The First Amendment Protects the Church's Ministry of Verbal and Relational Care

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The question presented is whether a church, acting pursuant to its doctrine, mission, and ancient pastoral practice, may minister to persons suffering from anxiety, depression, trauma, grief, addiction, and related afflictions through non-physical means such as prayer, confession, counsel, exhortation, teaching, listening, encouragement, spiritual direction, and other speech-based interventions informed by insights from neuroscience and psychology, without being treated as unlawfully "practicing" a state-licensed profession. Properly understood, the answer is yes, at least where the church engages in voluntary, non-coercive, non-physical, faith-directed care that neither prescribes medication nor performs invasive procedures nor falsely holds itself out as exercising state-conferred medical authority.

The First Amendment protects that ministry for two independent reasons. First, it protects the freedom of speech. Second, it protects the free exercise of religion and the autonomy of religious bodies in carrying out their religious mission.

I. The church's ministry of care is speech at the core of the First Amendment

Pastoral care is, in its essence, communicative. It consists of words, prayer, counsel, exhortation, comfort, admonition, teaching, and the relational presence through which those words are delivered. The Supreme Court's recent decision in *Chiles v. Salazar* strongly confirms that when the government targets talk therapy as such, it regulates speech, not merely conduct. In *Chiles*, the Court held that Colorado's law, as applied to a counselor's talk therapy, regulated speech based on viewpoint and therefore required far more than deferential review. The Court emphasized that when a person "employs only talk therapy," the State cannot escape the First Amendment by relabeling speech as "conduct," "treatment," or a "therapeutic modality."

That reasoning matters beyond the precise facts of *Chiles*. If a church elder, pastor, lay minister, or trained church counselor sits with a congregant, hears the person's suffering, asks questions, offers scriptural wisdom, teaches emotional regulation, encourages healthier habits, applies insights from the study of the mind and brain, and seeks to help that person pursue healing in a manner consistent with Christian doctrine, the church is

still using words. And under *Chiles*, speech does not lose constitutional protection because the government calls it "treatment."

The Court in *Chiles* also reaffirmed *NIFLA v. Becerra*, which rejected any general rule that "professional speech" receives diminished constitutional protection merely because the speaker is licensed or speaks in a counseling setting. The Court warned that content-based regulation of professional speech carries the same danger as other speech regulation: the government may be suppressing disfavored ideas rather than neutrally pursuing a legitimate objective. (Supreme Court)

Thus, where the State attempts to forbid the church from speaking certain truths, offering certain categories of advice, or using certain verbal methods because officials disapprove of the church's viewpoint about human flourishing, suffering, repentance, embodiment, forgiveness, hope, moral agency, or spiritual restoration, that is not neutral regulation of conduct. It is censorship.

II. The church's ministry of care is also an exercise of religion protected from state control

The First Amendment protects not only the right of individuals to speak, but also the right of religious institutions to govern their own religious life. The Supreme Court has repeatedly said that religious bodies have the right to decide for themselves, free from state interference, matters of church government, faith, and doctrine. In *Hosanna-Tabor* and *Our Lady of Guadalupe School*, the Court recognized a zone of church autonomy grounded in the Religion Clauses, protecting a church's authority over those who carry out its religious mission. *Our Lady* specifically reaffirmed that the First Amendment protects the right of religious institutions "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."

That principle is not limited to hiring and firing. Employment cases are simply one application of a broader constitutional rule: the civil magistrate may not seize control of the church's internal religious functions. Caring for souls is not incidental to the church's mission. It is central to it. For centuries, churches have instructed the anxious, comforted the depressed, counseled the traumatized, guided the grieving, restored the morally fallen, and accompanied the broken through conversation, prayer, teaching, confession, and community discipline. That is not the recent invention of a modern profession. It is an ancient ecclesial practice.

Because that ministry is doctrinally grounded, historically rooted, and mission-defining, the State may not constitutionally tell the church that it may preach salvation but not counsel despair, may teach repentance but not coach new habits, may pray with the

traumatized but not use evidence-informed conversational tools, or may disciple the suffering only if it confines itself to state-approved theories of the person. Such commands invade both speech and religious exercise.

III. The use of neuroscience and psychology does not strip the church of constitutional protection

The strongest counterargument is that once the church incorporates evidence-based practices from neuroscience or psychology, it ceases to act religiously and begins to practice a licensed profession. That conclusion does not follow.

The Constitution does not require religious ministries to remain intellectually frozen in antiquity. Churches may use architecture without becoming engineering firms, bookkeeping without becoming banks, and music theory without becoming conservatories. In the same way, a church may learn from the scientific study of memory, trauma, attachment, cognition, stress, habit formation, and interpersonal healing without surrendering the religious character of its ministry.

Indeed, *Chiles* itself involved a counselor who worked with trauma and other mental-health concerns through speech alone, and the Court's analysis turned not on whether psychological knowledge was involved, but on whether the State was regulating speech based on content and viewpoint.

Using evidence-informed, non-physical tools does not transform pastoral ministry into medicine. When the church teaches breathing and grounding techniques to calm panic, helps a traumatized person understand triggers, encourages healthy sleep and social connection, explains how stress affects the body, or uses structured conversation to help a person identify destructive thought patterns, it remains engaged in verbal and relational ministry, so long as it does not cross into distinctly licensable acts such as diagnosing under color of state authority, prescribing controlled substances, conducting invasive procedures, or fraudulently representing itself as providing secular clinical care under a state license.

To hold otherwise would mean that the more responsibly a church cares for people, the less constitutional protection it receives. The First Amendment contains no such perverse rule.

IV. Licensing laws cannot be used to create a state monopoly over soul care

The State plainly may regulate many professions. But *Chiles* sharply limits the inference the government may draw from that premise. The Court rejected Colorado's argument that modern counselor licensing or generalized malpractice concepts create a broad "First Amendment Free Zone" in which the State may censor speech it deems "substandard care." It stressed that licensing laws traditionally concern qualifications, not authority to dictate a speaker's viewpoint. It also noted that the first counselor-licensure bills are relatively recent and do not establish a historical tradition broad enough to justify diminished protection for speech.

That logic is especially forceful when applied to the church. If the government may require a civil license before a pastor may privately counsel a congregant about depression, trauma, guilt, marriage, addiction, fear, or the disciplined renewal of the mind, then the State effectively acquires a veto over one of the church's oldest and most sacred ministries. It can then decide who may comfort, who may exhort, what may be said, and which anthropology may govern the care of souls. That is exactly the type of official orthodoxy the First Amendment forbids. *Chiles* reiterated that viewpoint discrimination is an "egregious form" of content discrimination, and the Court's broader First Amendment cases have long rejected official commands over what may be spoken.

Nor can the government solve the problem by saying that it regulates only "practice" and not "speech." *Chiles* rejects that word game. If all the church does in the challenged setting is speak, listen, pray, teach, and guide, then speech is exactly what the State is regulating.

V. A constitutional line exists between protected pastoral ministry and regulable secular conduct

The strongest version of this argument is not that every activity labeled "counseling" is immune from regulation. It is that the Constitution forbids government from treating the church's non-coercive, non-physical, faith-directed ministry of words as unlicensed practice merely because that ministry addresses emotional or psychological suffering.

The government may still regulate fraud, coercion, abuse, false advertising, physical interventions, medication, institutional negligence, and conduct that independently violates generally applicable laws. *Chiles* itself acknowledged that states may prohibit aversive physical interventions and that not every application of these laws is unconstitutional.

But there is a constitutional difference between regulating harmful acts and claiming jurisdiction over the church's conversations. There is also a difference between requiring honesty about credentials and imposing a licensing regime that makes the church's ministry contingent on state approval. The former may be legitimate. The latter is not.

VI. Under the First Amendment, the church has the better constitutional claim when it offers voluntary, speech-based care as part of its religious mission

Putting these principles together yields the core conclusion.

When a church, consistent with its doctrine and historic mission, provides voluntary care to persons suffering from anxiety, depression, trauma, grief, addiction, or related burdens, and does so through non-physical interventions such as prayer, pastoral conversation, teaching, spiritual direction, confession, support, and evidence-informed relational practices derived from the scientific study of psychology and neuroscience, the church is engaged in protected speech and religious exercise.

Because that ministry is carried out through words, it falls within the heartland of the Free Speech Clause. Because it is carried out as part of the church's doctrine and mission, it also falls within the heartland of the Religion Clauses. And because the church's use of psychological or neuroscientific insight does not itself convert ministry into medicine, the State may not treat such speech-based ministry as unlawful unlicensed practice absent some additional element that places the conduct outside the protected sphere.

A contrary rule would hand the civil government authority to define the permissible boundaries of pastoral care, to privilege secular anthropologies over religious ones, and to condition the church's ministry to suffering people on professional licensure designed for a different office and a different calling. The First Amendment does not allow that result.

Religious Freedom Does Not Depend on 501(c)(3) Status, Clergy Status, or State Licensure

The constitutional protection at issue here does not belong only to incorporated churches, tax-exempt entities, ordained clergy, or persons employed by formal religious institutions. The First Amendment protects the free exercise of religion and freedom of speech as liberties of persons and communities, not as privileges conferred by tax classification or civil office. A church's 501(c)(3) status may affect taxation, but it does not define whether religious exercise exists. The Constitution protects religious exercise because it is religious exercise, not because the State has recognized an organization under the Internal Revenue

Code. The Supreme Court has long rejected the idea that government may impose a license tax or similar civil permission requirement on the exercise of religious witness or ministry as such.

That principle has important implications here. Faith-based soul care is not constitutionally limited to ordained clergy or employees of a formal church structure. A Christian may exercise religion through prayer, spiritual encouragement, discipleship, confession, scriptural counsel, and other forms of soul care because religious exercise belongs to the people as well as to institutions. Religious institutions receive special protection in matters of internal doctrine and governance, and the Supreme Court has reaffirmed that autonomy repeatedly. But those institutional protections do not cancel the parallel truth that individual citizens also possess their own First Amendment rights to speak, minister, pray, teach, and care for others in ways motivated by sincere religious conviction.

Nor does obtaining a state professional license, by itself, extinguish those constitutional freedoms. The Supreme Court has expressly rejected the theory that speech loses First Amendment protection simply because it is uttered by licensed professionals, and *Chiles* builds on that same premise in the counseling context. A state may regulate many forms of professional conduct, but it may not simply reduce a person's speech rights by placing that person inside a licensing regime and then treating all protected verbal ministry as state-controlled professional practice.

Accordingly, a counselor who holds a state license does not forfeit the right to engage in separate faith-based soul care merely because he or she also possesses professional credentials. The better constitutional view is that licensure does not erase the speaker's identity as a citizen or believer. Where the person is not acting in the capacity of a state-licensed professional, does not invoke state licensure as the source of authority, does not misrepresent the nature of the relationship, and proceeds through informed consent that makes clear the care being offered is faith-based rather than licensed clinical treatment, the Constitution provides a substantial basis for treating that activity as protected religious exercise and speech, not as automatically transformed into licensable practice. *NIFLA* is particularly important here because it rejects any broad doctrine under which the government may diminish constitutional protection merely by attaching a professional label to the speaker.

That said, precision matters. This argument is strongest where the facts clearly establish a genuine distinction between licensed professional services and separately offered faith-based ministry. Informed consent is therefore important, not because constitutional rights depend on a disclaimer, but because clarity helps show that the individual is not deceiving

anyone, not trading on state licensure while disclaiming its duties, and not confusing a pastoral or religious relationship with a formally licensed clinical engagement. In that setting, the State's effort to prohibit voluntary, speech-based, faith-informed soul care by a private citizen would burden both free exercise and free speech. And nothing in the First Amendment suggests that a person must become clergy, join a payroll, or obtain a 501(c)(3) umbrella before he or she may pray with, counsel, encourage, and spiritually assist another person in obedience to religious conviction.

Conclusion

The Church's care for wounded persons is not an incidental side project. It is a central expression of its doctrine, mission, and historic witness. For millennia, the Church has ministered to afflicted minds and hearts through words, relationships, prayer, discipline, teaching, and consolation. Modern insights from neuroscience and psychology may sharpen those ministries, but they do not secularize them. Where the Church uses only non-physical, voluntary, speech-based means to help people pursue healing, growth, repentance, resilience, peace, and restored life before God, the State may not convert that ministry into a licensable privilege.

That protection is not confined to tax-exempt organizations, ordained clergy, or employees of formal religious institutions. Religious liberty is not created by 501(c)(3) status, and it is not lost when a believer also holds a state license. Individual citizens retain the right to practice their faith through soul care, prayer, discipleship, and faith-based counsel. And where a licensed counselor, through informed consent and clear separation of roles, offers distinctly faith-based care not in the capacity of a state-licensed professional, the Constitution supplies a substantial foundation for protecting that ministry as religious exercise and speech rather than treating it as automatically subject to professional control.

Under the First Amendment, the government may regulate fraud, coercion, physical abuse, and genuinely medical or invasive acts. It may not, however, seize control of the Church's ministry of speech, nor may it require the Church, or individual believers acting in sincere religious exercise, to obtain civil permission before speaking hope, truth, wisdom, and evidence-informed care to the suffering. To hold otherwise would be to allow the State to license the cure of souls.