

No. 24-539

IN THE
Supreme Court of the United States

KALEY CHILES,

Petitioner,

v.

PATTY SALAZAR, In Her Official Capacity
as Executive Director of the Department of
Regulatory Agencies, *et al.*,

Respondents.

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

***Amici Curiae* Brief of America's Frontline
Doctors and Dr. Simone Gold, M.D., J.D.
in Support of Petitioner for Reversal**

DR. SIMONE GOLD, M.D., J.D.
DAVID A. DALIA
Attorney at Law
Counsel of Record
700 Camp Street
New Orleans, LA 70130
(504) 524-5541
davidadalia@gmail.com

Counsel for Amici Curiae
America's Frontline
Doctors and Dr. Simone
Gold, M.D., J.D.

130735



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iv
A MATTER OF THE GREATEST PUBLIC IMPORTANCE AND RULE 37.6 DISCLOSURE.....	1
INTERESTS OF <i>AMICI CURIAE</i>	2
SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	6
I. Colorado’s “prohibited speech” law, Colo. Rev. Stat. § 12-245-202(3.5) facially violates the First Amendment and the United States Supreme Court’s holding in <i>National Institute of Family & Life Advocates v. Becerra</i> , 585 U.S. 755 (2018).....	6
II. By attempting to prohibit discussions of <i>all</i> viable treatment options available to patients, this Colorado “prohibited speech” law breaches professional ethical duties of honesty and transparency owed by counselors to clients and likely constitutes professional malpractice.....	9

Table of Contents

	<i>Page</i>
III. Merely labeling protected free speech as “conduct” does not change its character as free speech, <i>NAACP v. Button</i> , 371 U.S. 415 (1963), nor does such labeling turn this free speech into unprotected “incidental speech”. <i>NIFLA</i>	11
IV. This Colorado law exhibits unconstitutional viewpoint discrimination in favor of supporting children who are undergoing “gender transition”.....	12
V. Medical mutilation of a child’s healthy human body violates informed consent, causes lifetime harmful side effects, violates the Hippocratic Oath, and is criminal child abuse and medical battery. No third party can supply such consent. This “transgender ideology” stems largely from unreliable and discredited WPATH “Standards of Care” which are entitled to no deference.....	13
VI. Further, the Colorado law is fatally void for vagueness, is unconstitutionally overbroad, is impossible to enforce, and arguably represents criminal violations of prohibitions against female genital mutilation and criminal violations of free speech under such statutes as 18 U.S.C. §116, 18 U.S.C. §241, and 42 U.S.C. §1983 liability. However, the Court need not reach these issues because	

Table of Contents

	<i>Page</i>
the Colorado law is invalid on account of its facial violations of the First Amendment and of <i>NIFLA</i> . See Headnote I27
CONCLUSION28

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Bolger v. Youngs Drug Prod. Corp.</i> , 163 U.S. 60 (1983).....	7
<i>Chiles v Salazar, et al.</i> , No. 22-1445, 23-1002 (10th Cir. 2024), 24-539 (2024).....	1
<i>Dobbs v. Jackson Women’s Health Org.</i> , 597 U.S. 215 (2022).....	11
<i>Gibson v. Collier</i> , 920 F.3d 212 (5th Cir. 2019).....	17
<i>Griffin v. Breckenridge</i> , 403 U.S. 88 (1971).....	27
<i>Health Freedom Defense Fund, et al. v Carvalho, et al.</i> , June 7, 2024, 22-55908 (CA9)	4
<i>Johnson et al. v Kotek, et al.</i> , No. 22-35624 (CA9), 24-173 (U.S. 2024).....	1
<i>Murthy, et al. v Missouri, et al.</i> , 23-411 (U.S. 2023)	1, 3
<i>NAACP v. Button</i> , 371 U.S. 415 (1963).....	11

Cited Authorities

	<i>Page</i>
<i>Nat'l Fed'n of Indep. Bus. v. OSHA</i> , 595 U.S. ___, 142 S. Ct. 661 (2022)	1
<i>National Institute for Family and Life Advocates, et al. v. James</i> , 2024 WL 3904870, August 24, 2024 (W.D.N.Y. 2024)	7, 8
<i>National Institute of Family & Life Advocates v. Becerra</i> , 585 U.S. 755 (2018)	2, 6, 7
<i>National Institute of Family and Life Advocates v. Raoul</i> , 685 F.Supp.3d 688 (N.D.Ill., 2023)	8, 9
<i>Planned Parenthood of Southeastern Pa. v. Casey</i> , 505 U.S. 833 (1992)	7, 11, 12
<i>Police Dep't v. Mosley</i> , 408 U.S. 92 (1972)	7
<i>Rosenberger v. Rector & Visitors of Univ. of Virginia</i> , 515 U.S. 819 (1995)	7, 8
<i>Schwarzer v. Wainwright</i> , No. 19-41011 (5th Cir. 2021)	27
<i>Skinner v. Oklahoma</i> , 316 U.S. 535 (1942)	23, 24

Cited Authorities

	<i>Page</i>
<i>United States of America v. Skrmetti, Attorney General and Reporter for Tennessee, et al.,</i> 23-477 (U.S. 2024)	1
<i>United States v Skrmetti,</i> 23-477 (U.S. 2024)	1, 14, 16-20, 25, 26
<i>United States v. Caronia,</i> 703 F.3d 149 (2d Cir. 2012)	8
<i>United States v. Guest,</i> 383 U.S. 745 (1966).....	27
<i>United States v. Price,</i> 383 U.S. 787 (1966).....	27
 Constitutional Provisions	
U.S. Const. amend. I.....	1, 2, 6-9, 13, 27, 28
 Statutes, Rules and Regulations	
18 U.S.C. §116.....	23, 27
18 U.S.C. §241	27
42 U.S.C. §1983	27
Colo. Rev. Stat. § 12-245-202(3.5)	6, 9, 27
Colo. Rev. Stat. § 12-245-202(3.5)(a)	27

Cited Authorities

	<i>Page</i>
Colo. Rev. Stat. § 12-245-202(3.5)(b).....	27
Colorado Criminal Code § 18-6-401	27
S.Ct. Rule 37.6	1

Other Authorities

A.M.A. Ethics Opinion 2.1.3: Withholding Information from Patients, https://code-medical-ethics.ama-assn.org/ethics-opinions/withholding-information-patients	10
AFLDS White Paper, The Civil Liberties and Human Rights Implications of Offering Children Medical Mutilation Procedures, Legal & Medical Issues in the Treatment of Gender-Dysphoric Youth Medical Mutilation Procedures Violate Children’s Civil Liberties, Lead Author Simone Gold, MD, JD, Dr. Melanie Crites-Bachert, DO, FACOS, FACS, Dr. Bryan Atkinson, MD, David Heller, pg. 12, July 2024, https://res.cloudinary.com/afllds/image/upload/v1720808982/Medical_Mutilation_White_Paper_1804e8ca1a.pdf	5
American Psychiatric Association, Gender Dysphoria, 2013 https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Gender-Dysphoria.pdf	14

Cited Authorities

	<i>Page</i>
American Psychiatric Association, Third Diagnostic and Statistical Manual.	14
Philip J. Cheng, Fertility Concerns of the Transgender Patient, TRANSLOGICAL JOURNAL . 2019;9(3):209-218 (explaining that hysterectomy, oophorectomy, and orchiectomy “results in permanent sterility”), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6626312/	24
Colorado Association of Psychotherapists, Code of Ethics, https://coloradopsychotherapists.org/code-of-ethics/	10
Do No Harm Medicine, https://donoharmmedicine.org	17
Doctors Protecting Children Declaration, https://doctorsprotectingchildren.org	17, 18
Don’t Lie but Don’t Tell the Whole Truth: The Therapeutic Privilege—Is it Ever Justified?, https://pmc.ncbi.nlm.nih.gov/articles/PMC2673833/	11
The Gold Report: Ep. 32 ‘Gender Ideology Is A Cult’ with Erin Lee, https://www.aflids.org/videos/post/the-gold-report-ep-32-gender-ideology-is-a-cult-with-erin-lee	22

Cited Authorities

	<i>Page</i>
The Gold Report: Medical Mutilation, https://www.aflids.org/videos/post/the-gold-report-medical-mutilation-part-1-of-5-the-reality-of-gender-affirming-care-with-dr-melanie-crites-bachert	15, 16
The Gold Report: Medical Mutilation: Part 2 of 5 ‘Female to Male’ with Dr. Melanie Crites-Bachert, https://www.aflids.org/videos/post/the-gold-report-medical-mutilation-part-2-of-5-female-to-male-with-dr-melanie-crites-bachert	25
The Gold Report: Medical Mutilation: Part 3 of 5 ‘Male to Female’ with Dr. Melanie Crites-Bachert, https://www.aflids.org/videos/post/the-gold-report-medical-mutilation-part-3-of-5-male-to-female-with-dr-melanie-crites-bachert	25, 26
Andrew Gregory, “Puberty blockers to be banned indefinitely for under-18s across UK,” <i>The Guardian</i> (Dec. 11, 2024), https://www.theguardian.com/society/2024/dec/11/puberty-blockers-to-be-banned-indefinitely-for-under-18s-across-uk	26
Miriam Grossman Gender Ideology and the Medical Experiment on our Children NatCon 3 Miami, https://www.youtube.com/watch?v=wIh8tvRLqck	21, 25

Cited Authorities

	<i>Page</i>
Miriam Grossman, “Rosa,” in <i>Lost In Trans Nation</i> , (New York, NY: Skyhorse Publishing, 2023).....	16, 21, 25
Illinois SB 1909	8, 9
Parents with Inconvenient Truths about Trans (PITT), https://www.pittparents.com/	26
Texas Attorney General Opinion No. KP-0104, February 18th, 2022	24
TX A.G. Op. KP-0401: https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2022/kp-0401.pdf	24
TX A.G. Op. No. KP-0401.....	23
<i>United States v Skrmetti</i> , 23-477 (2024), <i>Expert Declaration of Paul W. Hruz, M.D., Ph. D.</i> , Joint Appendix, Vol. 2, pg. 474	4, 14, 20, 21
<i>What Is A Doctor</i> , trailer: https://americasfrontlinedoctors.org/whatisadoctor	22, 26
WPATH Files, https://environmentalprogress.org/big-news/wpath-files	17
WPATH Files, https://www.public.news/p/the-wpath-files	16

**A MATTER OF THE GREATEST PUBLIC
IMPORTANCE AND RULE 37.6 DISCLOSURE**

The Free Speech Foundation, d/b/a America’s Frontline Doctors, and Dr. Simone Gold, M.D., J.D., the founder and physician member (“*Amici Curiae*” or “AFLDS”) respectfully file this *amici curiae* brief in support of the Petitioner for reversal in *Chiles v Salazar, et al.*, No. 22-1445, 23-1002 (10th Cir. 2024), 24-539, (2024).¹

The United States Supreme Court accepted the AFLDS filing of an *amici curiae* brief in the significant First Amendment case of *Murthy, et al. v Missouri, et al.*, 23-411 (U.S. 2023), in *Johnson et al. v Kotek, et al.*, No. 22-35624, (CA9), 24-173 (U.S. 2024), and in the related case of *United States of America v. Skrmetti, Attorney General and Reporter for Tennessee, et al.*, 23-477, (U.S. 2024).

The United States Supreme Court also accepted an *amicus curiae* brief from AFLDS in *Nat’l Fed’n of Indep. Bus. v. OSHA*, 595 U.S. ___, 142 S. Ct. 661 (2022). Our position prevailed in that case.

This *amici curiae* brief offers an important *medical and legal* perspective to this Court from thousands of doctors on the frontlines, by demonstrating that Colorado’s “prohibited therapeutic speech” law violates

1. No counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. The parties received timely notice of the filing of this *amici curiae* brief.

the First Amendment, violates this Court's holding in *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018), and is medically very dangerous.

INTERESTS OF *AMICI CURIAE*

AFLDS *Amici Curiae* are thousands of member physicians from across the country, representing a range of medical disciplines and practical experience on the front lines of medicine, and its founder and expert physician and attorney member, Dr. Simone Gold, M.D., J.D.

AFLDS' programs focus on critical issues including:

- Providing Americans with science-based facts for staying healthy;
- Protecting physician independence from government overreach;
- Combating illnesses with evidence-based approaches without compromising constitutional freedoms;
- Fighting medical cancel culture and media censorship;
- Advancing healthcare policies that protect the physician-patient relationship;

Each of AFLDS' member physicians is deeply committed to the guiding principle of medicine: "FIRST, DO NO HARM." They take their ethical obligations to

their patients very seriously. A physician's duty is to his or her patient.

America's Frontline Doctors is committed to preserving the voluntary and fully informed doctor/patient relationship, opposes any sort of illegal interference with the doctor/patient relationship, and opposes illegal government overreach by the censorship of medical and other information, or by the mandating of incorrect or dangerous medical information or treatments.

Indeed, AFLDS and Dr. Simone Gold, M.D., J.D. were targeted by the governmental Defendants in *Murthy v Missouri* (US. 2023) as being among the so-called [distinguished] "Disinformation Dozen" for promoting *accurate medical information*, such as the benefits of HCQ and Ivermectin, and for opposing vaccine passports. AFLDS's medical information proved to be completely correct. The censors were shown to be advancing inaccurate information, even though incorrect information is also protected free speech.

Dr. Gold and AFLDS also publicly supported the position as early as October, 2021 that experimental mRNA injections are not "vaccines", because they do not prevent infection or transmission, and they are neither "safe", nor "effective"². They are personal medical treatments only. This view is now known to be scientifically and legally

2. <https://aflds.org/about-us/press-releases/americas-frontline-doctors-supports-the-filing-of-a-petition-for-preliminary-injunction-to-prevent-kaiser-permanente-from-enforcing-their-vaccine-mandate>

correct. In June 2024, the Ninth Circuit refused to find these shots legally “vaccines” for this very reason.³

“Informed consent” cannot exist if it is not fully *informed*. Voluntary informed consent can never be coerced, subjected to undue influence, nor distorted by censored and incomplete information.

SUMMARY OF ARGUMENT

The Petitioner should be free to engage in protected and confidential speech with her clients in the best interests of Colorado minor children by exploring options such as “watchful waiting”⁴, as an alternative to dangerous “gender transition” surgeries to which these children may be subjected. *Amici Curiae* strongly protest using the phrase “gender transition surgery” as this is an intentional distraction from what is actually happening, which is a permanent Frankenstein-esque mutilation of a minor child’s healthy body. Many people are unaware of these gruesome medical facts. This Court must never lose sight of what is really at stake: permanent and irreversible loss of a minor child’s ability to ever create/produce sperm or egg; permanent and irreversible loss of a minor child’s ability to breast-feed, get pregnant, birth or father a baby; and permanent and irreversible facial, body and voice structures. The female child ends up with a lifelong “micro-penis” which typically cannot achieve penetrative

3. *Health Freedom Defense Fund, et al. v Carvalho, et al.*, June 7, 2024, 22-55908 (CA9).

4. *Expert Declaration of Paul W. Hruz, M.D., Ph. D.*, Joint Appendix, Vol. 2, pg. 474, 504-506, *United States v Skrmetti*, 23-477 (U.S. 2024).

intercourse and the male child ends up with a lifelong chronic wound requiring multiple painful dilatations per day. The majority of both sexes have lifelong anorgasmia.

Amici Curiae see these controversial surgeries as medical mutilation of a functional human body. This requires free and unhindered therapeutic discussions. *Amici Curiae* do not use the phrase “gender-affirming surgery” because that phrase is inaccurate. The phrase “medical mutilation surgery” accurately describes the surgical offerings which destroy healthy tissue.⁵ *Amici Curiae* affirmatively state that true “gender reassignment” surgery is medically impossible and a legal fiction due to the unalterability of the “XX” and “XY” chromosomes. Every single cell in every single organ in the human body, is either XX or XY. Testosterone on an XX female and estrogen on an XY male can never change that.⁶

Alarming, these Colorado minors lack the capacity to understand the substantial risks of these “gender

5. AFLDS White Paper, The Civil Liberties and Human Rights Implications of Offering Children Medical Mutilation Procedures, Legal & Medical Issues in the Treatment of Gender-Dysphoric Youth Medical Mutilation Procedures Violate Children’s Civil Liberties, Lead Author Simone Gold, MD, JD, Dr. Melanie Crites-Bachert, DO, FACOS, FACS, Dr. Bryan Atkinson, MD, David Heller, pg. 12, July 2024 https://res.cloudinary.com/afllds/image/upload/v1720808982/Medical_Mutilation_White_Paper_1804e8ca1a.pdf

6. All mammal bodies are oriented toward solely one gamete or the other (male or female reproductive system) even if there is a rare chromosomal abnormality. The presence of any “Y” chromosomal portion orients towards male.

reassignment” surgeries. By definition a minor cannot understand irrevocable infertility and anorgasmia.

These Colorado minors are unable due to their age to give informed consent to a procedure that may lead to their sterilization for life, to irreversible termination of their normal growth during puberty, to numerous serious and lifelong medical complications, and to a lifetime of medications, medical treatments, and a high likelihood of regret. No third party including their parents can supply such consent for them. There is of course no common law precedent for any third party to be able to grant permission to mutilate any other person’s body. No parent nor government actor nor physician has ever had such a right. Honest, ethical and transparent counseling that explores all treatment options free from unconstitutional government viewpoint-discrimination is essential. Colorado’s “prohibited speech” law, Colo. Rev. Stat. § 12-245-202(3.5) blatantly violates the First Amendment, the United States Supreme Court’s holding in *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018), and harmfully interferes with the counseling relationship.

ARGUMENT

- I. Colorado’s “prohibited speech” law, Colo. Rev. Stat. § 12-245-202(3.5) facially violates the First Amendment and the United States Supreme Court’s holding in *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018).**

The Tenth Circuit failed to enforce the First Amendment and failed to correctly apply the rule

of *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018) (“*NIFLA*”) to this Colorado statute. The Tenth Circuit erroneously found that crucial information regarding *all* client treatment options was merely “incidental speech”, incorrectly relying upon *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) in making that conclusion. However, *Casey* did not involve “prohibited speech” at all. *Casey* required additional speech by the State. It did not *prohibit* additional speech by the State. The speech in *Casey* was necessary to obtain fully informed consent. In this case we have opposite: the State is *prohibiting* reality-based speech which is necessary for the counselor/client relationship. Medical consultants informing clients of biological reality can never be characterized as “incidental”. See Headnote III.

In contrast, in *National Institute for Family and Life Advocates, et al. v. James*, 2024 WL 3904870, August 24, 2024 (W.D.N.Y. 2024), the district court granted a preliminary injunction against New York state, preventing the state from prohibiting free speech under the guise of “false advertising”. New York attempted to prohibit free speech by Plaintiffs, who wished to say that progesterone or “APR” or Abortion Pill Reversal were safe and effective. The district court stated:

“As a “general matter, ‘the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.’” *Bolger v. Youngs Drug Prod. Corp.*, 163 U.S. 60, 65 (1983) (quoting *Police Dep’t u. Mosley*, 408 U.S. 92, 95 (1972)). See also *Rosenberger u. Rector &*

Visitors of Univ. of Virginia, 515 U.S. 819, 828 (1995) (“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys”) ... When the government targets “particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” *Id.* at 829 ... Viewpoint discrimination “is thus an egregious form of content discrimination.” *Id.* And the “government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Id.* Content-based speech restrictions “are subject to ‘strict scrutiny’—that is, the government must show that the regulation at issue is narrowly tailored to serve or promote a compelling government interest.” *United States v. Caronia*, 703 F.3d 149, 163 (2d Cir. 2012). Such restrictions are “presumptively invalid.” *Id.*”

National Institute for Family and Life Advocates, et al. v. James, 2024 WL 3904870, August 24, 2024, 24, 25 (W.D.N.Y. 2024).

Similarly, in *National Institute of Family and Life Advocates v. Raoul*, 685 F.Supp.3d 688 (N.D.Ill., 2023), the district court permanently enjoined the state of Illinois from attempting to enforce SB 1909, which prohibited so-called pro-life viewpoint speech as “deceptive business practices”. The district court stated:

“SB 1909 is both stupid and very likely unconstitutional. It is stupid because its own

supporter admitted it was unneeded and was unsupported by evidence when challenged. It is likely unconstitutional because it is a blatant example of government taking the side of whose speech is sanctionable and whose speech is immunized—on the very same subject no less. SB 1909 is likely classic content and viewpoint discrimination prohibited by the First Amendment.”

National Institute of Family and Life Advocates v. Raoul, 685 F.Supp.3d 688 (N.D.Ill., 2023)

This is exactly what Colo. Rev. Stat. § 12-245-202(3.5) seeks to do. The viewpoint discrimination is obvious. The statute “chooses sides” regarding the child’s gender identity, *permitting* (nay, embracing) radical “transgender speech”, (which ideology has been largely discredited, see Headnote V), while unconstitutionally *forbidding* reality-based speech.

II. By attempting to prohibit discussions of *all* viable treatment options available to patients, this Colorado “prohibited speech” law breaches professional ethical duties of honesty and transparency owed by counselors to clients and likely constitutes professional malpractice.

It is fundamental to the counseling and psychotherapy professions that counselors owe duties of transparency, honesty and openness to their clients. Therapists and counselors must not withhold valuable information from their clients, information which may prove to be life-saving.

The Code of Ethics for the Colorado Association of Psychotherapists states:⁷

“INTEGRITY

Members shall strive to maintain a professional image that connotes competency, integrity honesty and fairness in the best interests of the client, the profession, and the community.

RESPONSIBILITY TO THE COMMUNITY

...Members shall promote the best interest of clients and the public.”

A.M.A. Ethics Opinion 2.1.3⁸⁸ states:

“Withholding Information from Patients

“Truthful and open communication between physician and patient is essential for trust in the relationship and for respect for autonomy. Withholding pertinent medical information from patients in the belief that disclosure is medically contraindicated creates a conflict between the physician’s obligations to promote patient welfare and to respect patient autonomy.”

7. Code of Ethics for the Colorado Association of Psychotherapists: <https://coloradopsychotherapists.org/code-of-ethics/>

8. A.M.A. Ethics Opinion 2.1.3: Withholding Information from Patients <https://code-medical-ethics.ama-assn.org/ethics-opinions/withholding-information-patients>

A.K. Edwin writes in PubMed that “withholding information from a competent patient is a violation of the doctor’s role as a fiduciary and is not ever justified.”⁹

Forbidding a counselor from discussing viable, less-invasive and statistically successful treatment options violates ethical duties owed to clients such as honesty, transparency, and full disclosure. Malpractice lawsuits are being filed by former children whose adult bodies can never reverse the permanent and irreversible damage inflicted upon their childhood bodies. Many of these lawsuits allege that counselors did not tell them the biological facts.¹⁰

III. Merely labeling protected free speech as “conduct” does not change its character as free speech, *NAACP v. Button*, 371 U.S. 415 (1963), nor does such labeling turn this free speech into unprotected “incidental speech”. *NIFLA*.

In upholding the withholding of crucial information to therapeutic clients as mere “incidental speech”, the Tenth Circuit ironically relied upon *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992), *overruled on other grounds* by *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) and cited by the *NIFLA* court.

9. Don’t Lie but Don’t Tell the Whole Truth: The Therapeutic Privilege – Is it Ever Justified? <https://pmc.ncbi.nlm.nih.gov/articles/PMC2673833/>

10. Woman sues California doctors, says she was rushed at age 12 into gender transition she regrets <https://www.sfchronicle.com/politics/article/lawsuit-transgender-health-care-19964425.php>

The irony lies in the fact that *Casey* concerned additional medical information that Pennsylvania mandated be given to patients in the process of doctors giving patients all of the pertinent information which they needed in formulating fully informed consent. The *NIFLA* court held that this disclosure requirement was incidental to the physicians' usual practice of obtaining patient informed consent in all cases.

The complete opposite is true in this case. Here there is no mandated helpful patient information. There is only withheld and **prohibited information** of viable clinical alternatives such as “watchful waiting” therapy. Such practice is clearly unethical, medically dangerous, and can constitute malpractice.

IV. This Colorado law exhibits unconstitutional viewpoint discrimination in favor of supporting children who are undergoing “gender transition”.

85% of those children will desist from the desire to “transition” within a few years after watchful waiting therapy. This Colorado “prohibited speech” law forbids any discussion of this successful treatment option. This “prohibited speech” increases the severe risks of harms and of lifetime medically horrific adverse consequences of attempting “gender transition”.

By allowing speech which affirms the child's gender identity, while forbidding speech which affirms reality-based biology, the Colorado statute is choosing sides. Transgender ideology is one viewpoint and reality-based biology is another viewpoint. The latter viewpoint deploys “watchful waiting”, and using this approach, at least 85%

of children outgrow their non-reality-based beliefs. The reality-based viewpoint is *at least* equally entitled to the same First Amendment protections as is the viewpoint that castrates and mutilates minor children. If trapping 100% of children into mutilating procedures was the sole correct path, the nation would not be hearing from tens of thousands of “detransitioners” who have now reached the age of majority.

These irreversible physical damages include permanent and irreversible loss of a minor child’s ability to ever create/produce sperm or egg; permanent and irreversible loss of a minor child’s ability to breast-feed, get pregnant, birth or father a baby; and permanent and irreversible facial, body and voice structures. The female child ends up with a lifelong “micro-penis” which typically cannot achieve penetrative intercourse and the male child ends up with a lifelong chronic wound requiring multiple painful dilatations per day. The majority of both sexes have lifelong anorgasmia.

V. Medical mutilation of a child’s healthy human body violates informed consent, causes lifetime harmful side effects, violates the Hippocratic Oath, and is criminal child abuse and medical battery. No third party can supply such consent. This “transgender ideology” stems largely from unreliable and discredited WPATH “Standards of Care” which are entitled to no deference.

Amici curiae physicians are very concerned that foundational medical principles such as the absolute requirement for informed consent in all cases, the Hippocratic Oath’s “Do No Harm” mandate, and the strict

observance of all applicable civil and criminal laws, were trampled upon in recent years by the sudden onslaught of an aggressive transgender ideology activism.

A heretofore rare disorder defined gender confusion as “gender identity disorder” in the American Psychiatric Association (APA)’s 1980 Third Diagnostic and Statistical Manual (DSM-3). However, the 2013 DSM-5 replaced “gender identity disorder” with “gender dysphoria”.¹¹

For eons, the term “gender” was historically used for grammatical distinctions in Latin and Romance languages. Over the past 1-2 decades “gender” began to be used to describe characteristics of biological sex. The correctness or incorrectness of the new usages of the term “gender” is controversial.¹²

Terminology such as the “sex assigned at birth”, and concepts such as “being born into the wrong body”, came into use.

For decades, it was mandatory to have years of physical and psychological screening before any rare adult patient was approved for gender reassignment surgery. All professionals agreed it was absolutely forbidden to medically or surgically treat minor children.

11. American Psychiatric Association, Gender Dysphoria, 2013 https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Gender-Dysphoria.pdf

12. *United States v Skrmetti*, 23-477 (2024), Expert Declaration of Paul W. Hruz, M.D., Ph. D., Joint Appendix, Vol. 2, pg. 474, 484-485.

Until very recently, all medical professionals agreed that under NO circumstances could a child consent to these treatments. That fact alone requires this Court to pause. This has been an extraordinarily rapid change by gender activists, not by dispassionate research. **All over the world countries have halted their “gender” programs due to utter lack of benefit.** The United Kingdom, Sweden, Norway and Finland have recently drastically limited access as have Denmark and Chile. France, Germany and Holland are voicing extreme alarm. It is only the United States, Australia and Canada (where physician-euthanasia is now the sixth leading cause of death) which has not stopped this Frankenstein mutilation of children.

After the 2013 DSM-5 change, suddenly, gender confusion was no longer a “disorder”, but was instead a “condition”, a “dysphoria” that could be supported. Indeed, for activists, it became a condition that could be promoted.

Instead of strict requirements like being an adult, dressing and living as the opposite sex for several years, changing one’s legal documents to reflect the opposite sex, and extensive psychological and psychiatric screening, it is now possible for a man who makes no attempt to look like a woman, and who expresses no real desire to become a woman, after only a 20 minute telemedicine interview with a nurse practitioner and a \$150 payment, can easily obtain an approval letter for an insurance company to pay a doctor to chop off his penis or cut off his testicles. This exposé by journalist Matt Walsh, the standards of care, the shift in medical treatments by activist-doctors, and the many surgical complications of so-called “gender-affirming care”, are discussed by Dr. Gold in “The Gold

Report: Medical Mutilation: Part 1 of 5 ‘The Reality of Gender Affirming Care’, and well documented in “*Lost in Trans-Nation*” by gender dysphoria expert Dr. Miriam Grossman.^{13 14}

In *United States v Skrmetti*, 23-477, (U.S. 2024), this ideological shift in bias based upon little to no evidence of positive clinical findings can be clearly seen in the government Petitioner’s Brief, “Medical Standards for Gender-Affirming Care”, pgs. 3-6. This section is full of statements of alleged medical facts regarding the standards of care for the gender dysphoric, which standards are all described as “accepted” and well settled, but which are actually hotly contested and sharply disputed in the wider medical community. Indeed, the government held out two organizations that the government said set “the accepted standard of care” for treating gender dysphoria, namely, the World Professional Association of Transgender Health (WPATH), and the Endocrine Society. See the *Skrmetti* Petitioner’s Brief, pg. 3. However, these organizations and their “standards of care” have been discredited and rejected by the overwhelming number of physicians and medical associations. See the WPATH Files¹⁵ wherein this activist (NON-physician) organization is revealed to purposefully refuse to provide informed consent to

13. The Gold Report: Medical Mutilation: Part 1 of 5 ‘The Reality of Gender Affirming Care’ with Dr. Melanie Crites-Bachert <https://www.aflds.org/videos/post/the-gold-report-medical-mutilation-part-1-of-5-the-reality-of-gender-affirming-care-with-dr-melanie-crites-bachert>

14. Miriam Grossman, “Rosa,” in *Lost In Trans Nation*, (New York, NY: Skyhorse Publishing, 2023).

15. <https://www.public.news/p/the-wpath-files>

patients.¹⁶ WPATH has been revealed to be essentially a scam, and in one year, 2023, its membership declined more than 60%, and there are now only about 1000 members in the USA. It would be reckless in the extreme for this Court to consider WPATH to be determinative on this subject. See the Doctors Protecting Children Declaration.¹⁷ See Do No Harm Medicine.¹⁸

The *Skrmetti amicus curiae* brief from the state of Alabama does an excellent job of exposing the fallacies and misstatements of fact in this monolithic government narrative, which government narrative only speaks of the “well-settled standards of care” for gender dysphoria emanating from WPATH and the Endocrine Society:

“This and other testimony has led both the First and Fifth Circuits—and, until recently, the U.S. Department of Health and Human Services—to find that “*the WPATH Standards of Care reflect not consensus, but merely one side in a sharply contested medical debate.*” *Gibson v. Collier*, 920 F.3d 212, 221 (5th Cir. 2019); *see Kosilek*, 774 F.3d at 90; ... 85 Fed.Reg. 37160, 37198 (June 19, 2020) (warning of “rel[y]ing] excessively on the conclusions of an advocacy group (WPATH) rather than on independent scientific fact-finding”). [*Emphasis added*]

16. <https://environmentalprogress.org/big-news/wpath-files>

17. Doctors Protecting Children Declaration. <https://doctorsprotectingchildren.org/>

18. <https://donoharmmedicine.org>

Skrmetti Brief of Alabama as *Amicus Curiae* Supporting Respondents, February 2nd, 2024, pg. 14.

Colorado’s unconstitutional embrace of only one viewpoint in this medical debate must be rejected. Indeed, numerous medical organizations all vigorously oppose WPATH and the medical mutilation of minors in the name of biased “transgender ideology”. Over 75,000 physicians and healthcare professionals in over sixty countries are publicly supporting state minor medical mutilation bans and have signed the “Doctors Protecting Children Declaration”, which states:¹⁹

“Therefore, given the recent research and the revelations of the harmful approach advocated by WPATH and its followers in the United States, we, the undersigned, call upon the medical professional organizations of the United States,...to follow the science and their European professional colleagues *and immediately stop the promotion of social affirmation, puberty blockers, cross-sex hormones and surgeries for children and adolescents who experience distress over their biological sex.* Instead, these organizations should recommend comprehensive evaluations and therapies aimed at identifying and addressing underlying psychological co-morbidities and neurodiversity that often predispose to and accompany gender dysphoria. We also encourage the physicians... to contact their leadership and urge them to

19. Doctors Protecting Children Declaration <https://doctorsprotectingchildren.org>

adhere to the evidence-based research now available.” *[Emphasis added]*

This Declaration highlights the necessity for unrestricted discussions of this issue, and exposes the misstatements of fact and the widely disputed nature of the Colorado statute’s viewpoint-discrimination. The rosy depiction in the *Skrmetti* Petitioner’s merits brief of the WPATH and the Endocrine Society’s guidelines “as reflecting the consensus of the medical communities on the appropriate treatment for gender dysphoria”²⁰ is categorically false.

Activist promotion of “transgender ideology” on the part of Colorado, as opposed to the objective, dispassionate, and ethical practice of counseling, discredits Colorado’s case. This ideological bias is also well illustrated by the important discovery of psychologist and noted researcher Dr. Ken Zucker, and WPATH’s reaction to Dr. Zucker’s discovery, as recounted by this paragraph in the *Skrmetti amicus curiae* brief from Alabama:

“Dr. Ken Zucker was one such professional “greeted with antipathy” by the activists at WPATH for his alternative views. Zucker... headed the committee that developed the American Psychiatric Association’s criteria for “gender dysphoria” in the DSM-V.41 The 2012 WPATH Standards of Care cite his work 15 times. *In his nearly forty years of research, Zucker discovered “that most young children who came to his clinic stopped identifying as*

20. *Skrmetti* Petition for a Writ of Certiorari, pg. 4.

another gender as they got older.” Zucker thus became concerned that transitioning children could entrench gender dysphoria that would otherwise resolve. [Emphasis added]

That position was not popular at WPATH.”

Skrmetti Alabama *Amicus Curiae* Brief, February 2nd, 2024, pg. 14, 23-477.

Indeed, WPATH went on the warpath against Dr. Zucker after his significant, but not new, discovery. The transgender ideologues could not tolerate the “watchful waiting” approach espoused by Drs. Zucker, Hruz, Grossman, and others, even if such an approach had **more** successful clinical outcomes.

That WPATH rejects these beneficial clinical findings is very concerning from a medical standpoint, and again illustrates their bias. The clinical success in treating gender dysphoria with “Watchful Waiting and Exploratory Therapy” is undeniable. This is explained by Dr. Hruz, M.D., Ph. D. in his Expert Declaration,²¹ paragraphs 60-62, and is reflected by the positive statistics:

“60...This realignment of expressed gender identity to be concordant with sex is sometimes called “desistance...”

“61...The “watchful waiting” approach does not advocate doing nothing...”

21. *Skrmetti* Expert Declaration of Paul W. Hruz, M.D., Ph. D., Joint Appendix, Vol. 2, pg. 474, 504-506.

“62...Estimates within the peer-reviewed published literature range from 50-98%, with most reporting desistance in approximately 85% of children before the widespread adoption of the “affirming” model discussed below...”

Skrmetti Expert Declaration of Paul W. Hruz, M.D., Ph. D., Joint Appendix, Vol. 2, pg. 474, 504-506.

Dr. Hruz goes on to explain in detail exactly how and why “affirming” gender dysphoria treatments such as puberty-blockers, cross-sex hormones, and surgical interventions can be very harmful and cause lifetime permanent damage.²²

Dr. Miriam Grossman, M.D., an international expert on gender dysphoria, an adult and child psychiatrist, researcher, and author of the book “*Lost in Trans Nation*”, discusses successful and unsuccessful gender dysphoria treatment options, the medical experimentation on our children, and the lack of data showing beneficial effects of puberty-blockers, cross-sex hormones, and surgical interventions. Dr. Grossman also recounts the history of her heart-wrenching regretful patient who could only say “If I just would have waited”. Dr. Grossman recommends gender dysphoria treatment which includes supportive psychological care, treating the other co-morbid conditions found in more than 70% (such as depression, anxiety, autism), family counseling and affirmation of biological reality. Dr. Grossman’s talk is here.²³

22. *Skrmetti Expert Declaration of Paul W. Hruz, M.D., Ph. D., Joint Appendix, Vol. 2, pg. 474, 507-523.*

23. Miriam Grossman | Gender Ideology and the Medical Experiment on our Children | NatCon 3 Miami <https://www.youtube.com/watch?v=wIh8tvRLqck>

WPATH, however, is hostile to these successful non-invasive gender dysphoria treatments because they do not conform to WPATH's "transgender ideology" bias, which favors "gender transition" surgeries, despite the substantial risks of negative outcomes. WPATH appears to be agenda-driven.

The ethical practice of medicine, consistent with the Hippocratic Oath and with the principle of "Do No Harm", is *not* agenda-driven.

Amici Curiae have been examining in depth these many issues swirling around treatments for gender dysphoria for years. On October 6th, 2024, *Amici Curiae* through their affiliate Frontline Films released a full length film called "What Is A Doctor?", which explores questions surrounding the efficacy of alternative treatments of gender dysphoria, with opinions from Dr. Simone Gold, Dr. Miriam Grossman, Dr. Melanie Crites-Bachert, Dr. Eithan Haim and Dr. Scott Jensen, all independent, expert frontline physicians who take their oaths to "Do No Harm" very seriously. The trailer to "What Is A Doctor" is here.²⁴

One Colorado mother willingly shared her family's fight to achieve a happy outcome for her young daughter. Her illustrative case history is here.²⁵

24. What Is A Doctor, trailer: <https://americasfrontlinedoctors.org/whatisadoctor>

25. The Gold Report: Ep. 32 'Gender Ideology Is A Cult' with Erin Lee <https://www.aflds.org/videos/post/the-gold-report-ep-32-gender-ideology-is-a-cult-with-erin-lee>

Amici Curiae affirmatively state that changing one's sex, which is what "gender reassignment surgery" purports to do, is a medical impossibility for several reasons including the unalterability of the "XX" and "XY" chromosomes. Surgical and hormonal interventions can only affect outward appearance; they are akin to cosmetic surgery, except that the surgery destroys normal and healthy functional tissue. Such surgical interventions affect outward appearance, functionality and psychological issues.

Texas Attorney General Ken Paxton opined in TX A.G. Op. No. KP-0401 that much of this so-called "gender reassignment" surgery also violates Texas criminal laws prohibiting child abuse and child sterilizations. Further, Attorney General Paxton found that children lacked the capacity to consent to any such surgeries, and that the right to procreate has long been recognized as a fundamental constitutional right since *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

Laws prohibiting child abuse, child sexual abuse, child sterilizations, protecting the fundamental procreation rights of minors, and severely limiting or eliminating entirely the ability of children to give informed consent to such procedures are common throughout the nation.

18 U.S.C. §116 criminalizes female genital mutilation (FGM). Criminal law violations would preclude the acceptability of Colorado's statute.

Most state laws severely restrict or eliminate the ability of minor children to consent to anything, with limited exceptions, because they lack the capacity at a

young age to understand the long term and even the short term consequences of their actions. They cannot sign binding contracts, buy alcohol, or get tattoos. This obviously includes their inability to give truly informed consent to life altering puberty blockers, cross-sex hormones, or surgical destruction (not reconstruction) of the normal functioning of their bodies.

TX A.G. Op. KP-0401²⁶ is worth reviewing in its entirety, and holds that minors do not have the capacity to consent to radical “gender reassignment” surgery, surgery which could result in their permanent sterilization.

The logic of TX A.G. Op. KP-0401 is inescapable. Minors lack the capacity to give informed consent to lifetime alterations of their normal bodily functioning and of their very lives. The Opinion goes on to point out that because procreation is a fundamental constitutional right, *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), minors cannot give consent to their own sterilizations. These procedures can and do cause sterilizations.^{27, 28}

No third party including parents or the government acting “*in loco parentis*” can consent to such medical mutilation of minors.

26. TX A.G. Op. KP-0401: <https://www.texasattorneygeneral.gov/sites/default/files/opinion-files/opinion/2022/kp-0401.pdf>

27. Texas Attorney General Opinion No. KP-0104, February 18th, 2022, pg 5.

28. See Philip J. Cheng, Fertility Concerns of the Transgender Patient, *T RANSL A NDROL U ROL* . 2019;9(3):209-218 (explaining that hysterectomy, oophorectomy, and orchiectomy “results in permanent sterility”), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6626312/>.

Much data has been collected regarding the drastic, life altering, and lifetime adverse effects which are caused by puberty blockers, cross-sex hormones, and “gender reassignment” surgeries. These often-horrific long term adverse effects justify discussions of all options, including watchful waiting.

Dr. Hruz details the clinically-observed serious adverse effects, including the irreversibility of puberty blockers, the effects on long term height, brain development, and other developmental issues.²⁹

Dr. Grossman enumerates problems with bone density (osteoporosis), heart attacks, strokes, blood clots, early menopause, sexual dysfunction, and effects on brain development from the hormones alone.^{30, 31}

Many surgical complications of so-called “gender-affirming care” are also discussed by Dr. Gold and Dr. Melanie Crites-Bachert in “The Gold Report: Medical Mutilation series: Parts 2 and 3 of 5, ‘The Reality of Gender Affirming Care’“, regarding complications from female to male surgery (Part 2), and male to female surgery (Part 3).³²

29. *Skrmetti* Joint Appendix, Vol. 2, pgs. 550, 590.

30. Miriam Grossman | Gender Ideology and the Medical Experiment on our Children | NatCon 3 Miami <https://www.youtube.com/watch?v=wIh8tvRLqck>

31. Chapter Twelve, a “Surgeon’s Dangerous Idea”, from Dr. Grossman’s book “Lost In Trans Nation”, pg. 175.

32. The Gold Report: Medical Mutilation: Part 2 of 5 ‘Female to Male’ with Dr. Melanie Crites-Bachert <https://www.aflds.org/videos/post/the-gold-report-medical-mutilation-part-2-of-5-female-to-male-with-dr-melanie-crites-bachert>

Many of these adverse effects are discussed by the five frontline physician experts in America’s Frontline Doctors “What Is A Doctor?” film, discussed above.

A critical report from the U.K. called the CASS Review, which meticulously reviewed the treatment of transgender youth for four years, found “gaps in the evidence base for hormone treatment” of minors. Following the CASS Review, the NHS ordered the closure of the Tavistock clinic, the only dedicated gender identity clinic throughout the entire United Kingdom.³³ The importance of this clinic closure must not be missed by the Court. *Tavistock was the world’s largest pediatric gender clinic and it was closed in March 2024 due to risk of harm to children.* Just this week, the U.K. announced that puberty blockers for children would be banned indefinitely across the U.K., except for clinical trials.³⁴

Also see the all-too-often tragic detransitioner stories on the PITT (Parents For Inconvenient Truth About Trans) substack.³⁵

The Gold Report: Medical Mutilation: Part 3 of 5 ‘Male to Female’ with Dr. Melanie Crites-Bachert <https://www.aflds.org/videos/post/the-gold-report-medical-mutilation-part-3-of-5-male-to-female-with-dr-melanie-crites-bachert>

33. *Skrmetti* Joint Appendix, Vol. 2, pgs 550, 590.

34. Andrew Gregory, “Puberty blockers to be banned indefinitely for under-18s across UK,” *The Guardian* (Dec. 11, 2024), <https://www.theguardian.com/society/2024/dec/11/puberty-blockers-to-be-banned-indefinitely-for-under-18s-across-uk>.

35. Parents with Inconvenient Truths about Trans (PITT) <https://www.pittparents.com/>

Colorado broadly prohibits child abuse by Colorado Criminal Code § 18-6-401. Colorado's counselors must be able to freely explore all options which may be in the best interests of their clients without government interference.

VI. Further, the Colorado law is fatally void for vagueness, is unconstitutionally overbroad, is impossible to enforce, and arguably represents criminal violations of prohibitions against female genital mutilation and criminal violations of free speech under such statutes as 18 U.S.C. §116, 18 U.S.C. §241, and 42 U.S.C. §1983 liability. However, the Court need not reach these issues because the Colorado law is invalid on account of its facial violations of the First Amendment and of *NIFLA*. See Headnote I.

A fair reading of Colo. Rev. Stat. § 12-245-202 (3.5) (a) & (b) reveals that the statute is fatally void for vagueness, because of numerous subjective terms which are dependent upon differing opinions and interpretations. The statute is also overbroad because it forbids legal and protected free speech.

The Colorado statute may also violate criminal laws proscribing female genital mutilation under 18 U.S.C. §116, criminal violations of constitutional rights under 18 U.S.C. §241, and 42 U.S.C. §1983 liability, under such cases as *Schwarzer v. Wainwright*, No. 19-41011 (5th Cir. 2021), *United States v. Guest*, 383 U.S. 745 (1966), *Griffin v. Breckenridge*, 403 U.S. 88 (1971), and *United States v. Price*, 383 U.S. 787 (1966). However, the Court need not reach these issues because the Colorado law is facially invalid under the First Amendment and *NIFLA*.

CONCLUSION

Because this Colorado statute facially violates the First Amendment, violates *NIFLA*, violates ethical and professional standards mandating the duties of honesty and transparency owed to clients and patients, violates criminal and civil federal and state statutes, all of which can cause great harms, the Petitioner's Petition for *Certiorari* should be granted.

Respectfully submitted,

DR. SIMONE GOLD, M.D., J.D.

DAVID A. DALIA

Attorney at Law

Counsel of Record

700 Camp Street

New Orleans, LA 70130

(504) 524-5541

dauidadalia@gmail.com

Counsel for Amici Curiae

America's Frontline

Doctors and Dr. Simone

Gold, M.D., J.D.