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With *Chiles v. Salazar*, Supreme Court Weighs in on Viewpoint Discrimination in the Therapist's Office

***Chiles v. Salazar*, 607 U.S. ___ (Mar. 31, 2026)**

In *Chiles v. Salazar*, the U.S. Supreme Court held that a Colorado law banning licensed counselors from engaging in talk-only "conversion therapy" with minors violates the First Amendment. A majority of the court concluded that the law impermissibly regulates speech based on viewpoint and is therefore subject to strict scrutiny review, a demanding standard under which laws rarely survive. The decision highlights the Supreme Court's stalwart protection for freedom of speech, even in the face of competing interests, like state regulation of professional care.

Background

In 2019, Colorado adopted a law barring licensed counselors from engaging in conversion therapy with minors. The law defines conversion therapy broadly as "*any* practice or treatment … that attempts … to change an individual's sexual orientation or gender identity" or any effort "to change behaviors or gender expressions or to eliminate or reduce" same-sex attractions. Despite this general prohibition, licensed counselors can still provide "[a]cceptance, support, and understanding" for an individual's "identity exploration and development." Counselors may also assist minors undergoing gender transition.

Kaley Chiles is a Colorado-licensed Christian counselor. In her practice, she engages only in talk therapy with clients, many of whom often request religiously informed care. Chiles sought a preliminary injunction to prohibit enforcement of Colorado's law against her under the Free Speech Clause of the First Amendment. Chiles argued that the law should be subject to strict scrutiny

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because it regulates the views she can express in her talk therapy. For example, if a minor client wanted to explore their gender identity, Chiles could employ her talk therapy to express support and acceptance. But if a minor client wanted to eliminate or reduce same-sex attractions, she could not employ her talk therapy to that end.

Supreme Court's Opinion

The Supreme Court agreed. Writing for the 8-1 majority, Justice Gorsuch confirmed that Chiles had standing to challenge the Colorado law, which chilled her speech. An as-applied ruling in her favor could remedy that chilling effect.

Further, the Supreme Court determined that the law regulated speech based on viewpoint and should be subject to strict scrutiny — an exacting standard that requires the government to prove that its law is narrowly tailored to achieve a compelling state interest. In applying strict scrutiny, the court reinforced that content-based laws are "presumptively unconstitutional." And it repeated that viewpoint-based regulation is "an egregious form" of content regulation. Because the Colorado law allows licensed counselors to employ only some messages regarding a minor's sexual orientation and gender identity, but prohibits other messages on the same topic, the Supreme Court concluded it regulates viewpoint.

Colorado and the lower courts had argued that the less stringent "rational basis review" should apply because the law primarily regulates conduct and only incidentally impacts speech. The Supreme Court majority roundly rejected this argument. As applied to Chiles, the Supreme Court made clear that the law regulates only her speech, which is strictly in talk therapy. She does not "prescribe any medicines, perform any physical treatments, or engage in any coercive or aversive practices." According to the court, this speech does not "become conduct just because it can also be described as a 'treatment,' a 'therapeutic modality,' or anything else." Instead, First Amendment protections extend equally to professional speech as they do to other forms of speech.

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The Supreme Court also rejected the three historical analogies proffered by Colorado □state medical-licensing laws, informed-consent requirements, and malpractice liability □as insufficient to place the law within a recognized exception to strict scrutiny. The court criticized this argument for imposing "far too high a level of generality" on three specific sets of laws with specific purposes, thus seeking the creation of "a cavernous 'First Amendment Free Zone.'" By rejecting these arguments, the Supreme Court foreclosed the primary defenses states might otherwise raise for other content-based professional-conduct regulations. Thus, the court reversed and remanded the case for further review, which □based on the court's reasoning □should be conducted under strict scrutiny.

Justice Kagan authored a concurring opinion, joined by Justice Sotomayor, in which she agreed that the Colorado law improperly regulated speech based on viewpoint, but added that if the law had instead been "a content-based but viewpoint-neutral law, it would raise a different and more difficult question." The concurrence noted that medical care generally involves speech and, as that is a highly regulated industry, those regulations might include restrictions on speech that are content-based but viewpoint-neutral. Whether such a law would survive the First Amendment is left "for another day."

In the lone dissent, Justice Ketanji Brown Jackson argued that Colorado's decision to ban licensed counselors from engaging in conversion therapy with minors is a valid exercise of state police power that is not presumptively unconstitutional in this context. In her view, the Colorado law primarily regulates medical treatment and only incidentally regulates speech, thereby warranting a lower level of scrutiny under the First Amendment.

Key Takeaways

- Viewpoint-based laws — like Colorado's law here — are "presumptively unconstitutional" and trigger strict scrutiny. Such laws are an "egregious form" of content-based regulation from which governments must nearly always abstain.

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- First Amendment protections extend equally to professional speech as they do to other forms of speech. Because viewpoint-based discrimination triggers strict-scrutiny review, it would seem that the Colorado law is unlikely to survive on remand.
- The Supreme Court's opinion is narrow in scope: it considers the law's application to talk therapy only, and not to other forms of conversion-therapy techniques, such as aversion therapies and physically coercive methods.
- Defenses based on historical-tradition arguments such as licensing, informed consent, and malpractice were also narrowed, as the Supreme Court found them insufficient to avoid strict-scrutiny analysis.

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