

Supreme Court Holds Strict Scrutiny Applies to Colorado Conversion Therapy Law

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Chiles v. Salazar, No. 24-539, 2026 WL 872307 (U.S. March 31, 2026)

The U.S. Supreme Court held, 8-1, that Colorado’s law banning conversion therapy, as applied to talk therapy by a licensed counselor, is a content- and viewpoint-based regulation of speech subject to strict scrutiny under the First Amendment. The ruling marks the first time the Court has directly addressed the constitutionality of conversion therapy bans and resolves a circuit split on the issue.

Writing for the majority, Justice Neil Gorsuch rejected Colorado’s argument that its law merely regulates professional conduct with only an incidental burden on speech. Instead, the Court found that the law directly targets the content of speech—specifically, the spoken word, which Gorsuch called “perhaps the quintessential form of protected speech.” Critically, the law “goes a step further” by prescribing what viewpoints a counselor may express.

The majority stressed that its holding is “a narrow one.” The Court did not strike down Colorado’s law and acknowledged that other applications of the statute—such as prohibitions on physical interventions—may be constitutional.

Factual Background: In 2019, Colorado adopted a law prohibiting licensed counselors from engaging in “conversion therapy” with minors. The law defines “conversion therapy” broadly, in part, to include “any practice or treatment . . . that attempts . . . to change an individual’s sexual orientation or gender identity.”

Kaley Chiles, a licensed counselor who provides talk therapy, filed suit under 42 U.S.C. § 1983, alleging the law violated her rights under the free speech and free exercise clauses of the First Amendment.

Key Takeaways:

- First Amendment protections apply with full force to speech by licensed professionals. The Court rejected any notion that “professional speech” is a separate category subject to diminished constitutional protection.
- A law that regulates the content of speech cannot escape strict scrutiny merely because it also regulates non-expressive conduct in other applications.
- The decision could impact conversion therapy bans in more than 20 states and prompt a wave of new constitutional challenges.

Concurring Opinion: Justice Elena Kagan wrote a concurring opinion, joined by Justice Sonia Sotomayor, agreeing that Colorado’s law “conflicts with core First Amendment principles because it regulates speech based on viewpoint.” Notably, however, Justice Kagan explained that a content-based but viewpoint-neutral law would “raise a different and more difficult question”—signaling that not all conversion therapy regulations would necessarily face the same fate.

Dissenting Opinion: Justice Ketanji Brown Jackson, the lone dissenter, warned that the decision “opens a dangerous can of worms” by undermining states’ longstanding authority to regulate the practice of medicine. Justice Jackson argued that Colorado’s law regulates professional conduct—not speech “as speech”—and that its incidental burden on a talk therapist’s expression does not trigger heightened scrutiny.

Next Steps: The case has been remanded to the U.S. Court of Appeals for the Tenth Circuit to apply strict scrutiny to the law, consistent with the Supreme Court’s holding.