantify “identity” are evolving constantly and are simply too much of a moving target to be definitively and universally understood. For instance, some recent surveys show that young people are more likely to blur the binaries of sexuality (gay or straight) and the distinctions between sexuality and gender.¹⁰ This is especially true for a significant portion of those who self-identify as sexual minorities and choose terms that resist distinctions (e.g. “genderqueer”) to identify themselves.¹¹ Among adolescents, researchers are finding numerous expansions of the sexual orientation lexicon; new terms have emerged to indicate sexual relationship patterns regardless of sex such as “monosexual,” indicating a “singularity of direction” (e.g. “gay,” “straight”) and “plurisexual” which indicates a plurality of possible attractions regardless of sex or gender (e.g. “pansexual” or “bisexual”).¹² “[L]abels like ‘gay,’ ‘lesbian,’ and

¹⁰ Jessica N. Fish & Stephen T. Russell, *The Paradox of Progress for Sexual and Gender Diverse Youth*, 48 CURRENT OPINION IN PSYCHOLOGY 101498 (2022), <https://doi.org/10.1016/j.copsyc.2022.101498>.

¹¹ Julia Naftulin, *Gen Z Doesn't Want to Use Your Labels to Define Their Sexuality*, BUSINESS INSIDER, December 14, 2023, <https://www.businessinsider.com/generation-z-cares-values-sexual-identity-queer-2023-12>.

¹² Phillip L. Hammack et al., *Gender and Sexual Identity in Adolescence: A Mixed-Methods Study of Labeling in Diverse*

‘bisexual’ [are no longer as common] as these new taxonomies have emerged and become more widespread.”¹³

In the midst of this cultural and personal linguistic dynamism, Colorado seeks to impose its version of rigidity and identity uniformity by forbidding young people in the active stages of identity development from accessing counseling or therapeutic conversations in order to allow minors to openly explore their own sexual orientation.

B. Colorado erroneously treats “gender identity” as a discrete, clearly defined, static category, when, in fact, “gender identity” has variable definitions that are not uniformly agreed upon.

The American Academy of Pediatrics policy publication on transgender and gender-diverse youth defines “gender identity” as follows:

A person’s deep internal sense of being female, male, a combination of both, somewhere in between, or neither, resulting from a multifaceted interaction of biological traits,

Community Settings, 37 J. OF ADOLESCENT RESEARCH (2) 167, 173 (2022),
https://www.philhammack.com/files/ugd/6f3628_6b1cbea0f71e4f11bee15d735b23bb29.pdf.

¹³ *Ibid.*

environmental factors, self-understanding, and cultural expectations.¹⁴

However, LGBT glossaries on the Internet and in academic and medical spaces give terms and labels that reveal the definitions are neither fixed nor necessarily agreed upon. According to the University of California San Francisco's website: "This glossary of LGBTQIA+ terminology is meant to evolve as language and culture changes. It is important to note that these identities and definitions are not definite. Words and identities mean different things to different people."¹⁵ An LGBT+ glossary posted by the University of Vermont Children's Hospital states that the acronym includes a "+" sign to "recognize the limitless sexual orientations and gender identities used by members of our community."¹⁶ Another recent article described 72 genders.¹⁷ The authors of a 2012 Human Rights Campaign study on gender-diverse

¹⁴ Jason Rafferty et al., *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 PEDIATRICS (4) 2018, 2019 (2018), <https://doi.org/10.1542/peds.2018-2162> (Rafferty).

¹⁵ LGBTQIA+ Glossary, University of California San Francisco LGBTQ Resource Center, <https://lgbtq.ucsf.edu/glossary-terms>.

¹⁶ LGBTQIA+ Glossary, The University of Vermont Children's Hospital, https://www.med.uvm.edu/docs/lgbtq_glossary_of_terms/ahcc-documents/lgbtq_glossary_of_terms.pdf?sfvrsn=f5169013_2#:~:text=LGBTQ%2B%3A%20An%20acronym%20for,by%20members%20of%20our%20community.

¹⁷ Shaziya Allarakha, *What Are the 72 Other Genders?*, MedicineNet, https://www.medicinenet.com/what_are_the_72_other_genders/article.htm.

youth noted that “these youth represent 925 distinct gender identities and expressions.”¹⁸ With this vast of a terminological landscape, how can a conscientious counselor help an adolescent navigate these issues when the counselor’s speech is constrained and when any honest and open conversation within the context of a client’s personal identity, which may not be at all “fixed,” could jeopardize the counselor’s license?

C. Colorado erroneously treats “sexual orientation” and “gender identity” as immutable and fixed characteristics even though the scientific record has established clear evidence of fluidity and change for both, especially among adolescents and young people.

Recent scholarship has definitively shown that people are not “born gay” in a genetic or deterministic sense,¹⁹ and that sexual attractions, behaviors, and identities can be fluid over time.²⁰ Sexual fluidity has

¹⁸ Joel Baum et al., *Supporting and Caring for Our Gender Expansive Youth: Lessons from the Human Rights Campaign’s Youth Survey*, Human Rights Campaign & Gender Spectrum 1, 2 (2012), <https://assets2.hrc.org/files/assets/resources/Gender-expansive-youth-report-final.pdf>.

¹⁹ Andrea Ganna et al., *Large-Scale GWAS Reveals Insights into the Genetic Architecture of Same-Sex Sexual Behavior*, 365 SCIENCE (6456) eaat7693 (2019), <https://doi.org/10.1126/science.aat7693>; see Tinca J. C. Polderman et al., *Meta-Analysis of the Heritability of Human Traits Based on Fifty Years of Twin Studies*, 47 NATURE GENETICS (7) 702 (2015), <https://doi.org/10.1038/ng.3285>.

²⁰ Lisa M. Diamond, *Sexual Fluidity in Male and Females*, 8 CURRENT SEXUAL HEALTH REPORTS 249 (2016),

been thoroughly documented and established in the scientific literature over the last two decades.²¹ According to a 2022 review article, “sexual fluidity explains that for some individuals, sexual orientation is not fixed and can be prompted to change by a variety of situational, interpersonal, and societal factors.”²²

Just how common is sexual orientation identity (SOI) change among adolescents? In order to capture the dynamic nature of identity exploration and development, short-term data is valuable. A recent 2025 survey involved a study with a two-month follow-up period. Researchers found that one in 10 adolescents reported SOI change in the two-month study period.²³

Long-term data is also critical to understanding these phenomena. In 2019, one study measured adolescent to young adult sexual orientation

<https://psych.utah.edu/resources/documents/people/diamond/Sexual%20Fluidity%20in%20Males%20and%20Females.pdf>.

²¹ Johnny Berona et al., *Trajectories of Sexual Orientation from Adolescence to Young Adulthood: Results from a Community-Based Urban Sample of Girls*, 63 J. OF ADOLESCENT HEALTH (1) 57 (2018), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6534354/>.

²² Sabra L. Katz-Wise & Kieran P. Todd, *The Current State of Sexual Fluidity Research*, 48 CURRENT OPINION IN PSYCHOLOGY 101497, 101498 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10289116/>.

²³ Lysie R. Ranker et al., *One in Ten Adolescents and Young Adults Report Changes in Their Sexual Orientation Identity over 2-Month Follow-Up: Results from a Longitudinal Cohort Study*, PSYCHOLOGY OF SEXUAL ORIENTATION AND GENDER DIVERSITY (2025), <https://awspntest.apa.org/doi/10.1037/sgd0000782>.

trajectories over time, finding that “substantial changes were common not only from late adolescence to the early 20s but also from the early 20s to the late 20s, indicating that sexual orientation development continues throughout emerging adulthood.”²⁴ The author observed:

[F]luidity in sexual orientation may be a response to changing situations throughout the life course and is not specific to any set age range. * * * However, large transitions in the life course, such as adolescence and young adulthood, also introduce developmental explorations of feelings, behaviors, and identity that may involve questioning and experimentation across various continuous dimensions of sexual orientation. Establishing sexual identity is a major developmental task of adolescence. In addition, some teenagers may not have had sexual relationships or experienced many attractions yet.²⁵

With respect to gender identity, Colorado treats it as immutable whereas the American Academy of Pediatrics (AAP) policy statement on transgender and gender diverse children and adolescents states that “[f]or some people, gender identity can be fluid, shifting in different contexts.”²⁶

²⁴ Kaestle 811.

²⁵ *Id.* at 812.

²⁶ Rafferty 2019.

One cannot deny that adolescence and early adulthood is a pivotal period, characterized by change and exploration. Yet in this critical period of identity development, Colorado law prohibits youths from discussing or questioning their own sexuality and life goals and potential for sexual fluidity. The “Q” in the acronym stands for “Questioning,” but Colorado seeks to limit the questions and control the answers. These restrictions will indiscriminately impact those youths with the most questions and who need the most latitude to explore the answers that are right for them.

II. Colorado’s law violates clients’ rights to individualized treatment by restricting their treatment to modalities approved by the government without regard to a client’s personal needs or desires.

Colorado’s law denies its youth struggling with sexuality and gender identity issues the opportunity to evaluate and access any and all treatment options available to help them resolve their conflict. It does not recognize an individual’s right to self-direct, nor does it acknowledge the unique needs that clients have. Indeed, there is no value assigned to individual freedoms or personal viewpoints at all. Instead, the purpose of the law is to mandate and advance a policy interest of the State by controlling and steering its vulnerable youth toward the goal set by the State.

A. Colorado’s law essentially mandates an “affirmation only” approach to gender identity, hindering therapeutic exploration that could protect vulnerable youths from medicalization and irreversible harms.

Colorado’s law prevents therapists from engaging in exploratory talk therapy for vulnerable youths dealing with sexual and/or gender identity issues and questions, thus blocking valuable therapeutic help and opening them to potentially grave harms. This law restricts therapists from helping clients who want to explore their self-identification of sexual orientation or gender lest it seem to challenge or encourage the client to consider an alternate understanding of themselves. This leaves vulnerable youths, much in need of such encouragement and exploration, without authentic help and informed guidance. The “eunuch” gender identity provides an example of a scenario that could actually occur under Colorado’s law.

In 2022, the World Professional Association of Transgender Health (WPATH) released the 8th version of the Standards of Care (SOC) for the Health of Transgender and Gender Diverse People. This version included a new chapter entitled, “Eunuchs,” which reads:

As with other sexual and gender minorities, working with eunuchs requires an understanding that they are a diverse population, and that each person is eunuch in their own way. * * * [T]he ideal intake form would ask the assigned sex and identified

gender and offer multiple gender options, including “eunuch” and “other.” Individuals may identify with more than one option and should be able to select more than one.²⁷

Healthcare professionals are advised to offer an, “accepting stance, open inquiry, suspension of judgment, and flexible expectations.”²⁸

Now consider that one study of adult men who had genital removal surgery found that the subjects had experienced higher levels of emotional, physical, and sexual trauma as children as well as learned about or been threatened with castration before age 13.²⁹ Therapists in Colorado might be reluctant to work with such a young man given that it might invite professional sanction. Under the Colorado law, an adolescent male could present with a “eunuch” gender identity, along with claiming other gender identities, and therapists would be required to affirm him if he assured them that he was mentally well. Given that age minimums were removed from SOC 8 and genital

²⁷ E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People*, 23 INTERNATIONAL J. OF TRANSGENDER HEALTH (sup. 1) S1, S92 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9553112/>.

²⁸ *Ibid.*

²⁹ Jamie Agapoff et al., *Exposures to Information about Castration and Emotional Trauma before Puberty are Associated with Men's Risk of Seeking Genital Ablation as Adults*, 11 SEXUAL MEDICINE (2) qfad011 (2023), <https://doi.org/10.1093/sexmed/qfad011>.

surgeries are performed on older teens,³⁰ the mandated affirmation takes away many possible helps and opens the door to many preventable harms.

In the recent legal challenges to pediatric and adolescent gender medicine including *United States v. Skrametti*, No. 23-477 (argued Dec. 4, 2024), and beyond, court rooms and legislative chambers have witnessed detransitioners reporting that their gender identity was rapidly affirmed rather than their problems explored and that the subsequent transition process gravely harmed them. Yet gender-affirming clinicians frequently minimize these harms. For instance, psychiatrist Jack Turban, a prominent advocate for pediatric gender medicine, wrote:

Although gender affirming hormones can cause some irreversible changes, such as body fat redistribution and vocal changes, these effects are primarily cosmetic. * * * For some patients detransition is simply a healthy developmental trajectory. Their gender exploration helps them to better understand themselves.³¹

³⁰ Christine Milrod & Dan H. Karasic, *Age is Just a Number: WPATH-Affiliated Surgeons' Experiences and Attitudes Toward Vaginoplasty in Transgender Females under 18 Years of Age in the United States*, 14 THE J. OF SEXUAL MEDICINE (4) 624 (2017), <https://doi.org/10.1016/j.jsxm.2017.02.007>.

³¹ Jack L. Turban & Alex S. Keuroghlian, *Dynamic Gender Presentations: Understanding Transition and "De-transition" among Transgender Youth*, 57 J. OF THE AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY (7) 451, 453 (2018), <https://doi.org/10.1016/j.jaac.2018.03.016>.

Thus let us be clear: Colorado's therapy restriction exempts and encourages the type of "gender exploration" that leads women to broken voices from the effects of testosterone and deep regret³² over their double mastectomies,³³ a high price to "better understand themselves." Under pain of professional censure, Colorado prohibits talk therapy and conversation that might lead minor clients to a "healthy developmental trajectory" that avoids medically-induced bodily harm by helping them come to a different, i.e. "changed," understanding of their gender identity.³⁴

³² Karleen D. Gribble, Susan Bewley & Hannah G. Dahlen, *Breastfeeding Grief after Chest Masculinisation Mastectomy and Detransition: A Case Report with Lessons About Unanticipated Harm*, 4 FRONTIERS IN GLOBAL WOMEN'S HEALTH 1073053 (2023), <https://doi.org/10.3389/fgwh.2023.1073053>.

³³ Br. for Keira Bell, Laura Becker, Sinead Watson, Kathy Grace Duncan, Laura Reynolds, Carol Freitas, and Detransvoices.org as Amici Curiae in Support of Defendant-Appellee, *Doe v. Snyder*, No. 21-15668 (9th Cir. 2022).

³⁴ Even the early Dutch pioneers of youth gender transition acknowledged resolving gender identity distress without medicalization is a preferable outcome in adolescents. "Naturally, if a resolution to extreme and lifelong cross-gender identity problems is attainable with less invasive treatment methods, clinicians should refrain from SRS, in adolescents as well as in older patients." Yolanda L.S. Smith, Stephanie H.M. van Goozen & Peggy T. Cohen-Kettenis, *Adolescents with Gender Identity Disorder who were Accepted or Rejected for Sex Reassignment Surgery: A Prospective Follow-up Study*, 40 J. OF THE AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY (4) 472, 473 (2001), <https://doi.org/10.1097/00004583-200104000-00017>.

B. Colorado’s law violates viewpoint neutrality and discriminates against religious individuals and others whose beliefs differ from the State’s secular values and anthropological assumptions by controlling their speech within the counseling context.

Colorado’s counseling restrictions clearly violate viewpoint neutrality and are biased and discriminatory to any worldview that contradicts the State’s values and assumptions regarding human sexuality and gender identity. For many individuals, the State imposes an amoral stance to human sexual behavior. Many religious and non-religious alike share the belief that there is not a distinct gender identity that is separate from the material body. Yet Colorado demands that all counseling for minors must rest on a different foundation. Such presumptions violate viewpoint neutrality. They also can lead to great harm.

Due to her high-profile case in the United Kingdom, Keira Bell is one of the world’s most well-known detransitioners. In 2014, she was a patient at England’s now-shuttered Tavistock Gender and Identity Services Clinic. After “a series of superficial conversations,” social workers agreed with Bell’s gender identification as a “trans man” and she was prescribed puberty blockers.³⁵ That same year, a senior Tavistock clinician, Bernadette Wren, published a paper on how ideas from postmodernism

³⁵ Keira Bell, *Keira Bell: My Story*, PERSUASION, April 7, 2021, <https://www.persuasion.community/p/keira-bell-my-story> (Bell).

and queer theory “may impact clinicians working with gender variant children and adolescents” – namely, the rejection of an “essential gender” and seeing “all gender as fictional and artificial.”³⁶ After discussing the possible conundrums that arise when directing youths to irreversible physical changes in light of these conceptions, Wren concluded:

The decision to recommend physical treatment for young people is then a genuinely shared but imperfect decision, involving the client, family, other professionals in the context of a wider cultural world, in which the meaning of trans is constantly shaped and re-shaped, but which rests on no foundation of truth. The therapist is not burdened with needing to be right or certain, but to offer a reflexive and thoughtful space to help clients explore the architecture and borders of their gendered world view.³⁷

Keira Bell now bears the scars of this postmodern therapy. She was being prescribed puberty blockers the year Wren’s paper went to press. Her therapists got it wrong, but they need not be burdened. It is Keira Bell and the many detransitioners like her that bear the burden of these “imperfect decisions.”³⁸

³⁶ Bernadette Wren, *Thinking Postmodern and Practising in the Enlightenment: Managing Uncertainty in the Treatment of Children and Adolescents*, 24 FEMINISM & PSYCHOLOGY (2) 271, 287 (2014), <https://doi.org/10.1177/0959353514526223>.

³⁷ *Id.* at 287.

³⁸ *Id.* at 271.

Outside the U.K. court, Bell made a statement:

I also call on professionals and clinicians to create better mental health services and models to help those dealing with gender dysphoria. I do not want any other young person who is distressed, confused, and lonely as I was to be driven to conclude transition is the only possible answer. I was an unhappy girl who needed help. Instead, I was treated like an experiment.³⁹

In and out of courtrooms, numerous detransitioned young women and men have since made similar pleas in the U.S.⁴⁰ But states like Colorado refuse to hear them. If the State was acting in a nondiscriminatory, neutral viewpoint manner, youths in Colorado would have a choice. Those who are seeking therapeutic help, and like Keira Bell, would benefit from the ability to openly question and consider all possible answers, should be able to engage with a counselor who offers that opportunity. Therapists should, in turn, be free to offer various perspectives for youths to consider and choose to accept or reject. But under Colorado law, only one treatment path is open, without regard to a client's rights, needs or desires.

³⁹ Bell.

⁴⁰ Jennifer Lahl & Kallie Fell, *THE DETRANSITION DIARIES* (2024).

C. Colorado’s law unduly burdens and restricts clients’ rights to autonomy, self-determination, and their free exercise of religion. Any sexual and gender identity exploration is permissible *except* that which, whether informed by the client’s conscience, religious values, or self-chosen life goals, seeks to explore “change” in ways that contradict the State’s imposed orthodoxy.

The State makes no allowance for youths with deeply held moral convictions that might differ from the State’s imposed secularism. Religiously-motivated youth should be free to receive counseling that respects and incorporates their worldview, if they so choose, to help them navigate their moral congruence with their sexuality, self-understanding, and life choices. Coming to an understanding of one’s faith, spirituality, and religious convictions is also an important part of adolescent identity development,⁴¹ but the State does not acknowledge this at all. Instead, it demands that even religiously committed youth privilege their experiences of sexuality or gender identity over their spiritual convictions and forbids counselors from helping them to work towards moral congruence. In doing so, the State is seeking to impose its own amoral value system on minors. In truth, only the minors themselves can work out their convictions regarding sexuality and the decisions they will make in light of those convictions. The State

⁴¹ Mark D. Regnerus & Jeremy E. Uecker, *Finding Faith, Losing Faith: The Prevalence and Context of Religious Transformations During Adolescence*, 47 REVIEW OF RELIGIOUS RESEARCH (3) 217 (2006), <https://www.jstor.org/stable/3512355>.

cannot preclude this identity work nor impose its solution, and to bar struggling adolescents from accessing counseling help that considers their values will only hinder and harm them. For instance, one recent study found that “[m]oral incongruence,” defined as “the experience of violating one’s deeply held moral values,” can lead to “distress and unhappiness.”⁴²

That Colorado places an undue burden on religious believers is evident in that any sexual and gender identity exploration is permissible and discussable within the counseling context *except* that which explores change motivated by religious conviction or conscience. By silencing exploratory talk about potential fluidity and different possible sexual identity trajectories, Colorado is denying youths accurate information regarding the “open future”⁴³ that is their right to consider and explore. Colorado purports to encourage youth to freely explore sexual and gender identity possibilities, take risks, and be guided by their consciences in doing so. Colorado’s religious youth should be afforded the same freedom,

⁴² Samuel L. Perry, Joshua B. Grubbs & Elizabeth E. McElroy, *Sex and Its Discontents: How Moral Incongruence Connects Same-Sex and Non-Marital Sexual Activity with Unhappiness*, 50 ARCHIVES OF SEXUAL BEHAVIOR 683 (2021), <https://doi.org/10.1007/s10508-020-01860-2>.

⁴³ Joel Feinberg, *The Child’s Right to an Open Future*, JUSTICE, POLITICS, AND THE FAMILY 145 (Daniel Engster & Tamara Metz eds., 2014); see Sarah C.J. Jorgensen, Nicole Athéa & Céline Masson, *Puberty Suppression for Pediatric Gender Dysphoria and the Child’s Right to an Open Future*, 53 ARCHIVES OF SEXUAL BEHAVIOR 1941 (2024), <https://doi.org/10.1007/s10508-024-02850-4>.

even if their choices do not conform to the State's orthodoxy.

III. Amicus' Personal Attestation: I have personally experienced sexual identity conflict, fluidity, and change. I had the freedom to work through that conflict within my own, individual worldview and goals in a therapeutic context. Every person should have that same right.

Although not required, it is not uncommon to position oneself as a researcher vis-à-vis the subject being studied,⁴⁴ which I will briefly do here. In my own life, I was a gender non-conforming youth. In the 1980's, I wore a tuxedo to my high school dance and was so androgynous I was often mistaken for a boy. I used this masculine style as a shield to guard me from the vulnerability of being female which had, in my reasoning, exposed me to childhood sexual abuse. If I was a young person today, I could easily be trans-identified. I became a Christian in my teens and my faith transformed my worldview. Subsequently, the conflict between my understanding of Christian sexual ethics and my experience of same-sex attraction became one of the deepest struggles of my life. Part of the work of my youth and development was choosing to follow my convictions and work out my sexual identity within the context of my religious commitment. In college, I was openly lesbian-

⁴⁴ See Phillip L. Hammack, David M. Frost & Sam D. Hughes, *Queer Intimacies: A New Paradigm for the Study of Relationship Diversity*, 56 THE J. OF SEX RESEARCH (4-5) 556 (2018), <https://doi.org/10.1080/00224499.2018.1531281>.

identified and pursued gay affirmative therapy. When I felt called to return to traditional Judeo-Christian sexual ethics, despite my attractions, I sought help in living chastely. I did not experience sexual fluidity and opposite sex attraction until I was in my thirties. I have now been married to a man for 17 years and am blessed to be a mother.

My personal journey has given me unique insight and understanding that I carry into my profession. I am keenly aware of the role that honest conversation and self-assessment in a professional, counseling context have played in my ability to effectively navigate my own sexual identity conflict within the context of my faith. Whether religious or not, Colorado's youth deserve access to counseling that honors their own deepest convictions and life goals. If a girl who identifies as bisexual and experiences sexual attractions to both sexes wants to have children, she may wish to explore strengthening her opposite-sex attraction and lessening her same-sex attraction due to ease of family formation. Under current Colorado law, a counselor would be barred from therapeutic conversation to help her explore her own desires and goals. However, that same counselor would be free to discuss egg retrieval and fertility preservation methods with a 15-year-old girl who identified as a boy.⁴⁵

⁴⁵ Moira A. Kyweluk, Afiya Sajwani & Diane Chen, *Freezing for the Future: Transgender Youth Respond to Medical Fertility Preservation*, 19 INTERNATIONAL J. OF TRANSGENDERISM (4) 401 (2018), <https://doi.org/10.1080/15532739.2018.1505575>; see Diane Chen & Lisa Simons, *Ethical Considerations in Fertility Preservation for Transgender Youth: A Case Illustration*, 6

Colorado's imposition of this undue burden and double-standard on its citizens is unjust and the free speech, religious liberty, and self-determination of its young people and those who serve them in therapeutic settings ought to be restored.

CONCLUSION

For the foregoing reasons, Amicus urges the Court to reverse the decision of the Tenth Circuit.

Respectfully submitted,

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