

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Brokamp v. District of Columbia

Brokamp · No. Civil Action No. 20-3574 (TJK) · Decided June 24, 2026

SUMMARY

The United States District Court for the District of Columbia considers a First Amendment challenge to the District's professional-counselor licensure requirement as applied to a Virginia-licensed psychologist seeking to provide teletherapy to District residents. The court concludes that the plaintiff's talk therapy constitutes protected speech and that the licensure requirement fails intermediate scrutiny as applied to her. The court grants the plaintiff partial summary judgment and awards declaratory and injunctive relief, while declining to reach her facial overbreadth claim.

CASE DETAILS

COURT	United States District Court for the District of Columbia
WRITING FOR THE COURT	Timothy J. Kelly
JURISDICTION	United States District Court for the District of Columbia
DECIDED	June 24, 2026
DOCKET	Civil Action No. 20-3574 (TJK)
DISPOSITION	other
PROCEDURAL POSTURE	Cross-motions for summary judgment in an as-applied and facial First Amendment challenge to the District of Columbia's professional-counselor licensure requirement.
STANDARD OF REVIEW	Summary judgment under Federal Rule of Civil Procedure 56; the court assumed intermediate scrutiny for the as-applied First Amendment challenge and required the District to show that the licensure requirement advanced important governmental interests unrelated to suppressing speech and did not burden substantially more speech than necessary.
PRECEDENTIAL VALUE	published

TOPICS

- free speech
- first amendment
- intermediate scrutiny
- overbreadth doctrine
- declaratory judgment

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Brokamp had Article III standing to bring an as-applied challenge to the District's professional-counselor licensure provisions.
2. Whether the District's requirement that Brokamp obtain a District license before providing talk therapy to District residents violates the First Amendment as applied to her.
3. Whether the court should reach Brokamp's facial overbreadth challenge after resolving her as-applied claim.
4. Whether Brokamp was entitled to declaratory and permanent injunctive relief.

HOLDINGS

1. Brokamp has standing to challenge the District's definition of professional counseling and its practice-act licensure requirement because she suffered professional and financial injury, the injury was traceable to the challenged provisions, and favorable relief would redress it.
2. Brokamp's talk-therapy activities, which consist essentially of speaking with clients, are speech protected by the First Amendment rather than conduct that only incidentally involves speech.
3. The District's licensure requirement, as applied to Brokamp's talk therapy, violates the First Amendment because the District failed to show that the requirement advances an important governmental interest and failed to establish a sufficiently close fit between its asserted interests and the burden imposed on her speech.
4. The court declined to reach Brokamp's facial overbreadth challenge because it had already granted relief on her as-applied claim.
5. Brokamp is entitled to a declaratory judgment and a permanent injunction barring the District from enforcing the challenged provisions against her.

KEY QUOTATIONS

“The Supreme Court has recently concluded that such “talk therap[y]” qualifies as speech.” (at 11)

“Failing to provide evidence that the licensure regulation at issue addresses a genuine, non-speculative injury suffered by the public, the District offers up four other considerations in support of its law.” (at 17-18)

“A less-burdensome licensing regime is possible here: the District could simply recognize professional counseling licenses issued by other states like Virginia.” (at 18-20)

“The violation of First Amendment rights, “for even minimal periods of time, unquestionably constitutes irreparable injury.”” (at 22)

FACTUAL BACKGROUND

Brokamp is a Virginia-licensed psychologist and professional counselor who operates a teletherapy practice treating anxiety, depression, PTSD, and relationship-related issues. She provides talk therapy by video and

telephone, does not prescribe medication, and sought to serve District residents who contacted her for counseling. The District's Board of Professional Counseling told her that she could not provide teletherapy to District residents without a District license, even if she disclosed her Virginia licensure and described her services generically as counseling. Virginia and the District lacked reciprocity, and the District's temporary pandemic waiver had ended.

PROCEDURAL HISTORY

Brokamp sued the District of Columbia in 2020, challenging the practice-act portion of the District's professional-counselor licensure law under the First Amendment and on vagueness grounds. The court dismissed the vagueness claim in March 2022 but allowed the First Amendment claims to proceed. After discovery, the parties cross-moved for summary judgment; the court stayed the case while awaiting implementation of the Counseling Compact, then lifted the stay after the Compact remained unimplemented and the parties agreed the claims were still live. The court granted Brokamp's motion in part, denied the District's motion, and awarded declaratory and injunctive relief.

DISPOSITION

other

CASES CITED

- Lopez v. Council on Am.-Islamic Rels. Action Network, Inc., 826 F.3d 492, 496 (D.C. Cir. 2016)
- Edwards v. District of Columbia, 755 F.3d 996, 1001, 1003, 1009 (D.C. Cir. 2014)
- Honig v. Doe, 484 U.S. 305, 317 (1988)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)
- Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016)
- Lance v. Coffman, 549 U.S. 437, 439 (2007) (per curiam)
- Town of Chester v. Laroe Estates, Inc., 581 U.S. 433, 439 (2017)
- Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949)
- Chaplinsky v. New Hampshire, 315 U.S. 568, 571-72 (1942)
- Green v. United States Department of Justice, 54 F.4th 738, 745 (D.C. Cir. 2022)
- Cornelius v. NAACP Legal Defense & Educational Fund, Inc., 473 U.S. 788, 797 (1985)
- Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 643, 653 (1994)
- Ward v. Rock Against Racism, 491 U.S. 781, 791, 798 (1989)
- Turner Broadcasting System, Inc. v. FCC, 520 U.S. 180, 189 (1997)
- Reed v. Town of Gilbert, 576 U.S. 155, 163-64, 171 (2015)
- United States v. Playboy Entertainment Group, Inc., 529 U.S. 803, 816, 823 (2000)
- National Institute of Family & Life Advocates v. Becerra, 585 U.S. 755, 767-68 (2018)
- National Association for Advancement of Multijurisdictional Practice v. Howell, 851 F.3d 12, 20 (D.C. Cir. 2017)

- Holder v. Humanitarian Law Project, 561 U.S. 1, 16, 21-22, 28 (2010)
- Chiles v. Salazar, 146 S. Ct. 1010, 1022-24, 1031 (2026)
- Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 884 (1992)
- Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022)
- 360 Virtual Drone Services LLC v. Ritter, 102 F.4th 263, 274 (4th Cir. 2024)
- United States v. Alvarez, 567 U.S. 709, 725 (2012)
- Brokamp v. [New York mental-health counselor licensing case], 66 F.4th 391, 398 n.22, 402
- Otto v. City of Boca Raton, 981 F.3d 854, 869 (11th Cir. 2020)
- United States v. Popa, 187 F.3d 672, 678 (D.C. Cir. 1999)
- Broadrick v. Oklahoma, 413 U.S. 601, 613 (1973)
- Board of Trustees v. Fox, 492 U.S. 469, 484-85 (1989)
- United States v. National Treasury Employees Union, 513 U.S. 454, 477-78 (1995)
- eBay Inc. v. MercExchange, LLC, 547 U.S. 388, 391 (2006)
- Mills v. District of Columbia, 571 F.3d 1304, 1312 (D.C. Cir. 2009)
- Elrod v. Burns, 427 U.S. 347, 373 (1976) (plurality opinion)
- Wisconsin Gas Co. v. FERC, 758 F.2d 669 (D.C. Cir. 1985)
- Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 297 (D.C. Cir. 2006)
- Anatol Zukerman & Charles Krause Reporting, LLC v. United States Postal Service, 64 F.4th 1354, 1364 (D.C. Cir. 2023)
- Gordon v. Holder, 721 F.3d 638, 653 (D.C. Cir. 2013)