

Institute for
Constitutional Advocacy and Protection

GEORGETOWN LAW

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

April 9, 2026

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

Dear Ms. Stephens:

Plaintiffs respectfully write to draw the Court’s attention to *Chiles v. Salazar*, 607 U.S. ----, No. 24-539, 2026 WL 872307 (U.S. Mar. 31, 2026).

Chiles concerned an as-applied, pre-enforcement challenge to a law “prohibiting licensed counselors from engaging in ‘conversion therapy’ with minors.” *Id.* at *4. The law permitted speech affirming a client’s gender identity or sexual orientation, but barred speech intended to help a gay or transgender client change his gender identity or sexual orientation. *Id.* at *9. After holding that the plaintiff had standing,¹ the Supreme Court concluded that the law impermissibly “censors speech based on viewpoint” by prohibiting the plaintiff from “voic[ing] certain perspectives the State disfavors when speaking with consenting clients.” *Id.* at *9, *13 (alterations and quotation marks omitted).

The Court rejected Colorado’s effort to identify a new category of unprotected speech regarding “substandard care.” *Id.* at *11-12. The Court emphasized the State’s “daunting burden” to “present persuasive historical evidence ... to overcome [the

¹ This letter addresses the *Chiles* merits because briefing on the First Amendment issues in this case is closed. Plaintiffs will address the standing analysis in *Chiles*, which bears on the cross-appeal, in the Fourth Brief.

Court’s] especial reluctance to mark off new categories of speech for diminished constitutional protection.” *Id.* at *11 (alterations and quotation marks omitted). Colorado’s effort failed “out of the gate” because “discrete traditions of content-based regulations cannot be aggregated together to sustain some new and broader category of lesser-protected speech.” *Id.*

The same reasoning resolves this case. The law challenged here discriminates based on viewpoint by banning speech that “recruits” a minor to have an abortion, while permitting speech intended to stop a minor from having an abortion. Defendants’ efforts to conjure a new category of unprotected speech relating to healthcare for minors, by mixing together disparate historical evidence presented for the first time in their appellate reply brief, falls far short.

Even when the State “regard[s] its policy” concerning “how best to help minors” as “essential to public health and safety,” the government may not “censor[] speech based on viewpoint.” *Id.* at *13.

Respectfully submitted,

/s/ William Powell

William Powell

Counsel for Plaintiffs/ Appellees/ Cross-Appellants

CC: All counsel of record (via CM/ECF)

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing letter complies with the word limit in Federal Rule of Appellate Procedure 28(j) because it contains 348 words.

/s/ William Powell

William Powell

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April 2026, this letter was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ William Powell
William Powell