

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

CHRISTIAN COUNSELORS FREEDOM
ALLIANCE,

Plaintiff,

v.

KEITH ELLISON, in his official capacity as
Minnesota Attorney General; LANDYN
PRESCOTT-MILES, CHRISTOPHER
ANDERSON, BHARATI ACHARYA, RANDY
ANDERSON, JACQUELINE BLUEM, SANDY
CLARK, DERRICK CRIM, AMY DOLS, DINA
WILLIAMS, ROY KAMMER, COREY
HARLAND, SARAH SIRIANNI DRIEVER, and
RANDY STILLDAY, each in their official
capacities as members of the Minnesota Board
of Behavioral Health and Therapy;
SAMANTHA STREHLO, in her official capacity
as Executive Director of the Minnesota Board of
Behavioral Health and Therapy; SHONDA
CRAFT, THAD SHUNKWILER, ADAM
ARNOLD, ANNA CLAVIN, JESSIE EVERTS,
CHILAH BROWN, and KATHRYN GRAVES,
each in their official capacities as members of
the Minnesota Board of Marriage and Family
Therapy; and JENNIFER MOHLENHOFF, in
her official capacity as Executive Director of the
Minnesota Board of Marriage and Family
Therapy,

Defendants.

Case No. 26-cv-3780 KMM/JFD

**PLAINTIFF'S
MEMORANDUM OF LAW
IN SUPPORT OF MOTION
FOR PRELIMINARY
INJUNCTION**

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INTRODUCTION

Earlier this year, the United States Supreme Court held in *Chiles v. Salazar*, 146 S. Ct. 1010 (2026), that the Free Speech Clause of the First Amendment bars a state from wielding its licensing power to dictate which views a mental-health counselor may share with a willing client in talk therapy. Minnesota Statute, Section 214.078 (the “Counseling Restriction”), does precisely what *Chiles* forbids: it bars licensed counselors from sharing disfavored views with willing clients while permitting the views the State prefers. The Counseling Restriction permits a licensed counselor to affirm and encourage a minor or vulnerable-adult client’s same-sex attraction or rejection of their sex, and yet it forbids the very same counselor from helping a client pursue the opposite goals – reducing unwanted same-sex attraction or living in alignment with their sex.

Plaintiff Christian Counselors Freedom Alliance (“CCFA”) is an association of Christian counselors who provide talk therapy – pure conversation in the counseling room – to clients who voluntarily seek them out, set their own counseling goals, and very often choose the counselor precisely because of their shared Christian faith. By allowing speech on one side of a contested question while threatening discipline for speech on the other, the Counseling Restriction unmistakably discriminates based on viewpoint. Faced with the threat of discipline and potential loss of their professional license, CCFA’s counselors are

forced to censor themselves, leaving their clients' questions unanswered and their clients' chosen goals unaddressed. Because the Counseling Restriction is materially indistinguishable from the law the Supreme Court condemned in *Chiles*, CCFA is overwhelmingly likely to prevail on the merits, and every day the statute remains in force inflicts irreparable First Amendment injury. CCFA brings this motion pursuant to Fed. R. Civ. P. 65(a) to preliminarily enjoin its enforcement with respect to talk therapy.

STATEMENT OF FACTS

I. Plaintiff CCFA and Its Members

Plaintiff Christian Counselors Freedom Alliance ("CCFA") is an unincorporated association of Christian counselors in Minnesota. Declaration of Dan Schmoyer ("Schmoyer Decl.") ¶ 43. CCFA's mission is to honor God and to advocate for the constitutional rights and freedoms of Christian counselors, and it was formed for the specific purpose of pursuing legal and civic action to protect the constitutional rights of Christian licensed counselors in Minnesota, including their First Amendment speech and religious rights. *Id.*, ¶ 44.

Each member of CCFA holds an active license from one of the six relevant Minnesota licensing boards to practice as a mental health professional or practitioner or is pursuing such licensure. *Id.*, ¶ 46. CCFA's membership includes

counselors licensed by the health-related licensing boards whose executive directors and members are Defendants here: the Board of Behavioral Health and Therapy and the Board of Marriage and Family Therapy. *Id.*, ¶ 47. Every CCFA member is a Christian who has affirmed CCFA’s Statement of Faith and CCFA’s Statement of Human identity, as well as the belief that Christian counselors should be permitted to practice in alignment with their Christian faith and biblical principles. *Id.*, ¶¶ 48-49 and Exs. A-B. All CCFA members who are licensed by either the Board of Behavioral Health and Therapy or the Board of Marriage and Family Therapy (“CCFA Licensed Counselor Members”) engage in talk therapy with their clients, and many of them – including Dan Schmoyer and Amber Langford – currently counsel minors or vulnerable adults and are therefore directly and negatively affected by the Counseling Restriction and its chilling effect on counselor speech. Schmoyer Decl. ¶¶ 35-41, 50; Declaration of Amber Langford (“Langford Decl.”) ¶¶ 37, 44-49, 52-58.

Dan Schmoyer and Amber Langford are both members of CCFA and serve as its co-presidents. Schmoyer Decl. ¶ 42; Langford Decl. ¶ 59. Mr. Schmoyer is a counselor licensed by the Minnesota Board of Behavioral Health and Therapy and is the founder and owner of two Christian counseling practices. Schmoyer Decl. ¶¶ 3, 6, 7. Ms. Langford is a marriage and family therapist licensed by the

Minnesota Board of Marriage and Family Therapy and has practiced counseling in Minnesota since 2011. Langford Decl. ¶¶ 7, 9.

II. CCFA Counselors Provide Faith-Informed Talk Therapy at Their Clients' Direction

CCFA Licensed Counselor Members provide only talk therapy – that is, their counseling consists entirely of conversations with their clients and does not include any aversive or coercive techniques. Amended Verified Complaint, (“Am.Ver.Compl.”), ¶¶ 31-32; Schmoyer Decl. ¶ 19; Langford Decl. ¶ 21.

CCFA members Schmoyer and Langford are devout Christians whose faith informs every aspect of the counseling they provide. Schmoyer Decl. ¶¶ 9, 11, 15; Langford Decl. ¶¶ 14-15. Most of their clients – roughly 85 to 90 percent – are themselves Christians, and most seek out the declarants precisely because they want counseling shaped by a shared Christian faith. Schmoyer Decl. ¶ 12; Langford Decl. ¶ 17. At intake, the counselors ask whether the client wishes to have faith integrated into the counseling, and they respect the client's choice. Schmoyer Decl. ¶ 13; Langford Decl. ¶¶ 18, 20.

The counseling goals are set by the client, not the counselor. Schmoyer Decl. ¶ 20; Langford Decl. ¶¶ 25, 26; Am.Ver.Compl. ¶ 37. The client identifies the concerns and objectives, and although a counselor may help inform the client's goals or surface issues the client has not yet seen, the counselor never

dictates the goals. *Id.* Counseling is voluntary: clients confirm that they are choosing to participate and are not being forced, and they remain free to terminate at any time, for any reason or no reason. Schmoyer Decl. ¶ 23; Langford Decl. ¶ 28; Am.Ver.Compl. ¶ 38. By the same token, CCFA Licensed Counselor Members' religious convictions prevent them from helping a client pursue a goal that contradicts their faith. Schmoyer Decl. ¶ 17; Am.Ver.Compl. ¶¶ 39-40.

III. CCFA Counselors Counsel Minors and Vulnerable Adults Regarding Gender Confusion and Unwanted Same-Sex Attraction

CCFA Licensed Counselor Members engage in talk therapy with willing minor and vulnerable-adult clients regarding gender confusion and unwanted same-sex attraction. Am.Ver.Compl. ¶ 41. For example, both Mr. Schmoyer and Ms. Langford have counseled minors and adults concerning gender confusion, and Mr. Schmoyer has also counseled minors and adults concerning unwanted same-sex attraction. *Id.*, ¶ 42; Schmoyer Decl. ¶ 26; Langford Decl. ¶ 33. Before the Counseling Restriction, Schmoyer and Langford felt free to engage willing clients in open dialogue on these subjects, including helping willing minor clients who were struggling with gender-identity issues and wished to live in alignment with their sex. Langford Decl. ¶ 35; Schmoyer Decl. ¶¶ 29, 34.

In the Mr. Schmoyer's and Ms. Langford's clinical experience, gender confusion and unwanted same-sex attraction often have roots in past trauma or

in unmet emotional and relational needs; processing those underlying dynamics through talk therapy can produce beneficial shifts. Schmoyer Decl. ¶¶ 24, 25; Langford Decl. ¶¶ 36, 40, 41. When Ms. Langford works with a client experiencing gender confusion, she gently tries to identify what emotional dynamic or function the confusion may be serving and then attempts to understand that function and address it. Langford Decl. ¶¶ 37, 40, 41. For example, Ms. Langford describes a young female client whose disdain for femininity was tied to a difficult relationship with her mother and who, as that relationship has begun to heal, has independently reduced her use of testosterone and has become more open to femininity. *Id.*

Were they free to do so, Ms. Langford and Mr. Schmoyer would help willing minor clients explore the root causes of gender confusion and would support and even celebrate clients who choose to detransition or to live in alignment with their sex. Langford Decl. ¶¶ 46, 53, 58; Am.Ver.Compl. ¶ 47. Mr. Schmoyer, for his part, continues to have with adult clients the very conversations about unwanted same-sex attraction that the Counseling Restriction prevents him from having with minor clients. Schmoyer Decl. ¶ 41.

IV. The Counseling Restriction Has Chilled CCFA Counselors' Speech

The Counseling Restriction, enacted in April 2023, has directly affected CCFA Licensed Counselor Members' therapy practices and counseling-room

speech. Am.Ver.Comp. ¶ 58. Because the statute prohibits any practice that seeks to change a client's sexual orientation or gender identity – including any efforts to change behaviors or gender expressions – and because that language is vague, CCFA counselors are uncertain which of their words and talk-therapy techniques might expose them to a complaint, an investigation, and disciplinary action. *Id.*, ¶ 59; Langford Decl. ¶¶ 42, 43; Schmoyer Decl. ¶ 36. To avoid that risk, CCFA Licensed Counselor Members feel compelled to engage in self-censorship and curtail what they say to minor clients about sexual orientation and gender identity. Am.Ver.Comp. ¶¶ 60-61; Schmoyer Decl. ¶ 35; Langford Decl. ¶ 44.

Mr. Schmoyer describes a client he began counseling at age sixteen or seventeen for unwanted same-sex attraction and gender-identity issues, with whom – before the Counseling Restriction – he had discussed identity, the role of faith in identity, and the influences shaping the client's sense of self. Schmoyer Decl. ¶¶ 28, 29. After the law took effect, and after the client (by then a vulnerable adult owing to a traumatic brain injury) began considering hormone treatments, Mr. Schmoyer felt compelled to filter what he said and to withhold thoughts and concerns he otherwise would have shared, which limited the effectiveness of his counseling. Schmoyer Decl. ¶¶ 30, 31, 34. He is likewise restricted from sharing with minor clients even factual information – such as research indicating that most children who experience gender dysphoria come to

resolve it – for fear that doing so could be perceived as an effort to change the client’s gender identity. Schmoyer Decl. ¶ 40.

Ms. Langford, too, has been forced to be much more guarded with respect to her speech in her counseling sessions. Langford Decl. ¶¶ 47-48. She no longer verbalizes explicit observations that would help a minor client connect emotional history to gender confusion. Langford Decl. ¶ 47. She fears that expressing discomfort with a request to use pronouns inconsistent with a client’s sex or helping a client identify the root causes of gender confusion could be construed as a prohibited change effort and reported as a violation. Langford Decl. ¶¶ 45-46. Due to the Counseling Restriction, she has also refrained from discussing information with minor clients about the potential risks and long-term consequences associated with gender-transition interventions that other professionals may be recommending. Langford Decl. ¶¶ 49-52. And although she currently treats a minor client who is detransitioning, she refrains from affirming or celebrating that client’s progress for fear of running afoul of the statute. Langford Decl. ¶¶ 53-55.

Mr. Schmoyer and Ms. Langford attest that each would speak more freely – and counsel more effectively – but for the Counseling Restriction. Schmoyer Decl. ¶¶ 31, 39; Langford Decl. ¶ 56. The fear of being reported, investigated, or sanctioned forces them to censor speech that would be loving,

respectful, and grounded in their clinical training and Christian faith. Langford Decl. ¶ 57; Schmoyer Decl. ¶ 38. Absent injunctive relief, CCFA Licensed Counselor Members including Mr. Schmoyer and Ms. Langford will continue engaging in self-censorship with existing clients and any new minor or vulnerable-adult clients they take on. Am.Ver.Compl. ¶ 70. If the Counseling Restriction were enjoined, they would resume the full range of speech they previously used. *Id.*, ¶ 71.

ARGUMENT

Plaintiff CCFA seeks a preliminary injunction to stop ongoing First Amendment violations. Consequently, CCFA must show (1) a likelihood of success on the merits; (2) that the movant will suffer irreparable harm absent the injunction; (3) that the balance of harms favors the movant; and (4) that the public interest favors the movant. *See Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981). A plaintiff's probability of success on the merits is "the most significant factor." *See CEZ Prior, LLC v. 755 N. Prior Ave. LLC*, 126 F.4th 1353, 1358 (8th Cir. 2025). Because Plaintiff seeks to enjoin a state statute, Plaintiff must show that it is "likely to prevail on the merits." *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 733 (8th Cir. 2008). CCFA meets that standard in spades. And because this is a First Amendment case, CCFA's strong showing on the likelihood-of-success factor drives the remaining *Dataphase* factors in its

favor as well. *See Rodgers v. Bryant*, 942 F.3d 451, 456 (8th Cir. 2019) (“Generally, if a party shows a likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are deemed to have been satisfied.”) (cleaned up).

I. CCFA is likely to prevail on the merits of its claim that the Counseling Restriction violates its members’ First Amendment-free-speech rights.

A. The Counseling Restriction discriminates on the basis of viewpoint and thus violates the First Amendment under *Chiles v. Salazar*.

Earlier this year, the Supreme Court held in *Chiles v. Salazar*, 146 S. Ct. 1010 (2026), that Colorado’s ban on so-called “conversion therapy” – a law materially indistinguishable from the Counseling Restriction – “censors speech based on viewpoint” as applied to talk therapy and that “the courts below failed to apply sufficiently rigorous First Amendment scrutiny....” *Id.* at 1029, 1023. Because Minn. Stat. § 214.078 (the “Counseling Restriction”) operates in precisely the same manner as Colorado’s law and burdens precisely the same kind of speech, CCFA is overwhelmingly likely to succeed on its claim that the Counseling Restriction constitutes viewpoint discrimination subject to the most demanding First Amendment review.

1. *Chiles v. Salazar* holds that laws like the Counseling Restriction, as applied to talk therapy, are unconstitutional viewpoint-based speech restrictions.

The First Amendment “envisions the United States as a rich and complex place where all are free to think and speak as they wish, not as the government demands.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 603 (2023) (citation omitted). Consistent with that vision, “no official — ‘high or petty’ — may command our tongues or silence our voices.” *Chiles*, 146 S. Ct. at 1021 (quoting *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)).

Two interlocking principles drive the analysis. First, “[c]ontent-based laws — those that target speech based on its communicative content — are presumptively unconstitutional” and trigger strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Second, viewpoint-based regulation — where the government “seeks to dictate what particular ‘opinion or perspective’ individuals may express” — represents “an egregious form” of content regulation from which “governments in this country must nearly always ‘abstain.’” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995); *see also Chiles*, 146 S. Ct. at 1021.

Applying these principles to Colorado’s law, the *Chiles* Court held the law viewpoint discriminatory and reversed the lower courts’ denial of injunctive relief. *Chiles*, 146 S. Ct. at 1029. *Chiles* is dispositive here because the Counseling

Restriction operates in the same way, on the same subject matter, against the same kind of speech, with the same viewpoint-based asymmetry as Colorado's law.

The parallels between the Minnesota and Colorado statutes are striking:

	Colorado Statute	Minnesota Statute
Prohibition	"Any practice or treatment...that attempts...to change an individual's sexual orientation or gender identity...." ¹	"Any practice...that seeks to change an individual's sexual orientation or gender identity...." ²
Expressly Prohibited Efforts	"[E]fforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex" ³	"[E]fforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender" ⁴
Expressly Permitted Efforts	"Acceptance, support, and understanding for the facilitation of an individual's...identity exploration and development" and "assistance to a person	"[A]cceptance, support, and understanding of an individual or facilitates an individual's coping, social support, and identity exploration and development" and "assistance to an individual

¹ Colo. Rev. Stat. § 12-245-202(3.5)(a) (2022).

² Minn. Stat. § 214.078, subdiv. 1(b).

³ Colo. Rev. Stat. § 12-245-202(3.5)(a) (2022).

⁴ Minn. Stat. § 214.078, subdiv. 1(b).

	undergoing gender transition” ⁵	undergoing gender transition” ⁶
Regulatory Scope	Regulates licensed counselors with respect to counseling of minor clients ⁷	Regulates licensed mental health practitioners and professionals with respect to counseling of minors and vulnerable adults ⁸
Penalties	Disciplinary action (fines, probation, loss of license) ⁹	Unprofessional conduct; disciplinary action by licensing board ¹⁰

The two statutes’ operative language is materially indistinguishable. Like Colorado’s law, the Counseling Restriction proscribes any practice that attempts to assist a minor with eliminating unwanted same-sex attraction or helping a minor who wants to live in alignment with their sex, while expressly permitting counseling that encourages the opposite, namely, embracing same-sex attraction or assisting a “gender transition.” *Compare* Minn. Stat. § 214.078, *with* Colo. Rev. Stat. § 12-245-202(3.5)(a)–(b) (2022). And as in *Chiles*, the Counseling Restriction regulates the spoken word itself – the talk therapy in which CCFA Licensed Counselor Members engage with their clients.

⁵ Colo. Rev. Stat. § 12-245-202(3.5)(b)(I) and (II) (2022).

⁶ Minn. Stat. § 214.078, subdiv. 1(b).

⁷ Colo. Rev. Stat. § 12-245-224(1)(t)(V)

⁸ Minn. Stat. § 214.078, subdiv. 2(a).

⁹ *See* Colo. Rev. Stat. § 12-245-225

¹⁰ Minn. Stat. § 214.078, subdiv. 2(b).

CCFA counselors engage in pure speech. Just as Ms. Chiles “does not prescribe medication, use medical devices, or employ any physical methods,” and “all Ms. Chiles does is speak with clients,” *Chiles*, 146 S. Ct. at 1023, CCFA Licensed Counselor Members offer only talk therapy and use no coercive or aversive techniques. Schmoyer Decl. ¶ 19; Langford Decl. ¶ 21; Am.Ver.Compl., ¶¶ 31-32. Their counseling consists entirely of conversations: clients articulate their own goals, and CCFA counselors respond in light of those stated objectives as informed by their Christian faith. Schmoyer Decl. ¶¶ 9, 11, 15, 20; Langford Decl. ¶¶ 14-15, 25-26. As the Supreme Court emphasized, “the spoken word is perhaps the quintessential form of protected speech. And that is exactly the kind of expression in which [CCFA counselors] seek[] to engage.” *Chiles*, 146 S. Ct. at 1023.

The Counseling Restriction prescribes which views CCFA counselors may and may not express. The Counseling Restriction draws the same viewpoint line the *Chiles* Court condemned. Like its Colorado counterpart, Minnesota’s Counseling Restriction goes beyond regulating the content of licensed counselors’ speech, “prescribing what views [they] may and may not express.” *Id.* at 1024. CCFA counselors may, with the State’s blessing, express “acceptance, support, and understanding” of a client’s “identity exploration and development...as long as” they “do[] not seek to change” the client’s “sexual orientation or gender

identity.” Minn. Stat. § 214.078, subd 1(b). Thus, they “cannot voice certain ‘perspective[s]’ the State disfavors when speaking with consenting clients.” *Chiles*, 146 S. Ct. at 1024 (quoting *Rosenberger*, 515 U.S. at 829). A CCFA counselor may tell a minor or vulnerable adult experiencing same-sex attraction that those attractions are an immutable part of his identity to be embraced but cannot tell that same minor or vulnerable adult – who likely sought out the CCFA counselor precisely because of their shared Christian faith – that change is possible or that scripture offers a different vision of human flourishing.

That asymmetry is the very definition of viewpoint discrimination: the Counseling Restriction “permits [CCFA counselors] to express some viewpoints but not others.” *Chiles*, 146 S. Ct. at 1026. It is “textbook” viewpoint discrimination. *Id.* at 1030 (Kagan, J., concurring). The law “distinguishes between two opposed sets of ideas” and “draws a line based on the speaker’s ‘opinion or perspective,’” thereby “enabl[ing] ‘speech on only one side’ – the State’s preferred side – of an ideologically charged issue.” *Id.* (citations omitted).

The State cannot prevail by relabeling CCFA’s speech as “professional conduct.” If Minnesota were to contend, as Colorado did, that the Counseling Restriction regulates the “practice” of counseling rather than speech, that argument would fail just as it did in *Chiles*. CCFA counselors’ speech “does not become conduct just because the State may call it that. Nor does [their] speech become conduct

just because it can also be described as a ‘treatment,’ a ‘therapeutic modality,’ or anything else.” *Chiles*, 146 S. Ct. at 1023. The First Amendment “is no word game,” and the rights it protects cannot be renamed away or their protections nullified by ‘mere labels.’” *Id.* (quoting *NAACP v. Button*, 371 U.S. 415, 429 (1963)). What matters under the First Amendment “is not how a government describes its law or whether the law may regulate conduct in other circumstances. *Id.* at 1023–24. What matters is whether, in fact, the law regulates speech in the case at hand.” *Id.* at 1024. As to CCFA Licensed Counselor Members’ pure-speech counseling, “speech is all [Minnesota] seeks to regulate.” *Id.* at 1025.

The State will likewise be unable to repackage the Counseling Restriction as a regulation of professional conduct that incidentally burdens speech. As *Chiles* makes clear, the speech-incident-to-conduct doctrine has two narrow forms, and the Counseling Restriction fits neither. *Id.* at 1026. CCFA’s speech is not “integrally related to unlawful conduct” — the very same conversations a CCFA counselor cannot have with a minor client could lawfully be had by “‘life coaches’ and other non-licensees,” as Colorado conceded in *Chiles*. *Id.* (citation omitted). Nor does the Counseling Restriction regulate expressive conduct for reasons unrelated to its content. On the contrary, the statute “trains directly on the content of [CCFA counselors’] speech and permits [them] to express some

viewpoints but not others.” *Id.* The Counseling Restriction, no less than Colorado’s, “does not regulate speech incident to conduct; it regulates ‘speech as speech.’” *Id.* (quoting *Nat’l Inst. of Family & Life Advocates v. Becerra* (NIFLA), 585 U.S. 755, 770 (2018)).

The State’s licensing power does not narrow CCFA’s First Amendment rights. That CCFA’s counselors are state-licensed is no answer. *Chiles* confirms that “[t]he fact that the State’s viewpoint regulation targets only licensed healthcare professionals . . . changes nothing.” *Id.* at 1024. The First Amendment “protects the right of all,” not just the unlicensed; it “safeguards not only popular ideas” but “secures, even and especially, the right to voice dissenting views.” *Id.* The Court’s prior cases – including *NIFLA* – “expressly rejected the . . . notion that ‘professional speech’ represents some ‘separate category of speech’ subject to ‘diminished constitutional protection.’” *Id.* (quoting *NIFLA*, 585 U.S. at 767). Minnesota cannot leverage its licensing authority to “manipulate and control professional speech – including ‘the content of doctor-patient discourse’ – in ways designed ‘to increase state power,’ ‘suppress minorities,’ and muzzle ‘unpopular ideas.’” *Id.* at 1024–25 (quoting *NIFLA*, 585 U.S. at 771).

No traditional category of unprotected speech encompasses the Counseling Restriction. The *Chiles* Court also held that Colorado could not justify its law by reference to any “long tradition of permissible content regulation.” *Chiles*, 146 S.

Ct. at 1026–29. The Court rejected each of the three traditions Colorado invoked – medical licensing, informed-consent laws, and malpractice liability – as either too recent in vintage, too dissimilar in operation, or too removed from the actual viewpoint-suppressive operation of the law. *Id.* Whatever similar traditions Minnesota might invoke must fail for the same reasons: the Counseling Restriction does not address professional qualifications, does not require disclosure of “factual and uncontroversial information” incident to a separate physical procedure, and does not require the “[e]xacting proof requirements” of injury caused by breach of duty that can “provide sufficient breathing room for protected speech” in malpractice cases. *Id.* at 1028 (citations omitted). Similar to Colorado’s law, the Counseling Restriction “threaten[s] individuals” with discipline which could include “the loss of their licenses simply for expressing a particular view.” *Id.*; see Minn. Stat. § 214.078, subdiv. 2(b) (violation is considered unprofessional conduct that may subject the licensee to disciplinary action by the relevant licensing board).

2. The Counseling Restriction’s extension to “vulnerable adults” compounds the First Amendment violation.

Unlike the Colorado law, the Minnesota Counseling Restriction reaches counseling conversations with “vulnerable adults,” Minn. Stat. § 626.5572, subdiv. 21, as well as minors. That difference makes Minnesota’s law *more* constitutionally suspect, not less.

The *Chiles* ruling turned on the character of the speech regulation, not the identity of the audience. Nothing in the Court’s reasoning depended on the clients being minors; the Court’s finding of viewpoint discrimination flowed from audience-neutral principles that do not vary with the age — or the State’s assessment of the fragility — of the listener. But even if audience identity did matter, it cuts against the State. The government’s power over speech is at its apex as to minors, yet even there it has no “free-floating power to restrict the ideas to which children may be exposed,” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 794 (2011). *Chiles* condemned the Colorado law as viewpoint discriminatory even though every client the law covered was a minor. Adults, by contrast, enjoy the First Amendment’s protections at full strength, including an independent right to *receive* information and ideas from willing speakers. *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 756–57 (1976); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). The Counseling Restriction suppresses the identical viewpoint for a broader class of listeners, restricting more fully protected speech than the Colorado law.

Moreover, the “vulnerable adult” label cannot dilute First Amendment protection. The First Amendment recognizes no class of adult listeners too fragile to hear a disfavored viewpoint; the Court has repeatedly rejected the “highly paternalistic” premise that the State may protect listeners by keeping them

ignorant of one side of a debate. *See Va. State Bd. of Pharmacy*, 425 U.S. at 770; *see also First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 791 n.31 (1978); *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 577 (2011). Nor, as *Chiles* made clear, may the State manufacture a censorship-permitting category by labeling. *Chiles*, 146 S. Ct. at 1023. Yet the Counseling Restriction applies the “vulnerable adult” label by reference to Minn. Stat. § 626.5572, subdiv. 21, which classifies adults as vulnerable largely by *status* — residence in or receipt of services from licensed facilities and providers — without any individualized finding of diminished capacity. The statute thus forbids fully competent adults from hearing one side of the conversation based on nothing more than where they live or from whom they receive care. And even as to adults with genuine impairments, viewpoint discrimination remains forbidden territory: the government may not draw viewpoint-based lines even within categories of speech it may otherwise regulate. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 384–86, 391–92 (1992); *Chiles*, 146 S. Ct. at 1029–30 (Kagan, J., concurring).

* * *

In short, the Counseling Restriction does to CCFA’s counselors exactly what Colorado’s law did to Ms. Chiles: it permits them to voice the State-favored view on questions of human sexuality and gender identity, while forbidding

them – on pain of professional discipline – from voicing the opposing, faith-informed view their clients have come to hear. *Chiles* holds that such laws “censor speech based on viewpoint” and represent an “egregious assault” on “every American[’s] . . . inalienable right to think and speak freely.” *Id.* at 1029 (cleaned up).

Because the Counseling Restriction is materially indistinguishable from the Colorado statute the Supreme Court recently condemned, it is unconstitutional, and CCFA is likely to prevail on the merits of its viewpoint-discrimination claim.

B. Because the Counseling Restriction is viewpoint discriminatory, it is *per se* unconstitutional.

The Supreme Court in *Chiles* effectively held that viewpoint discriminatory laws are *per se* unconstitutional. The majority described Colorado’s viewpoint discrimination as “an ‘egregious’ assault” on the First Amendment. *Chiles*, 146 S. Ct. at 1029 (citation omitted). It explained that no matter how “well-intentioned,” because the law “censors speech based on viewpoint,” it conflicts with “First Amendment” principles. *Id.* The Court further explained that the government’s concern for “public health and safety” could not justify its “effort to enforce orthodoxy in thought or speech.” *Id.* at 1029.

Significantly, the *Chiles* majority did not engage in strict-scrutiny analysis or any other tier of First Amendment review. Having established that the

Colorado law is viewpoint discriminatory and thus offensive to core First Amendment principles, the *Chiles* majority proceeded to “reverse[]” the lower court’s denial of a preliminary injunction. *Id.* The Court did not *vacate* the lower court’s denial and remand for further proceedings; it *reversed* the denial and remanded, meaning a preliminary injunction must be issued. *Id.* The majority in *Chiles* thus effectively ordered that the Colorado law be enjoined solely because it is viewpoint discriminatory, without applying any tier of scrutiny. That’s a *per se* prohibition of viewpoint discrimination.¹¹

Because Minnesota’s Counseling Restriction is viewpoint discriminatory in the same manner as the Colorado law, it is likewise *per se* unconstitutional. CCFA is likely to succeed on the merits.

C. The Counseling Restriction cannot survive strict scrutiny.

The determination that the Counseling Restriction discriminates based on viewpoint should conclude the constitutional analysis. The application of strict scrutiny is fatal in fact: only once in “the First Amendment context” has the

¹¹ Justice Kagan’s concurrence and Justice Jackson’s dissent buttress this conclusion. Justice Kagan concluded that the majority ruling condemned Colorado’s law, “as applied to [Chiles’s speech],” because it “conflicts with core First Amendment principles.” 146 S. Ct. 1029–30 (Kagan, J., concurring). Justice Jackson stated that the ruling “block[s]” Colorado from enforcing its law to regulate licensed counselors’ expression of viewpoints. *Id.* at 1032 (Jackson, J., dissenting). According to “the majority,” Justice Jackson wrote, that “violates the Constitution.” *Id.* at 1050 (Jackson, J., dissenting).

Supreme Court held that “a law triggered but satisfied strict scrutiny,” *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 484 (2025), and that law was a content-discriminatory law in a context not relevant here, *id.* (citing *Holder v. Humanitarian Law Project*, 561 U.S. 1, 27–29 (2010)). No viewpoint-discriminatory law has survived strict scrutiny in the Supreme Court. Nothing suggests that the Counseling Restriction should be an exception.

1. The Counseling Restriction does not serve a compelling interest.

To demonstrate the compelling interest necessary to survive strict scrutiny, the government must prove that the Counseling Restriction “address[es] a real problem.” *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 822 (2000). To do that, the government must produce tangible evidence – not “anecdote and supposition.” *Id.* Importantly, when defining the compelling interest, the government must engage in a “precise analysis,” *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021), that focuses on “the actual speech being regulated, rather than how the law might affect others who are not before the court.” *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 754 (8th Cir. 2019). So, the government cannot merely claim a general interest in preventing minors from being exposed to risk or harm. Rather, the “precise analysis” here requires the government to demonstrate that the counselors’ talk therapy itself poses a specific threat.

CCFA Licensed Counselor Members counsel their clients on a voluntary basis, and the clients set the goals for counseling. Schmoyer Decl. ¶ 20; Langford Decl. ¶¶ 25, 26; Am.Ver.Compl, ¶¶ 37-38. If clients express an interest in achieving comfort with their sex or reducing unwanted same-sex attractions, but for the Counseling Restriction, CCFA counselors would try to assist their clients in meeting those goals. The government has no legitimate interest in regulating private, consensual conversations, which constitute “the actual speech being regulated” here, *Telescope Media Grp.*, 936 F.3d at 754, particularly when the conversations involve counseling goals that the clients select. Moreover, there is no definitive evidence that counseling-room conversations with a willing client aimed at helping them eliminate unwanted same-sex attraction or helping them live in alignment with their sex and develop comfort with their physical body poses any risk of harm to the counseling client. *See* Am.Ver.Compl., ¶¶ 55-57.

At bottom, what the State actually seeks is to insulate counseling clients from viewpoints it disfavors — an end that the First Amendment forbids the government from pursuing. *See Matal v. Tam*, 582 U.S. 218, 245–46 (2017) (rejecting government’s asserted interest in “preventing ‘underrepresented groups’ from being ‘bombarded with demeaning messages’” as equivalent to asserting an interest in “preventing speech expressing ideas that offend”). That the counseling clients at issue are minors and vulnerable adults doesn’t alter that

conclusion. Speech “cannot be suppressed solely to protect the young from ideas...that a legislative body thinks unsuitable for them.” *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213–14 (1975). That principle is precisely why courts have turned aside legislative efforts to keep supposedly violent video games out of children’s hands in the name of protecting them from “harmful effects.” *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 800–01 (2011); *Video Software Dealers Ass’n v. Webster*, 968 F.2d 684, 689 (8th Cir. 1992).

2. The Counseling Restriction is not narrowly tailored.

The Counseling Restriction also fails strict scrutiny’s second prong: it lacks the requisite narrow tailoring. To satisfy narrow tailoring, a law cannot be overinclusive or underinclusive. *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 793 (1978). In addition, the Government must show that applying the law is “the least restrictive means to further” the Government’s interest and that any offered “plausible, less restrictive alternative...will be ineffective to achieve its goals.” *Playboy Ent. Grp., Inc.*, 529 U.S. at 813, 816. “[I]f a less restrictive means is available for the Government to achieve its goals, the Government must use it.” *Id.* at 815.

Underinclusiveness. The Counseling Restriction is woefully underinclusive because it leaves untouched a range of activities that undercut the government’s interest in prohibiting allegedly harmful counseling.

The Counseling Restriction applies only to licensed “mental health practitioner[s]” and “mental health professional[s].” Minn. Stat. § 214.078, subdiv. 2(a); *see also* Minn. Stat. § 245I.02, subdivs. 26–27 (cross-referencing § 245I.04, subdivs. 2 and 4 for those definitions). Countless others who help shape minors’ views—including unlicensed therapists, life coaches, classmates, and friends—remain free to engage in the very conversations that the statute marks as off-limits for licensees. The Counseling Restriction is thus “ineffective” because “the vast majority of conversion therapy [78 percent] is performed by unlicensed professionals.” Cameron J. Rachford, *Botched Bans: Analyzing Conversion Therapy Bans After a Decade of Legal Challenges*, 99 Ind. L.J. 1403, 1411–12 (2024). Such “wild[] underinclusive[ness]” alone demonstrates that the Counseling Restriction is unconstitutional. *Brown*, 564 U.S. at 802.

Moreover, the definition of who qualifies as a covered professional is riddled with exclusions. It captures only the limited set of licensees enumerated in Minn. Stat. § 245I.04—principally marriage and family therapists, licensed professional clinical counselors, psychologists, clinical social workers, and certain physicians and nurses—but says nothing about other professionals who indisputably exert powerful influence on minors: teachers, school staff, and athletic coaches, among others. *See* Minn. Stat. § 245I.04, subdivs. 2, 4. By leaving these influential professionals outside its reach, the State has drawn its

prohibition in a profoundly underinclusive manner. Were the speech at issue truly dangerous, the statute would not stop at regulating a handful of licensed professionals.

If Minnesota's concern truly were the welfare of vulnerable listeners, it would regulate practices that risk harm regardless of the view expressed. But the Counseling Restriction prohibits any practice that "seeks to change an individual's sexual orientation or gender identity," while it expressly permits any "counseling, practice, or treatment that provides assistance to an individual undergoing gender transition" and any treatment that "facilitates an individual's coping, social support, and identity exploration and development." Minn. Stat. § 214.078, subdiv. 1(b). A licensed counselor may thus explore questions of same-sex attraction and gender identity at length with a minor or vulnerable adult provided the conversation runs in the State-approved direction — *regardless of any harmful consequences to the client*. Such underinclusiveness "raise[s] serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Brown*, 564 U.S. at 802. The Counseling Restriction does not shield vulnerable adults or minors from harm; it selects one side of a contested debate and enlists the counselor to deliver only the State's preferred view.

Overinclusiveness. The Counseling Restriction does not merely ban physical treatments and aversive conduct. It prohibits voluntary talk therapy with willing clients who come into the counseling room with the goal of decreasing unwanted same-sex attraction or increasing comfort with their sex, and who have sought out the counselor precisely because the counselor shares the client's Christian convictions. There is no definitive evidence that such talk therapy causes any harm, and yet it is banned. Because the State cannot show that "each activity within the proscription's scope is an appropriately targeted evil," the Counseling Restriction is overinclusive and fails strict scrutiny. *Frisby v. Schultz*, 487 U.S. 474, 485 (1988).

Least-restrictive means. "The least-restrictive-means standard is exceptionally demanding." *Holt v. Hobbs*, 574 U.S. 352, 364–65 (2015). It is not enough for the government to show that proffered less-restrictive alternatives have flaws or would be less efficient than the challenged regulation. *See, e.g., Ashcroft v. ACLU*, 542 U.S. 656, 669 (2004); *Reno v. ACLU*, 521 U.S. 844, 874 (1997). Rather, the government has the burden to demonstrate both that the challenged regulation is effective in advancing the state's compelling interest, and to show that each proposed alternative is less effective. *Ashcroft v. ACLU*, 542 U.S. at 669 ("Nor do[es] [the party challenging the regulation] bear a burden to introduce, or offer to introduce, evidence that their proposed alternatives are more effective.

The Government has the burden to show they are less so.”); *see also* 281 *Care Comm. v. Arneson*, 766 F.3d 774, 793–94 (8th Cir. 2014) (holding Minnesota’s ban on knowingly false speech about ballot initiatives failed strict scrutiny because counterspeech provided a less-restrictive alternative, and rejecting the State’s argument that counterspeech would be ineffective where the statute itself was equally flawed in its ability to achieve the asserted goal). Nor is it sufficient for the government to claim that narrower alternatives are novel or untested. *See Sable Commc’ns of Cal., Inc. v. FCC*, 492 U.S. 115 (1989) (concluding that new technology could potentially control minors’ access to “dial-a-porn” messages and was therefore a less-restrictive alternative to Congress’s complete ban); *Reno v. ACLU*, 521 U.S. 844, 876–77 (1997) (similar analysis regarding new screening software technology that could supply less-restrictive alternative). Rather, “[w]hen a plausible, less restrictive alternative is offered to a content-based speech restriction, it is the Government’s obligation to prove that the alternative will be ineffective to achieve its goals.” *Playboy*, 529 U.S. at 816.

Here, numerous less-restrictive means are available that would advance the government’s interest in protecting minors and vulnerable adults from harm.

First, the State could launch a public-information effort explaining why it views conversion therapy as harmful, or it could maintain a roster of state-

approved counselors. *See NIFLA*, 585 U.S. at 774–75 (endorsing comparable approaches).

Second, the State could enact a specific informed-consent requirement for the counseling practices at issue here, ensuring that minors, vulnerable adults, and their guardians and families are fully informed of any risks that the State contends exist.

Third, the State could limit its ban to aversive or coercive methods, instead of reaching counseling that consists purely of speech. This alternative furthers the governmental interest in protecting minors and vulnerable adults at least as well as the broader regulation because there is no definitive evidence that pure talk therapy – conversation in the counseling room – poses any risk of harm to minors, vulnerable adults, or anyone else. *See Amended Verified Complaint*, ¶¶ 55-57. “A more precise law limited to . . .” aversive and coercive methods “and specifically defining key terms would be less burdensome on protected expression.” *Video Software Dealers Ass’n v. Webster*, 968 F.2d 684, 689 (8th Cir. 1992) (holding that a Missouri law prohibiting dissemination to minors of material depicting violence was not narrowly drawn to protect minors where the law failed to define violence, thereby sweeping in innocuous material such as animated violence in cartoon shows).

Fourth, the State could write an exemption for conversations in talk therapy that touch on a client's moral or religious beliefs or practices. Or the State could adopt a religious exemption that insulates licensed counselors from being forced to speak in ways that offend their religious convictions, just as other states have done. *E.g.*, Idaho Code § 54-3416(1) ("No person engaged in the practice of professional counseling or marriage and family therapy in the state of Idaho shall be required to provide counseling to or facilitate the counseling of a client in support of goals, outcomes, or behaviors that conflict with the sincerely held religious, moral, or ethical principles of the counselor or therapist.").

Fifth, the State could rely on "[l]ongstanding torts for professional malpractice' or other state-law penalties for bad acts that produce actual harm." *Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 870 (11th Cir. 2020) (alterations in original) (quoting *NIFLA v. Becerra*, 585 U.S. 755, 769 (2018)). If a client were ever to be harmed, the State could pursue disciplinary action that could lead to license revocation and other penalties. The disciplinary tools provided under existing Minnesota law authorize sanctions against counselors who engage in "fraudulent, deceptive, or dishonest conduct" or in "unprofessional conduct . . . which has the potential for causing harm to the public," and independently requires informed consent and forbids exploitation of the therapeutic relationship. *See* Minn. Stat. § 148B.59, subdiv. 1(a)(2)–(3); Minn. R. 2150.7525

(informed consent); Minn. R. 2150.7550 (client welfare; prohibition on exploitation); Minn. R. 2150.7595 (deception or fraud); Minn. R. 2150.7600 (unprofessional conduct). Moreover, the State's generally applicable laws already prohibit fraudulent, harassing, and violent conduct. *See, e.g.*, Minn. Stat. § 325F.69 (consumer fraud); Minn. Stat. § 609.749 (harassment); Minn. Stat. § 609.224 (assault).

In short, abundant avenues exist for the State to protect minors and vulnerable adults from non-expressive harm. *See McCullen v. Coakley*, 573 U.S. 464, 491–92 (2014) (invalidating buffer zone as overbroad because the State's interest could be vindicated through other state and local laws). The existence of so many less-restrictive alternatives conclusively demonstrates that the Counseling Restriction lacks narrow tailoring and cannot survive strict scrutiny. Consequently, CCFA is likely to prevail on the merits of its claim that the Counseling Restriction violates the free-speech clause of the First Amendment.

II. The Counseling Restriction violates CCFA members' right to the free exercise of religion.

CCFA is independently likely to succeed on its claim that the Counseling Restriction violates its members' right to the free exercise of religion. The Free Exercise Clause, applicable to the States through the Fourteenth Amendment, forbids government from imposing special disabilities on the basis of religious

status and from burdening religious exercise through a law that is not both neutral and generally applicable. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–33 (1993). A law that fails either requirement is subject to strict scrutiny. *Id.* at 546; *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021). The Counseling Restriction fails both requirements, and it cannot survive the strict scrutiny that failure demands.

A. The Counseling Restriction is neither neutral nor generally applicable.

A law is not generally applicable, and therefore triggers strict scrutiny, whenever it “treat[s] any comparable secular activity more favorably than religious exercise,” with comparability “judged against the asserted government interest that justifies the regulation at issue.” *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam). The same is true where a law “prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Fulton*, 593 U.S. at 534.

That is precisely how the Counseling Restriction operates. The State seeks to protect minors and vulnerable adults from supposedly harmful counseling about sexuality and gender. Yet the statute expressly permits a licensed counselor to provide talk therapy that offers “acceptance, support, and understanding,” that “facilitates an individual’s coping, social support, and

identity exploration and development,” and that provides “assistance to an individual undergoing gender transition.” Minn. Stat. § 214.078, subdiv. 1(b). It forbids only counseling directed at the opposite goal – the very faith-informed counsel CCFA Licensed Counselor Members wish to offer willing clients. The permitted, State-favored counseling is the same kind of pure-speech talk therapy, with the same minors, on the same subjects, and it bears on the State’s professed interest to at least the same degree. Permitting that comparable secular activity while burdening religious exercise is the hallmark of a law that is not generally applicable. *Tandon*, 593 U.S. at 62; *Fulton*, 593 U.S. at 534.

For the reasons explained in Section I, the statute also prohibits one viewpoint on sexuality and gender – the faith-grounded message CCFA’s members are religiously compelled to convey and that their clients seek out, often precisely because of their shared Christian faith – while protecting the opposite viewpoint. A law so directed at religiously motivated expression does not operate neutrally toward religious exercise. *Lukumi*, 508 U.S. at 533–34. Strict scrutiny applies for that reason as well, and for the further, independent reason that the burden on free exercise here arises “in conjunction with other constitutional protections, such as freedom of speech.” *Emp. Div. v. Smith*, 494 U.S. 872, 881 (1990).

B. The Counseling Restriction cannot satisfy strict scrutiny.

Because it is neither neutral nor generally applicable, the Counseling Restriction can stand only if the State proves it is narrowly tailored to serve a compelling interest. *Lukumi*, 508 U.S. at 546. The relevant question is “not whether the [State] has a compelling interest in enforcing its [policy] generally, but whether it has such an interest in denying an exception” to CCFA’s religious objectors. *Fulton*, 593 U.S. at 541. The State cannot make that showing, for the reasons set out in Section I.C, which apply with equal force here.

A law that “leaves appreciable damage to [the] supposedly vital interest unprohibited” cannot be regarded as protecting an interest “of the highest order.” *Lukumi*, 508 U.S. at 547 (citation omitted). The Counseling Restriction does exactly that: it permits the same counselors to provide talk therapy that aligns with the State’s established orthodoxy to minors and vulnerable adults no matter the risk, while forbidding only CCFA members’ faith-informed counsel. That selective prohibition refutes any claim that denying Christian counselors an exemption is necessary to a compelling end. *Id.*; *Fulton*, 593 U.S. at 541–42.

Nor is the statute narrowly tailored. As Section I.C explains, the State has ample less-restrictive means of protecting minors and vulnerable adults, among them restricting only aversive or coercive techniques, requiring informed consent, providing public information, and enforcing existing malpractice and

disciplinary remedies. And other jurisdictions protect religious counsel through the very kind of express exemption Minnesota did not adopt. Because the Counseling Restriction burdens CCFA members' religious exercise far beyond anything even a compelling interest could justify, CCFA is likely to prevail on its free-exercise claim.

III. The Counseling Restriction is unconstitutionally vague in violation of the Due Process Clause.

CCFA is also likely to prevail on its claim that the Counseling Restriction is void for vagueness. The Due Process Clause of the Fourteenth Amendment condemns a law that "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). And where a law abridges the freedom of speech, "rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech," *Fox*, 567 U.S. at 253–54, such that the "standards of permissible statutory vagueness are strict in the area of free expression." *NAACP v. Button*, 371 U.S. 415, 432 (1963). The Counseling Restriction fails on both fronts.

A. The Counseling Restriction does not give counselors fair notice of what it prohibits.

The statute marks no clearly ascertainable line between the talk therapy it permits and the talk therapy it forbids. It permits counseling that provides

“acceptance, support, and understanding” and that “facilitates an individual’s coping, social support, and identity exploration and development,” while prohibiting any practice that “seeks to change an individual’s sexual orientation or gender identity, including efforts to change behaviors or gender expressions.” Minn. Stat. § 214.078, subdiv. 1(b). Yet it defines none of the terms on which that line depends – not “sexual orientation,” “gender identity,” “gender expressions,” “behaviors,” “facilitate,” “coping,” or “identity exploration and development.” A counselor cannot know whether helping a willing minor examine the roots of gender confusion is permissible “identity exploration” or forbidden “change.” The uncertainty deepens because the statute never says whose objective controls – the counselor’s or the client’s – even though for talk therapy conducted by CCFA members, the client, not the counselor, sets the counseling goals.

Such uncertainty borne of undefined statutory terms cannot be reconciled with due process, least of all where speech rights are at stake. *See Stephenson v. Davenport Cmty. Sch. Dist.*, 110 F.3d 1303, 1310 (8th Cir. 1997) (“[T]he failure to define the pivotal term of a regulation can render it fatally vague.”). Because “uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked,” *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972), the First Amendment permits the government to regulate “only with narrow specificity.” *Button*, 371 U.S. at

433. The Counseling Restriction’s undefined terms have produced exactly the chill the doctrine guards against: uncertain about which words might trigger a complaint, an investigation, and the loss of their licenses, CCFA’s members have silenced speech they believe their clients should hear.

B. The Counseling Restriction invites arbitrary and discriminatory enforcement.

More fundamentally, the Counseling Restriction “impermissibly delegates basic policy matters” to licensing boards and complainants “for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” *Grayned*, 408 U.S. at 108–09. Because the operative terms are undefined, and because the line between permitted “exploration” and forbidden “change” turns on judgment about ideologically charged and contested concepts, the statute’s application is left to the unguided discretion of those who enforce it. A standardless law of this kind permits enforcers to “act in an arbitrary or discriminatory way.” *Fox Television Stations, Inc.*, 567 U.S. at 253.

That danger is acute here. In an arena as contested as counseling on sexuality and gender, an undefined prohibition invites enforcement driven by disapproval of a particular counselor’s religious viewpoint – discrimination that the Constitution forbids. The Supreme Court has repeatedly invalidated speech restrictions resting on terms no less indeterminate than these. *See Reno v. ACLU*,

521 U.S. 844, 870–74 (1997) (“indecent” and “patently offensive” communications); *Button*, 371 U.S. at 432–33. So has the Eighth Circuit, where a State regulated expression reaching minors without defining its central term. *See Video Software Dealers Ass’n v. Webster*, 968 F.2d 684, 689–90 (8th Cir. 1992) (statute regulating “violent” material void where “violence” left undefined). Because the Counseling Restriction leaves its central terms undefined and its enforcement to unguided discretion, it is unconstitutionally vague, and CCFA is likely to succeed on this claim as well.

IV. CCFA Licensed Counselor Members are suffering irreparable harm because the Counseling Restriction is chilling their protected speech.

The Counseling Restriction is depriving CCFA Licensed Counselor Members of First Amendment freedoms every day it remains in force. Under controlling Eighth Circuit precedent, that ongoing deprivation is, by itself, irreparable harm sufficient to satisfy the second *Dataphase* factor.

The Supreme Court has long held that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). The Eighth Circuit has adopted that rule without qualification. *See Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) (quoting *Elrod*); *Marcus v. Iowa Pub. Television*, 97 F.3d 1137, 1140–41 (8th Cir. 1996) (reaffirming that a violation of First Amendment rights inherently constitutes irreparable harm). A plaintiff

need not wait for an enforcement action to make this showing; irreparable harm exists whenever there is a reasonable threat that First Amendment rights will be deprived. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158–59 (2014) (holding that a credible threat of future enforcement establishes a justiciable injury and that a plaintiff need not first expose itself to actual prosecution before bringing a pre-enforcement challenge).

CCFA’s members fall squarely within this rule. CCFA counselors are Christians whose sincerely held religious beliefs inform every aspect of the talk therapy they provide, and their clients — including minors and their parents — very often affirmatively seek out CCFA counselors precisely because they want counseling shaped by a shared faith and pursued in service of goals the clients themselves set. The Counseling Restriction, however, bars CCFA counselors from speaking with minor clients about gender identity and same-sex attraction in a manner that comports with their Christian faith. To avoid the statute’s reach, CCFA counselors are self-censoring: they are leaving client questions unaddressed, steering away from topics their clients raise, refraining from addressing topics they otherwise would, and are often unable to offer counsel consistent with their faith and their clients’ counseling goals. Langford Decl. ¶¶ 45–58; Schmoyer Decl. ¶¶ 27–40; Am.Ver.Compl. ¶¶ 58–71.

That self-censorship, driven by fear of enforcement, is irreparable. The Counseling Restriction does not merely threaten CCFA's speech at some indefinite future moment; it is silencing protected counseling speech now, in every session in which a minor or vulnerable-adult client raises issues of gender identity or same-sex attraction. As the *Chiles* court recognized, compelled self-censorship is itself an "ongoing injury resulting from the statute's chilling effect on . . . speech." *Chiles*, 146 S. Ct. at 1019 (cleaned up). And to the extent CCFA counselors continue to speak according to their faith rather than self-censor, they face a reasonable threat of professional discipline under Minn. Stat. § 214.078 — a threat that independently establishes irreparable harm.

V. The balance of equities and public interest favor an injunction.

The balance of equities and public interest "merge" when the government is the defendant, *Nken v. Holder*, 556 U.S. 418, 435 (2009), and both factors favor a preliminary injunction. "The balance of equities . . . generally favors the constitutionally-protected freedom of expression." *Phelps-Roper*, 545 F.3d at 690. Likewise, the "public interest favors protecting core First Amendment freedoms." *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 970 (8th Cir. 1999). Indeed, "it is always in the public interest to protect constitutional rights." *Phelps-Roper*, 545 F.3d at 690.

When, as here, “a plaintiff has shown a likely violation of his or her First Amendment rights, the other requirements for obtaining a preliminary injunction are generally deemed to have been satisfied.” *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 870 (8th Cir. 2012) (quoting *Phelps-Roper v. Troutman*, 662 F.3d 485, 488 (8th Cir. 2011)); see also *Child Evangelism Fellowship of Minn. v. Minneapolis Special Sch. Dist. No. 1*, 690 F.3d 996, 1004 (8th Cir. 2012) (noting that a likely First Amendment violation favors the issuance of an injunction). In addition to violating CCFA members’ free-speech rights, the Counseling Restriction harms young people and vulnerable adults who are denied helpful counseling that they desire and that aligns with their sincerely held religious beliefs. Both the balance of equities and the public interest thus tilt heavily in favor of halting the ongoing unconstitutional chill that the Counseling Restriction imposes on CCFA members’ protected speech.

CONCLUSION

For all the foregoing reasons and considering the Supreme Court’s ruling in *Chiles v. Salazar*, this Court should grant CCFA’s motion for preliminary injunctive relief.

Respectfully submitted this 9th day of September, 2026.

By: /s/ Douglas G. Wardlow

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