

Office of the Attorney General



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April 10, 2026

Kelly L. Stephens
U.S. Court of Appeals for the Sixth Circuit
540 Potter Stewart Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202-3988

Re: *Welty v. Dunaway*, Nos. 25-5738/25-5739

Dear Clerk Stephens:

We write in response to Plaintiffs’ letter regarding *Chiles v. Salazar*, 607 U.S. ----, No. 24-539, 2026 WL 872307 (U.S. Mar. 31, 2026). Plaintiffs contend *Chiles*’s First Amendment analysis “resolves this case.” Letter at 2. It does not.

Chiles does not “resolve[]” Plaintiffs’ as-applied challenge, which fails because § 39-15-201(a) does not prohibit Plaintiffs’ conduct. *See* First-Br. 39. Plaintiffs may contest that interpretation of Tennessee law, but *Chiles* has no bearing on that dispute.

Chiles likewise does not “resolve[]” Plaintiffs’ facial challenge. *Chiles* involved an as-applied challenge, and its reasoning is limited to that context. 2026 WL 872307, at *9, *12. *Chiles* thus did not displace the inquiry *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), requires for facial relief, which Plaintiffs failed to satisfy, *see* First-Br. 36-53. Nor did *Chiles* determine, contrary to *NetChoice*, that there is a viewpoint-discrimination exception to that facial inquiry. *See* Third-Br. 27-28.

Chiles's standing analysis does, however, "bear[] on" this appeal, as Plaintiffs acknowledge. Letter at 1 n.1.¹ But that analysis supports Defendants. *Chiles* embraced the same standing test Defendants advance. *Compare Chiles*, 2026 WL 872307, at *5 n.* (citing *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014)), with First-Br. 17-36 and Third-Br. 3-19. Application of that test here establishes that Plaintiffs, unlike the *Chiles* plaintiff, lack standing. See First-Br. 16-36.

Chiles also illustrates that, as Defendants argue, the pre-enforcement standing inquiry begins by figuring out what the challenged law proscribes. Third-Br. 4. In *Chiles*, Colorado advanced a new construction of the challenged law that would not have covered the plaintiff. 2026 WL 872307, at *5 n.*. The Court rejected this construction because it was incorrect, *id.*—not because, as Plaintiffs argue, a plaintiff need prove only that a law "arguably" prohibits her conduct for standing purposes, Second-Br. 17.

Respectfully,

/s/ Madeline W. Clark

Madeline W. Clark

Principal Deputy Solicitor General

Counsel for Defendant-Appellants

¹ Plaintiffs suggest that standing is an issue in the cross-appeal. Letter at 1 n.1. While this Court has an obligation to assure itself of its jurisdiction in every appeal, standing is an issue only in the principal appeal. See First-Br. xv.

CERTIFICATE OF COMPLIANCE

This letter complies with Rule 28(j) because its body contains 344 words. It also complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in proportionally spaced typeface using Times New Roman 14-point font in Microsoft Word.

/s/ Madeline W. Clark

Madeline W. Clark

Principal Deputy Solicitor General

CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(d) and 6 Cir. R. 25(f), I certify that a true and exact copy of this letter has been filed via the Court's electronic filing system on April 10, 2026. That system sends a Notice of Docket Activity to all registered attorneys in this case. Under 6 Cir. R. 25(f)(1)(A), "[t]his constitutes service on them and no other service is necessary."

/s/ Madeline W. Clark
Madeline W. Clark
Principal Deputy Solicitor General