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 *AMICUS CURIAE* OF THE FREEDOM FROM RELIGION FOUNDATION IN SUPPORT OF RESPONDENTS

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## INTEREST OF AMICUS[1]

The Freedom From Religion Foundation ("FFRF") is the largest national association of freethinkers, representing atheists, agnostics, and others who form their opinions about religion based on reason, rather than faith, tradition, or authority. Founded nationally in 1978 as a 501(c) (3) nonprofit, FFRF has more than 42,000 members, including members in every state and the District of Columbia. FFRF's primary purposes are to educate about nontheism and to preserve the cherished constitutional principle of separation between religion and government.

In a secular, religiously pluralistic nation, religion may not dictate the regulations of healthcare professionals, particularly in the realm of mental health treatment for an especially vulnerable group – minors who are members of the LGBTQIA+ community. FFRF believes that religious ideology threatens access to properly regulated mental health services for LGBTQIA+ minors and places them at risk of grave harm. FFRF also seeks to protect equal access to the courts for civil rights litigants in this realm. Courts must not stray from longstanding jurisdictional principles to afford leniency to religiously-affiliated litigants while using the same principles to deny access to other civil rights litigants.

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1. No party's counsel in this case authored this brief in whole or in part. No party or party's counsel contributed any money intended to fund preparing or submitting this brief. No person, other than amicus, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

## SUMMARY OF ARGUMENT

A plaintiff must have a sufficient "personal stake" in a dispute to establish legal standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, n.1 (1992). Kaley Chiles ("Chiles") does not have standing to challenge Colorado's Minor Conversion Therapy Law ("MCTL") because she has not violated and does not intend to violate the law. Simply put, she has no "personal stake" in the constitutionality and enforcement of a law that does not impact her.

Perhaps more concerning is that this case represents another in a growing list of cases where religious parties have received leniency in our courts, where they have been permitted to litigate claims that seek to make the law reflect their personal beliefs instead of legal rights and principles. This problem has become especially prevalent in cases where religiously affiliated claimants attempt to strike down laws and policies that protect the LGBTQIA+ community. Courts must stop being complicit in these efforts and must, instead, bar the door to parties who sue to further only their policy preferences, not legal rights.

## ARGUMENT

### I. Chiles' Speculative And Unsupported Allegations Do Not Support Article III Standing.

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Couns.*, 555 U.S. 7, 24 (2008) (citation modified). Among other factors, a party seeking a preliminary injunction must also "demonstrate that irreparable injury is *likely* in the absence of an injunction." *Id.* at 22 (emphasis

in original) (citation modified). Courts may not issue preliminary injunctions "based only on a possibility of irreparable harm …." *Id.* (citation modified). An alleged injury "must be legally and judicially cognizable." *U.S. v. Texas,* 599 U.S. 670, 676 (2023) (citation modified). "But the 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured." *Sierra Club v. Morton*, 405 U.S. 727, 734–35 (1972). And plaintiffs do not have legal standing to contest a law when they have only an "imaginary or speculative" fear that a law will be enforced against them. *Younger v. Harris*, 401 U.S. 37, 42 (1971). Chiles does not have standing to challenge Colorado's MCTL because she fails to establish either an injury in fact or anything more than a far-fetched and unfounded fear that she somehow *could* face liability under the law.

### A. Chiles Cannot Establish The Requisite "Injury In Fact" For Article III Standing Because Her Own Allegations Show That She Has Never Violated The MCTL And Has No Intention Of Doing So In The Future.

A legally sufficient injury must be real, not abstract. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024) (citation omitted). The injury also must affect "the plaintiff in a personal and individual way[.]" *Id.* (quoting *Lujan v. Defs. of Wildlife,* 504 U.S. 555, 560, n.1 (1992)) "[T]the injury must be actual or imminent, not speculative — meaning that the injury must have already occurred or be likely to occur soon." *Id.* (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)). And, when a plaintiff seeks prospective relief such as an injunction, the plaintiff must establish a sufficient likelihood of future

injury. *Id.* (citing *Clapper*, 568 U.S. at 401). "No concrete harm, no standing." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 417 (2021).

For a pre-enforcement challenge to a statute, a plaintiff must allege that they intend to engage in conduct that is sufficiently specific to demonstrate standing. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 161–63 (2014). In *Driehaus*, the petitioners proved standing by alleging that they intended to continue their practice of issuing statements that certain political candidates who voted for the Affordable Care Act supported "taxpayer-funded abortion," which a disciplinary panel had already determined was likely in violation of the false statement law at issue. *Id.* at 161. The petitioner in *Steffel v. Thompson* had standing to challenge a trespassing statute based on his allegations that he wished to continue distributing antiwar handbills at a local mall despite repeated threats from mall employees and the police to stop or face prosecution. 415 U.S. 452, 459 (1974). And, in *Virginia v. American Booksellers Association, Inc.*, booksellers properly demonstrated standing under a law that restricted access to books "harmful to youth" by introducing examples of the books on open display at their store and describing the significant and costly measures they would have to take to comply with the law, or risk criminal prosecution. 484 U.S. 383, 388–92 (1988).

Another case concerning a conversion therapy ban like the one at issue in this case is especially instructive on this point. *Tingley v. Ferguson*, 47 F.4th 1055 (9th Cir. 2022), involved a licensed therapist who sought to enjoin a highly similar law. That statute, like the MCTL, forbade efforts to "change" a patient's sexual orientation or

gender identity while permitting counseling and therapy to provide support and understanding for both. *See id.* at 1065. To support his challenge to the law, Tingley alleged that "his Christian values inform his work[,]" and that he "believes that the sex each person is assigned at birth is 'a gift from God' that should not be changed and trumps an individual's 'feelings, determinations, or wishes.'" *Id.*

Tingley also demonstrated that he practiced what he preached. For instance, he alleged that he had worked with minors who "'sought his help in reducing same sex attractions,' and others 'who have expressed discomfort with their biological sex.'" *Id*, 47 F.4th at 1067. He went on to provide examples of the work he did with some of these patients. In one specific case, Tingley counseled a minor who had "'begun expressing unhappiness with her female gender identity, and … asserting a male gender identity.'" *Id.* The minor's parents sought Tingley out to "'hopefully enable her to return to comfort with her female body.'" *Id.* Following some sessions with Tingley, the minor "'expressed a desire to become more comfortable with her biological sex,'" and Tingley then counseled the minor and "'worked with her toward that goal.'" *Id.*

In another example, Tingley described working with a teenager experiencing "'unwanted same-sex attractions'" to "'support[] th[e] client as he works toward the change he desires to see in his own life.'" *Id.* 47 F.4th at 1067–68. Tingley also noted his "visible identity as a licensed counselor who is a Christian," as well as his expectation that "parents and minors will continue to come to him for counseling with a goal of helping children return to comfort with a gender identity aligned with [their] biological sex or lessen same-sex attractions." *Id.* at 1068

(citation modified). Finally, Tingley claimed he "currently works with and will continue to work with clients to these ends." *Id.* (citation modified). The Ninth Circuit found that these "factual allegations of injury" were sufficient to establish standing. *Id.* at 1069 (citation modified).

Chiles' allegations in this case fall well short of the mark for a legally viable injury based on Colorado's MCTL, which, like the statute discussed above, prohibits counselors from trying to "change an individual's sexual orientation or gender identity." Colo. Rev. Stat. § 12-245-202(3.5)(a). Chiles makes only a single, general allegation regarding her own faith — That "she is a practicing Christian." Pet.App.212a. Unlike the therapist plaintiff in *Tingley*, however, she says nothing about how her faith affects her personal beliefs about sexual orientation and gender identity or her counseling work in those areas. Not a word. Chiles also does not share what her beliefs are apart from her religion. Instead, she alleges that "she highly respects client autonomy and therefore does not seek to impose her values or beliefs on her clients." Pet. App. 212a.

In fact, Chiles admits that she does not plan to, or even desire to, engage in minor conversion therapy. In further contrast to the plaintiff in *Tingley*, Chiles explains that she "does not seek to 'cure' clients of same-sex attractions or to 'change' clients' sexual orientation[.]" Pet.App.207a. The plain meaning of Chiles' own words is that she does not want or intend to practice conversion therapy on her clients. Her best effort to show that the MCTL impacts her work comes when she alleges that she "seeks only to assist clients with their stated desires and objectives in counseling, which sometime[s] includes clients seeking to

reduce or eliminate unwanted sexual attractions, change sexual behaviors, or grow in the experience of harmony with one's physical body" Pet.App.207a. This allegation is not enough, but it also must be read in the context of the very next paragraph of Chiles' verified complaint, where she states:

> The only relevant considerations in Plaintiff's counseling are that same-sex attractions, behaviors, identity, or a sense that one must change one's physical body as a solution to gender dysphoria are (a) sometimes an experience over which the client has anxiety or distress, and (b) the client seeks to eliminate that anxiety or distress.

Pet.App.207a-08a. In sum, Chiles alleges that she might help clients deal with the anxiety and distress associated with same-sex attraction and gender dysphoria, but *not* that she would try to change a client's same-sex attractions or gender identity. Chiles acknowledges this yet again in some of her remaining allegations.

Chiles concedes that "most of [her] clients do not initially request counseling specifically to reduce or eliminate unwanted same-sex attractions, behaviors, or identity[,]" and that "[i]nstead, they want help and counseling to understand the sources, causes, and origins of their feelings." Pet.App.210a. To this, she adds only vague assertions such as "[c]lients who have been living a life inconsistent with their faith or values often present with internal conflicts, depression, anxiety, addiction, eating disorders and so forth and are seeking resolution of such turmoil." Pet.App.241a. Beyond this, Chiles does

not specify whether any of these clients are minors, and she fails to describe *any* work she has done with such clients. She does, however, take great pains to explain that she never has and never will counsel a client to *change* the client's sexual orientation or gender identity. *See* Pet. App.205a, 207a-08a, 210a, 212a, 213a-14a. Chiles does not have standing to challenge the MCTL because her own allegations show that she will not violate and face liability under the law.

### B. Chiles' Unfounded And Attenuated Fears That She Might Wrongly Be "Perceived" As Having Violated The MCTL Do Not Demonstrate A Credible Threat That The Law Will Be Enforced Against Her.

Despite having no history or intention of violating the MCTL, Chiles worries that somehow, someday, someone might get the wrong impression that she has. But worry and speculation do not confer Article III standing for her. *O'Shea v. Littleton*, 414 U.S. 488, 497 (1974) (abstract injury which takes courts into an "area of speculation and conjecture" does not meet the standing requirement). Although plaintiffs need not expose themselves to actual prosecution to be entitled to challenge a statute that arguably impacts their constitutional rights, *Steffel*, 415 U.S. at 459, they cannot demonstrate a legally viable future injury unless there is a credible threat of prosecution under the statute at issue. *Doe v. Bolton*, 410 U.S. 179, 188 (1973). Plaintiffs are not entitled to legal standing to contest a law when they have only an "imaginary or speculative" fear that a law will be enforced against them. *Younger v. Harris*, 401 U.S. 37, 42 (1971). When they "do not claim that they have ever been threatened with

prosecution, that a prosecution is likely, or even that a prosecution is remotely possible," plaintiffs do not allege a controversy capable of resolution in federal court. *Id.*

Here, Chiles' allegations fail to establish standing to challenge the MCTL because she is unable to show a credible threat that she will face enforcement under the law. In her verified complaint, Chiles strings together a series of vague hypotheticals in an effort to show that she could face liability under the MCTL. Her cautious allegations provide little substance, but what they do show is that Chiles does not truly believe she will violate the MCTL. She's simply worried that someone might get the wrong impression that she violated the law if and when, through no effort on her part, a future minor client happens to experience a spontaneous "change" in their sexual orientation or gender identity. The hypothetical, concerned observer in this scenario would then have to make several leaps in logic to conclude that the minor made this change because Chiles purposefully counseled them to do so. This kind of "highly attenuated chain of possibilities" does not satisfy the immediacy required of an alleged injury. *Clapper*, 568 U.S. at 410.

It is undisputed that the MCTL has never been enforced against anyone in the four years since its enactment, including Chiles, *see Chiles v. Salazar*, 116 F.4th 1178, 1198 (10th Cir. 2024), *cert. granted*, 145 S. Ct. 1328 (2025), and she has never been the subject of a complaint or report of harm stemming from her counseling work. Pet.App.215a. Chiles also fails to specify any counseling work she has done with clients, whether adults or minors, who are experiencing unwanted same-sex attraction or gender dysphoria. Nonetheless, she is

concerned that she might work with future clients who undergo unintended and unforeseen changes in their sexual attractions, behaviors, or identities. Pet.App.210a. Chiles worries that her counseling efforts "may result in a spontaneous change for the minor client, even though it was not the topic or goal of her counseling." Pet.App.210a. As a result, she apparently believes that she might risk liability for violating the MCTL merely by "discussing something that could be perceived as 'changing' sexual orientation or identity." Pet.App.209a.

Unmoored from any concrete examples of these discussions or "changes" actually happening in her counseling work, this string of attenuated and vague allegations strays too far into "an area of speculation and conjecture[.]" *Littleton*, 414 U.S. at 497. Again, Chiles has failed to establish standing to challenge the MCTL.

## II. Religious Litigants Have Demonstrated A Pattern Of Bringing Sham Lawsuits To Force The Law To Conform To Their Personal Beliefs, Not To Vindicate Actual Legal Rights.

"Federal courts do not operate as an open forum for citizens to press general complaints about the way in which government goes about its business." *All. for Hippocratic Med.*, 602 U.S. at 368 (2024) (citation modified). Article III standing is a "bedrock constitutional requirement[,]" *United States v. Texas*, 599 U.S. 670, 675 (2023), that "screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action." *All. for Hippocratic Med.*, 602 U.S. at 381. "[C]itizens [may not] sue merely because their legal objection is accompanied by a strong moral, ideological,

or policy objection to a government action." *Id*. Despite this clear mandate, religious litigants are continually orchestrating lawsuits to advance their personal beliefs, not to address legal rights. Sadly, these suits have received leniency in the face of jurisdictional challenges under Article III, particularly when their focus falls on laws or policies that provide protection for members of the LGBTQIA+ community.

### A. Affording Chiles Standing Will Send Yet Another Wrecking Ball Into The Foundation Of Article III On Behalf Of Religious Litigants.

Article III standing is not "an ingenious academic exercise in the conceivable." *Lujan*, 504 U.S. at 566, (quoting *United States v. Students Challenging Regul. Agency Procs. (SCRAP)*, 412 U.S. 669, 688 (1973)). In other words, the Constitution does not allow plaintiffs to concoct a "case or controversy" where none exists. But religious litigants have developed a pattern of doing exactly that — and they're getting away with it.

This Court has not hesitated to make strict application of Article III and deny standing for litigants who seek judicial relief that might negatively impact religious interests. In *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, the Court found that plaintiffs who lived in Maryland could not contest a transfer of property in Pennsylvania to pursue their claim that the transfer violated the Establishment Clause. 454 U.S. 464, 471, 486–87 (1982). In *Hein v. Freedom From Religion Foundation, Inc.*, the Court held that taxpayers lacked standing to challenge federal expenditures under the Establishment Clause without express authorization

for the expenditures from Congress. 551 U.S. 587, 608 (2007). Similarly, in *Arizona Christian School Tuition Organization v. Winn*, the Court ruled that taxpayers did not have Article III standing to challenge funding for religious education because the funding came from a tax credit as opposed to a government expenditure. 563 U.S. 125, 141 (2011). And, when abortion providers brought a pre-enforcement action related to Texas' Heartbeat Act, the Court held, in part, that there was no real case or controversy between proper, adverse parties. *Whole Woman's Health v. Jackson*, 595 U.S. 30, 39–40 (2021).

Religious plaintiffs, however, have not faced similar limitations. This Court let a church proceed in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, even though the Missouri Governor had provided the relief sought by the church — the ability to compete for and receive state grants on the same terms as secular organizations. 582 U.S. 449, 459 n.1 (2017). In a footnote, the Court declared the case was not moot because it was not "absolutely clear" that the state could not revert to its policy of excluding religious organizations. *Id.* In *303 Creative LLC v. Elenis*, the Court noted portions of the lower courts' findings on standing, but declined to address the issue on its own before reaching the merits. There, a Christian web designer's Free Speech claim was founded on just her stated desire to start designing wedding websites, but for heterosexual couples only. 600 U.S. 570, 582–83 (2023).

Another case out of the Eighth Circuit demonstrates just how dangerous this kind of leniency is. Before representing the plaintiff in *303 Creative*, Alliance Defending Freedom served as plaintiffs' counsel in a highly similar case, *Telescope Media Group. v. Lucero*,

936 F.3d 740 (8th Cir. 2019). There, plaintiffs claimed they planned to expand their business into wedding videography, but that they wanted to post a statement on the business' website saying that it would not make films "promoting any conception of marriage that contradicts its religious beliefs that marriage is between one man and one woman, including films celebrating same-sex marriages." *Id*. at 767 (Kelly, J. concurring). After obtaining both a favorable ruling from the Eighth Circuit and the subsequent issuance of a preliminary injunction by the district court, Telescope Media promptly discontinued its pursuit of a wedding videography business. *See Telescope Media Grp. v. Lucero*, No. 16-cv-4094, 2021 WL 2525412, at *1 (D. Minn. Apr. 21, 2021). When the case returned to the district court, the plaintiffs quickly sought to dismiss the case after the state served them with discovery requests. 2021 WL 2525412, at *2. The district court correctly spotted the case as a sham, noting that it was "a smoke and mirrors case or controversy from the beginning, likely conjured up by Plaintiffs to establish binding First Amendment precedent rather than to allow them to craft wedding videos, of which they have made exactly two." *Id*. at *3. This kind of gamesmanship has no place in our legal system.

If the Court does not prevent the same result in this case, many others like it are sure to follow. If permitted to do so, religious litigants will continue to construct hypothetical and even insincere legal injuries in support of lawsuits designed to strike down laws and policies that they disagree with, impermissibly elevating religious belief above the law and clearing the way for "every citizen to become a law unto himself." *Reynolds v. United States*, 98 U.S. 145, 166–67 (1878). These litigants often

do not wish to engage in particular conduct in their businesses or otherwise. That seems to be a secondary, if not nonexistent, objective. What they really want is a broad, sweeping court decision that proclaims victory for their faith over a law that sits outside of it. In this case, a conversion therapy ban for minors.

As the above discussions make clear, Chiles' allegations in this case show that she has not and does not intend to practice conversion therapy on minors in violation of the MCTL. Despite that, she's asking this Court to find the law unconstitutional. Were that to happen, the ruling would have no impact on her or her counseling practice. But it likely would be put to use to undermine similar laws and to promote the use of conversion therapy in other states. Chiles is not entitled to a ruling on the merits in this case because her suit presents "only a general legal, moral, ideological, or policy objection to a particular government action." *All. for Hippocratic Med.*, 602 U.S. at 381. A decision to the contrary will do even more damage to the doctrine of standing under Article III, and the damage will come, yet again, at the behest of a religiously motivated litigant.

### B. Litigants Have Been Particularly Favored When They Seek To Strike Down Policies/ Laws Designed To Protect Members Of The LGBTQIA+ Community.

In her dissenting opinion in *303 Creative*, Justice Sotomayor discussed some of the strides that the LGBTQIA+ community has made in its hard-fought pursuit of dignity and equality in this country. Unfortunately, her related warnings about the strident opposition to these

efforts was shockingly prophetic. As she correctly noted, "[a]round the country, there has been a backlash to the movement for liberty and equality for gender and sexual minorities. New forms of inclusion have been met with reactionary exclusion. This is heartbreaking. Sadly, it is also familiar." 600 U.S. at 604 (Sotomayor, J. dissenting). Far too familiar. And even more troubling is that "[t]hose who would subordinate LGBT people have often done so with the backing of law." *Id*. at 616.

This trend has ramped up in recent years, and the results are alarming. *See, e.g.*, *Telescope*, 936 F.3d 740 (8th Cir. 2019) (preliminary injunction ruling that First Amendment allowed filmmakers to advertise wedding videos for heterosexual couples only); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 584 U. S. 617 (2018) (holding that civil rights commission violated cakemaker's First Amendment rights in how it handled a charge against him for refusing to make a wedding cake for a same-sex couple); *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (holding that website designer had First Amendment right to refuse service to same-sex couples getting married); *U.S. v Skrmetti*, 605 U.S. —, 145 S. Ct. 1816 (2025) (applying rational basis to uphold ban on gender-affirming care for transgender minors); *Mahmoud v. Taylor*, 606 U.S. —, 145 S. Ct. 2332 (2025) (holding that parents had First Amendment right to have their children opt out of exposure to reading materials at school if featured books included LGBTQIA+ characters). This case continues the trend and, if the decision below is reversed, it will perpetuate mistreatment of an already beleaguered community.

It is also important to note the obvious: that a highly disproportionate number of parties who oppose laws and

policies that protect the LGBTQIA+ community are religiously motivated. Coupled with their proven ability to manufacture legal controversies and orchestrate lawsuits to promote their beliefs in court, religious parties are now regularly obtaining legal authorization to weaponize their faith against the LGBTQIA+ community. Our courts must stop being complicit in these efforts and must, instead, bar the door to parties who sue to further only their policy preferences, not legal rights.

## CONCLUSION

Because Kaley Chiles lacks standing to challenge Colorado's MCTL, this Court should dismiss the appeal for lack of jurisdiction. Alternatively, the Court should affirm the ruling of the Court of Appeals.

Respectfully Submitted,

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