

All Talk: *Chiles v. Salazar* and the Application of Neutral Principles

Will Creeley*

In *Chiles v. Salazar*, the Supreme Court considered a First Amendment challenge to Colorado’s ban on “conversion therapy”—counseling intended to change a person’s gender identity or attraction to the same sex. Unsurprisingly, the case attracted widespread attention; conversion therapy has a dark and painful history, and both the practice and its intended aims are intensely controversial. By an 8–1 decision, the Court ruled in favor of plaintiff Kaley Chiles, a licensed counselor and a “committed Christian who seeks to live out her faith in every aspect of her life.”¹ Following the Court’s ruling, reactions to the case followed a now-familiar culture war narrative: A conservative Court once again striking down progressive legislation to instead advance the interests of religious litigants, and once again doing so under the guise of the First Amendment’s protection of free speech.²

This description is accurate enough, but superficial. On closer look, the Court’s decision belies this simple gloss. *Chiles* should be welcomed by First Amendment litigants of all political commitments (or none at all) for two reasons.

First, the Court availed itself of the opportunity to draw a brighter line between conduct and speech in the professional context. Chiles’s practice was all talk, literally: a conversation between

* Legal Director, Foundation for Individual Rights and Expression.

¹ *Kaley Chiles’s Story*, ALL. DEFENDING FREEDOM (Mar. 31, 2026), <https://adflegal.org/article/kaley-chiles-story> (last visited July 27, 2026).

² See, e.g., Craig Konnoth, *Supreme Court’s Conversion Therapy Ruling Erases Gay, Transgender Identity*, THE HILL (Apr. 9, 2026, 10:00 AM ET), <https://thehill.com/opinion/judiciary/5818265-supreme-courts-conversion-therapy-ruling-erases-gay-transgender-identity>; Jude Cramer, *Supreme Court Conversion Therapy Ruling Ignores History of Harm in the Name of “Free Speech.” It Could Set a Chilling Precedent*, FAST CO. (Apr. 1, 2026), <https://www.fastcompany.com/91519825/conversion-therapy-supreme-court-scotus-vote-decision-ignores-history-of-harm-free-speech>.

a willing speaker and a willing listener. But Colorado claimed the authority to restrict what a licensed counselor like Chiles might say to a client specifically because of the views she expressed. By rejecting the state's viewpoint-based intrusion into the counselor-client relationship, the Court avoided blessing a red-state/blue-state patchwork of professional speech codes—protecting not just the counseling offered by Chiles, but mirror-image conversations about gender affirmation, for example, or reproductive health, vaccines, autism, marijuana, end-of-life care, and so on.

Second, *Chiles* reinforces a basic proposition: speech is speech. By denying Colorado's attempt to refashion Chiles's speech as conduct, *Chiles* underscores not only *National Institute of Family and Life Advocates v. Becerra*'s rejection of lesser scrutiny for "professional speech,"³ but also the broader suspicion of novel attempts to expand the government's authority over speech that the Court articulated in *United States v. Stevens*.⁴ *Chiles*'s revitalization of those tenets of First Amendment doctrine is a welcome development—especially now, when private litigants, state attorneys general, and federal government agencies are all aggressively attempting to recast core protected speech as tortious conduct or criminal activity subject to investigation, regulation, and punishment. The Court's reminder should echo: "The First Amendment is no word game."⁵

Chiles buttresses neutral First Amendment principles that will just as readily protect litigants who advance views exactly the opposite of Ms. Chiles and her supporters. To that end, both Justice Neil Gorsuch, writing for the majority, and Justice Elena Kagan, joined by Justice Sonia Sotomayor in concurrence, made clear that Colorado's legislation was fatally flawed because it discriminated on the basis of viewpoint. The Court usually knows what to do with laws that burden or ban speech because of the viewpoint expressed: apply strict scrutiny. Thankfully, that's exactly what the *Chiles* Court did. Because Chiles "cannot voice certain 'perspective[s]'" the State disfavors when speaking with consenting clients," Colorado's law warranted (and could not withstand) strict scrutiny.⁶ By faithfully

³ 585 U.S. 755 (2018) [hereinafter *NIFLA*].

⁴ 559 U.S. 460, 471 (2010).

⁵ *Chiles v. Salazar*, 607 U.S. 627, 628 (2026).

⁶ *Id.* at 646 (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)).

adhering to its precedent, the Court arrived at a speech-protective, doctrinally consistent result that should prove useful for the defense of First Amendment rights.⁷

This article first provides a background canvassing conversion therapy's history, Colorado's legislation barring the practice, Kaley Chiles's challenge to that ban, and relevant circuit precedent. It next reviews notable exchanges from oral argument before the Court and analyzes the majority opinion, the concurrence, and the dissent. The article then assesses *Chiles's* potential impact, first arguing that the ruling broadly secures First Amendment protections for professionals beyond the limited context of conversion therapy, then discussing *Chiles's* utility as a shield against current attempts to rebrand protected expression as actionable conduct. Finally, the article concludes that *Chiles's* emphasis on viewpoint neutrality strengthens other recent First Amendment decisions from the Court and suggests that consistent application of the neutral principles articulated will promote culture war disarmament by reminding government officials of the threat of mutually assured viewpoint-based censorship.

I. Background

A. Conversion Therapy

Conversion therapy has a long, painful history. The practice was born of the fact that “[u]ntil the mid-20th century, same-sex intimacy long had been condemned as immoral by the state itself in most Western nations,” including the United States, and that condemnation was “often embodied in the criminal law.”⁸ Not only did homosexuality carry the threat of criminal conviction, it was “treated as an illness” and “classified as a mental disorder” in the *Diagnostic and Statistical Manual of Mental Disorders*.⁹ The desperation engendered

⁷ In that way, *Chiles* stands in marked contrast to the motivated, result-oriented reasoning on display in the Court's resolution of another recent First Amendment case, *Free Speech Coalition v. Paxton*, 606 U.S. 461 (2025), rejecting a challenge to a Texas statute requiring adults to verify their ages before accessing speech obscene as to minors on private websites. For a sharp discussion of *Paxton's* troubling dismissal of binding precedent, authored by one of the attorneys representing the plaintiffs before the Court, see Vera Eidelman, *Free Speech Coalition v. Paxton: A Departure, but Not a Roadmap*, 2024–2025 CATO SUP. CT. REV. 163, 175–76 (2025).

⁸ *Obergefell v. Hodges*, 576 U.S. 644, 660 (2015).

⁹ *Id.* at 661.

by such intense social stigma and brutally repressive consequences meant attempts to “cure” people of their sexuality or gender identity were widespread.¹⁰ The “treatments” took a variety of forms, with some including the use of electric shocks or chemicals¹¹—a practice described as torture by those subjected to it.¹²

Today, groups like the American Psychiatric Association,¹³ the American Counseling Association,¹⁴ and the American Medical Association¹⁵ oppose conversion therapy, linking it to negative mental health outcomes and suicide. In 2012, California became the first state to enact legislation banning the practice;¹⁶ Colorado followed in 2019. When the Court granted *certiorari* to Chiles’s challenge,

¹⁰ See, e.g., Katherine Ott, *The History of Getting the Gay Out*, SMITHSONIAN MAG. (June 24, 2021), <https://www.smithsonianmag.com/blogs/national-museum-american-history/2021/06/24/getting-the-gay-out/> (“When non-conforming identities were considered a medical disease, psychiatrists used medical treatments, such as electroconvulsive shock, lobotomy, drugs, and psychoanalysis to cure or prevent ‘deviancy.’”).

¹¹ See, e.g., Susan Donaldson James, *Mormon “Gay Cure” Study Used Electric Shocks Against Homosexual Feelings*, ABC NEWS (Mar. 28, 2011), <https://abcnews.com/Health/mormon-gay-cures-reparative-therapies-shock-today/story?id=13240700>; Manon Auffret, Marc Verin, and Andrew Lees, *When Doctors Turned Tormentors: Apomorphine Aversion Therapy and Homosexuality*, NEUROLOGY (Apr. 9, 2024), <https://www.neurology.org/doi/10.1212/WNL.0000000000205461>.

¹² See, e.g., Robin Opsahl, *Advocates, Protesters Rally Against “Conversion Therapy” Bill in Iowa House*, IOWA CAP. DISPATCH (Feb. 9, 2026, 4:42 PM), <https://iowacapitaldispatch.com/2026/02/09/advocates-protesters-rally-against-conversion-therapy-bill-in-iowa-house/> (“Keenan, Crow with One Iowa, said conversion therapy is ‘torture.’ Since the bill was publicized, Crow said One Iowa, an LGBTQ advocacy organization, has received countless emails from Iowans detailing their ‘horrific’ experiences with conversion therapy, which include institutionalization and electroshock therapy.”); Lucas Wilson, *Conversion Therapy Is Abuse & Torture. It Should Never Be Legal*, LGBTQ NATION (Mar. 6, 2026, 9:34 AM ET), <https://www.lgbtqnation.com/2025/10/conversion-therapy-is-it-should-never-be-legal/>.

¹³ *Position Statement on Conversion Therapy and LGBTQ+ Patients*, AM. PSYCHIATRIC ASS’N., at 1 (2024), <https://www.psychiatry.org/getattachment/3d23f2f4-1497-4537-b4de-fe32fe8761bf/Position-Conversion-Therapy.pdf> (last visited July 28, 2026).

¹⁴ *Conversion Therapy Statement*, AM. COUNSELING ASS’N., <https://www.counseling.org/about/values-statements/conversion-therapy> (last visited July 28, 2026).

¹⁵ *Advocating for the LGBTQ Community*, AM. MED. ASS’N., <https://www.ama-assn.org/public-health/population-health/advocating-lgbtq-community> (last visited July 28, 2026).

¹⁶ Ellen Barry, *What Is Conversion Therapy? A History of the Practice*, N.Y. TIMES (Oct. 7, 2025), <https://www.nytimes.com/2025/10/07/us/politics/conversion-therapy-supreme-court.html>.

27 states banned counselors from engaging in conversion therapy with minors.¹⁷

But what if the therapy doesn't involve shocks, chemicals, or "aversive physical interventions" of any kind?¹⁸ What if it instead involves only a counselor and a client talking to each other? In Colorado, that conversation would be unlawful, too. The state's law prohibited counselors from "any practice or treatment" that "attempts or purports to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex."¹⁹ "Any practice or treatment" means any practice or treatment, including a voluntary conversation.

But even with the statute's broad sweep, the Colorado legislature was careful to note an exception to its definition of conversion therapy. Although the law prohibited conversations with a client who sought to "eliminate or reduce" same-sex attraction, it explicitly exempted practices with other aims—such as conversations in which a counselor provided "[a]cceptance, support, and understanding" to "facilitate" a client's "identity exploration and development," or provided "[a]ssistance to a person undergoing gender transition."²⁰ The law permitted a counselor to talk to a client with one understanding of their sexuality, but not another.

B. Chiles's Suit

Chiles filed an as-applied pre-enforcement challenge to the law in September 2022, alleging it violated her First Amendment right to freedom of expression by preventing her from providing "licensed, ethical, and professional counseling"—that is, speech—"that honors her clients' autonomy and right to self-determination."²¹ Colorado's

¹⁷ Amy Harmon, *A Debate Over "Conversion Therapy," Once Widely Condemned, Is Back*, N.Y. TIMES (Oct. 7, 2025), <https://www.nytimes.com/2025/10/07/us/conversion-therapy-transgender.html>.

¹⁸ *Chiles*, 607 U.S. at 644.

¹⁹ Colo. Rev. Stat. §12-245-202(3.5)(a)(2025).

²⁰ *Id.* §12-245-202(3.5)(a), (b), (I) (II).

²¹ Complaint at 2, *Chiles v. Salazar*, No. 1:22-cv-02287, 2022 U.S. Dist. LEXIS 227887 (D. Colo. Dec. 19, 2022), ECF No. 1. Chiles's complaint also alleged violations of her First Amendment right to the free exercise of religion and her clients' First Amendment right to receive information, as well as a Fourteenth Amendment vagueness claim. *Id.* at 4, 34, 40. Like the Supreme Court, this article focuses on Chiles's free expression claim.

law prevented her from talking to clients about their sexuality, Chiles alleged, leaving her unable to help them “prioritize their religious and moral values above unwanted same-sex sexual attractions, behaviors, or identities . . . even when the client desires and freely consents to such counseling.”²² Because the law restricted her speech, which Chiles identified as her “only tool,” it prevented her from doing her job, “lest she dare say something contrary to the state-approved orthodoxy mandated by the law.”²³

A federal district court disagreed. Denying Chiles’s motion for preliminary injunction, the court held Chiles’s First Amendment rights could not have been violated because Colorado’s law “regulates professional conduct rather than speech.”²⁴ Even if the law reached Chiles’s conversations with her clients, “speech made in professional contexts is not always pure speech.”²⁵ Chiles’s conversation was treatment, not talk, and thus any impact the law imposed on Chiles’s ability to communicate with her clients was “incidental to the professional conduct it regulates.”²⁶ Declaring the law both viewpoint- and content-neutral, the district court applied rational-basis review and concluded that the law easily cleared that low bar.²⁷

The district court’s analysis relied in significant part on *Tingley v. Ferguson*, a 2022 Ninth Circuit decision upholding Washington State’s conversion therapy law against a “nearly identical”²⁸ First Amendment challenge.²⁹ In *Tingley*, the Ninth Circuit considered whether NIFLA’s rejection of lesser scrutiny for “professional speech” undercut *Pickup v. Brown*—a 2014 decision in which it upheld California’s conversion ban.³⁰ NIFLA had explicitly criticized the Ninth Circuit’s ruling in *Pickup*, yet the *Tingley* panel found no reason to change

²² *Id.* at 2–3.

²³ *Id.* at 2, 25.

²⁴ *Chiles v. Salazar*, No. 1:22-cv-02287, 2022 U.S. Dist. LEXIS 227887, at *17 (D. Colo. Dec. 19, 2022).

²⁵ *Id.* at *22.

²⁶ *Id.* at *25.

²⁷ *Id.* at *25–29.

²⁸ *Id.* at *14.

²⁹ 47 F.4th 1055 (9th Cir. 2022).

³⁰ 740 F.3d 1208, 1229 (9th Cir. 2014) (“Most, if not all, medical and mental health treatments require speech, but that fact does not give rise to a First Amendment claim when the state bans a particular treatment.”).

course. “States do not lose the power to regulate the safety of medical treatments performed under the authority of a state license,” the Ninth Circuit reasoned, “merely because those treatments are implemented through speech rather than through scalpel.”³¹

On appeal to the U.S. Court of Appeals for the Tenth Circuit, Chiles argued that the district court erred by treating her counseling as “medical treatment” instead of “a client-directed conversation consisting entirely of speech.”³² Chiles called the Tenth Circuit’s attention to *Otto v. City of Boca Raton*, another First Amendment challenge to a conversion therapy ban.³³ In that 2020 decision, the Eleventh Circuit struck down Boca Raton’s ban and rejected the government’s argument that it was a regulation of conduct, not speech. The question was “easy,” wrote the Eleventh Circuit majority; “because the ordinances depend on what is said, they are content-based restrictions that must receive strict scrutiny.”³⁴

Contra *Tingley* and *Pickup*, the Eleventh Circuit held that Boca Raton could not escape the First Amendment simply by classifying its ban as a regulation on treatment, not speech—the panel characterized that kind of relabeling as “a dubious constitutional enterprise.”³⁵ “Whether therapy is prohibited depends only on the content of the words used in that therapy, and the ban on that content is because the government disagrees with it,” explained the court, “[a]nd whether the government’s disagreement is for good reasons, great reasons, or terrible reasons has nothing at all to do with it.”³⁶

But echoing the district court’s analysis, the Tenth Circuit disagreed with Chiles. Rejecting the Eleventh Circuit’s reasoning in *Otto*, the Tenth Circuit concluded that Colorado’s law “does not regulate expression,” but rather “the provision of a therapeutic modality—carried out through use of verbal language—by a licensed practitioner authorized by Colorado to care for patients.”³⁷

³¹ *Tingley*, 47 F. 4th at 1064.

³² Brief of Appellant/Cross-Appellee at 23 n.4, *Chiles v. Salazar*, 116 F.4th 1178 (10th Cir. 2024) (No.22-1445), ECF No. 31 (citation omitted).

³³ 981 F.3d 854 (11th Cir. 2020).

³⁴ *Id.* at 861.

³⁵ *Id.* at 865 (quoting *Wollschlaeger v. Governor*, 848 F.3d 1293, 1309 (11th Cir. 2017)).

³⁶ *Id.* at 863.

³⁷ *Chiles v. Salazar*, 116 F.4th 1178, 1208 (10th Cir. 2024).

The Tenth Circuit sought to account for *NIFLA* by acknowledging that “Colorado’s power to regulate the counseling profession does not authorize the state to regulate all speech uttered by a counseling professional.”³⁸ But it nevertheless agreed with the district court’s conclusion that Colorado’s law is “a regulation of professional conduct incidentally involving speech,” and thus warranted—and survived—rational basis review, not strict scrutiny.³⁹ The ban “incidentally involves speech because an aspect of the counseling conduct, by its nature, necessarily involves speech,” reasoned the court.⁴⁰ Chiles’s First Amendment right to speak is “implicated” by the law, “but it is not abridged.”⁴¹

Chiles sought the Supreme Court’s review to resolve the split between the circuit courts of appeals—with the Ninth and now Tenth Circuits finding conversion therapy bans incidental and permissible regulations of professional speech, and the Eleventh Circuit on the other side.⁴² The Court agreed to hear her case.

II. Oral Argument

At oral argument, the Justices focused on two central questions: (1) whether talk therapy is better considered conduct or speech and (2) whether Colorado’s law discriminates on the basis of viewpoint in its regulation of conversion therapy.

A. *Speech, Not Conduct*

James Campbell, Chiles’s counsel, emphasized repeatedly that Chiles’s therapy is different from medical practices involving conduct, characterizing her interactions with clients as “an ongoing, active dialogue where she’s helping them to explore their goals, and that absolutely has to be protected by the First Amendment.”⁴³

³⁸ *Id.* at 1204.

³⁹ *Id.* at 1214, 1221.

⁴⁰ *Id.* at 1210.

⁴¹ *Id.*

⁴² An older Third Circuit case involving New Jersey’s ban on conversion therapy—decided in 2014, before *NIFLA*—rejected the “counter-intuitive conclusion” that a counselor’s talk therapy with clients constitutes “conduct.” *King v. Governor of N.J.*, 767 F.3d 216, 225 (3d Cir. 2014), cert. denied, *King v. Christie*, 575 U.S. 996 (2015).

⁴³ Transcript of Oral Argument at 29, *Chiles v. Salazar*, 607 U.S. 627 (2026) (No. 24-539).

Presaging her dissent, Justice Ketanji Brown Jackson pressed Campbell on what differentiates Chiles from “a medical professional who has exactly the same goals, exactly the same interests, and would just be prescribing medication for that rather than her talking with the client.”⁴⁴ “Because this involves a conversation,” not conduct, Campbell replied.⁴⁵ If the “treatment” at issue “consists only of speech, then it doesn’t trigger the speech-incidental-to-conduct doctrine.”⁴⁶

When Justice Kagan and Chief Justice John Roberts engaged him on the same point, Campbell readily granted that if Chiles’s practice involved more than talk therapy—“administering drugs, performing procedures, conducting examinations”—the analysis would be different.⁴⁷ Likewise, Campbell agreed that if Chiles’s speech was “closely connected” to that kind of conduct, it would be incidental and thus subject only to rational basis review.⁴⁸ For example, speech “describing how to take the medication” would be incidental to the conduct of prescribing medication.⁴⁹ (Campbell noted that Chiles has no authority to prescribe drugs, not being a psychiatrist.)

B. Viewpoint Discrimination

Several Justices sought to tease out the extent to which Colorado’s law relied on the viewpoint Chiles or other professional counselors espoused, and their questions evinced skepticism of the law’s neutrality. In one telling exchange with Shannon Stevenson, Colorado’s solicitor general, Justice Samuel Alito argued that the law applies unequally to potential clients:

So, in the first situation, an adolescent male comes to a licensed therapist and says he’s attracted to other males, but he feels uneasy and guilty with those feelings, he wants to end or lessen them, and he asks for the therapist’s help in doing so.

⁴⁴ *Id.* at 28.

⁴⁵ *Id.* at 29.

⁴⁶ *Id.* at 18.

⁴⁷ *Id.* at 12.

⁴⁸ *Id.* at 13.

⁴⁹ *Id.*

The other situation is a similar adolescent male comes to a licensed therapist, says he's attracted to other males, feels uneasy and guilty about those feelings, and he wants the therapist's help so he will feel comfortable as a gay young man.

It seems to me . . . your statute dictates opposite results in those two situations based on the view—based on the viewpoint expressed. One viewpoint is the viewpoint that a minor should be able to obtain talk therapy to overcome same-sex attraction if that's what he—or he or she wants. And the other is the viewpoint that the minor should not be able to obtain talk therapy to overcome same-sex attraction even if that is what he or she wants.⁵⁰

"Looks like blatant viewpoint discrimination," concluded Justice Alito.⁵¹

Justice Kagan echoed Justice Alito's concern: "If a doctor says, I know you identify as gay and I'm going to help you accept that, and another doctor says, I know you identify as gay and I'm going to help you to change that, and one of those is permissible and the other is not," she observed, "that seems like viewpoint discrimination in the way we would normally understand viewpoint discrimination."⁵² In response, Stevenson argued "medical treatment has to be treated differently."⁵³

Relatedly, Justice Amy Coney Barrett and Justice Gorsuch pressed Stevenson on whether other states could pass a "mirror image" law that, as Justice Gorsuch put it, "prohibits any attempt to affirm changes of gender identity or sexual orientation."⁵⁴ Justice Barrett asked a similar question as to why Colorado's law would receive only rational-basis review but a hypothetical mirror image law would receive strict scrutiny. Stevenson argued that the prevailing standard of care would be determinative of the scrutiny warranted and ultimately the state's power to forbid the speech at issue. If, for example,

⁵⁰ *Id.* at 76–77.

⁵¹ *Id.* at 77.

⁵² *Id.* at 78.

⁵³ *Id.*

⁵⁴ *Id.* at 62.

medical consensus prohibited “a regulated licensed professional from affirming homosexuality,”⁵⁵ as Justice Gorsuch suggested in a hypothetical question, then yes, Stevenson agreed, the legislature “could regulate” and prohibit that speech.⁵⁶

Stevenson’s answer did not seem to satisfy Justice Barrett, who asked about states picking sides in the face of medical uncertainty. Stevenson again argued that the standard of care should be determinative and suggested that the Court need not confront that question to decide this case. “Counsel, it’s pretty important that I think about how this would apply to cases down the road,” answered Justice Barrett.⁵⁷

III. The Court’s Decision

The Justices’ apparent skepticism of Colorado’s position throughout oral argument proved to be predictive. In an 8–1 decision, the Court reversed the Tenth Circuit, holding Colorado’s law did not simply regulate conduct, but rather “censors speech based on viewpoint.”⁵⁸ Justice Gorsuch authored the majority opinion, Justice Kagan concurred in a separate opinion joined by Justice Sotomayor, and Justice Jackson contributed the lone dissent.

A. Justice Gorsuch’s Majority Opinion

Justice Gorsuch’s majority opinion is quick to identify issues the case did *not* raise. “The question before us is a narrow one,” he writes, because Chiles’s as-applied pre-enforcement challenge contests the law’s impact on talk therapy, not “the State’s effort to prohibit what she herself calls ‘long-abandoned, aversive’ physical interventions.”⁵⁹ In other words, shock treatment was not before the Court. Rather, the case concerns solely “the spoken word . . . perhaps the quintessential form of protected speech.”⁶⁰ And as it undergirds the majority’s analysis, this fact bore repeating: “[A]ll Ms. Chiles does is speak with clients”; “[a]ll Ms. Chiles offers is talk therapy”;

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 65.

⁵⁸ *Chiles*, 607 U.S. at 655.

⁵⁹ *Id.* at 639 (citation omitted).

⁶⁰ *Id.* at 644.

she “seeks to engage only in speech”; she just wants “to speak with interested clients,” with whom she “sits down . . . and talks to them about their goals”; and so on.⁶¹

The all-talk framing grounds the majority’s threshold conclusion: Colorado’s law “does not regulate speech incident to conduct; it regulates ‘speech as speech.’”⁶² Chiles is not prescribing medication or ordering X-rays; she’s talking to willing listeners, and nothing more. The state law reaches conduct in “many applications,” but as applied to Chiles, it reaches only speech, and it “regulates what she may say.”⁶³ The government cannot put bounds on Chiles’s speech “just because it can also be described as a ‘treatment,’ a ‘therapeutic modality,’ or anything else.”⁶⁴ First Amendment rights “cannot be renamed away.”⁶⁵

The majority found no reason to apply lesser scrutiny. The fact that Chiles is a licensed counselor “changes nothing” about the First Amendment’s protection of her speech.⁶⁶ Citing *NIFLA* and *Holder v. Humanitarian Law Project*,⁶⁷ the majority declares “the First Amendment’s protections extend to licensed professionals much as they do to everyone else,” and Colorado’s law does not “implicate any recognized exception to our usual First Amendment rules.”⁶⁸ Nor does it warrant lesser scrutiny under *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*,⁶⁹ which involved compelled disclosure of factual, noncontroversial information in the course of speech proposing a commercial transaction, or *NIFLA*, which recognized the traditional permissibility of regulations of speech that only “incidentally burden speech.”⁷⁰

On the latter, the majority reviews the Court’s “speech-incident-to-conduct precedents,” under which the test is “whether the law

⁶¹ *Id.* at 634, 644, 649 (citation omitted).

⁶² *Id.* at 650 (quoting *NIFLA*, 585 U.S. at 770).

⁶³ *Id.* at 644–45.

⁶⁴ *Id.* at 645.

⁶⁵ *Id.*

⁶⁶ *Id.* at 646.

⁶⁷ 561 U.S. 1 (2010).

⁶⁸ *Chiles*, 607 U.S. at 642–43, 647.

⁶⁹ 471 U.S. 626 (1985).

⁷⁰ *NIFLA*, 585 U.S. at 769.

in question restricts speech only because it is integrally related to unlawful conduct—or whether the law restricts expressive conduct only for reasons unrelated to its content.”⁷¹ The majority has little problem answering: The speech in which Chiles seeks to engage is lawful for “anyone else” beyond licensed counselors like herself, and by design, Colorado’s law “trains directly on the content of her speech and permits her to express some viewpoints but not others.”⁷²

Having dismissed Colorado’s attempts to characterize Chiles’s speech as either conduct or speech incidental to it, the majority concludes by considering the state’s effort to demonstrate “persuasive evidence” that its restriction on counselors’ speech “is part of a long (if heretofore unrecognized) tradition of proscription.”⁷³ Colorado argues that states have long “enjoyed wide latitude to proscribe ‘substandard care’ even when that involves regulating the content of speech” and have acted on that traditional authority by “licensing the practice of medicine, regulating informed consent, and permitting tort suits for medical malpractice.”⁷⁴

The majority rejected each argument in turn. States only began licensing counselors within the past 50 years, and however established medical licensing may be, a state’s power to license does not “entail a right to dictate a professional’s point of view.” Informed consent laws are inapposite because Chiles’s counseling is not a predicate for conduct like a procedure, nor does Colorado’s law require the kind of disclosure that informed consent laws typically involve. And malpractice torts require proof of deviation from a duty of care in a court proceeding, whereas Colorado’s law functions as a blanket ban.

Worse, permitting states to statutorily proscribe a particular view forecloses the possibility of evolving consensus. As the majority notes, per Colorado’s standard, a state law adopted when homosexuality was considered a mental disorder that prohibited counselors

⁷¹ *Chiles*, 607 U.S. at 649.

⁷² *Id.* at 649–50.

⁷³ *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 792 (2011). The possibility of such a showing is provided for, though skeptically, by the Court in *Stevens*, *United States v. Alvarez*, *Brown v. Entertainment Merchants Association*, and, in the context of “professional speech,” *NIFLA*—but it “comes with a daunting burden,” requiring “‘persuasive’ historical evidence.” *Chiles*, 607 U.S. at 650 (quoting *NIFLA*, 585 U.S. at 767).

⁷⁴ *Chiles*, 607 U.S. at 650–51 (citation omitted).

“from engaging in the ‘substandard care’ of affirming their clients’ homosexuality would have been subject to only rational-basis or intermediate-scrutiny review—and likely upheld.”⁷⁵

B. Justice Kagan’s Concurrence

Justice Kagan’s concurrence, joined by Justice Sotomayor, first focuses on the “textbook” viewpoint discrimination written into Colorado’s law.⁷⁶ Because “the law prevents a therapist from saying she can help a minor change his same-sex orientation, but permits her to say that such a goal is impossible and so she will help him accept his gay identity,” the First Amendment problem is “straightforward.”⁷⁷ And as her questions suggested at oral argument, Justice Kagan would identify the same constitutional flaw in a law barring counselors from talk therapy *affirming* a client’s sexual orientation or gender identity—because again, “the State has suppressed one side of a debate, while aiding the other.”⁷⁸ As she explains, “it does not matter what the State’s preferred side *is*”; what matters is that the law forbids counselors from disagreeing with it.⁷⁹

Clear enough. But Justice Kagan wrote separately “to note that if Colorado had instead enacted a content-based but viewpoint-neutral law, it would raise a different and more difficult question.”⁸⁰ Content-based restrictions on speech typically trigger strict scrutiny, the concurrence acknowledges, but the Court’s “precedents respecting those laws recognize complexity and nuance.”⁸¹ What does that mean in practice? If a content-based, viewpoint-neutral law “raises no real concern that the government is censoring disfavored ideas,”⁸² then strict scrutiny may be unwarranted.

Justice Kagan cites *Vidal v. Elster* for a recent example.⁸³ In that 2024 decision, the Court unanimously concluded that “a content-based,

⁷⁵ *Id.* at 654.

⁷⁶ *Id.* at 657 (Kagan, J., concurring).

⁷⁷ *Id.* at 656–57.

⁷⁸ *Id.* at 657.

⁷⁹ *Id.*

⁸⁰ *Id.* at 655–56.

⁸¹ *Id.* at 657.

⁸² *Id.* at 658.

⁸³ 602 U.S. 286 (2024).

but viewpoint-neutral, trademark restriction” was “compatible with the First Amendment”—but the Justices split as to why.⁸⁴ A majority relied on the “history and tradition”⁸⁵ of limiting trademarks on names. But Justice Sotomayor’s concurring opinion, which Justice Kagan joined, instead proposed a “doctrinal framework drawn from this Court’s First Amendment precedent”:

The analysis should proceed in two steps. First ask whether the challenged provision targets particular views taken by speakers on a given subject. If the trademark registration bar is viewpoint based, it is presumptively unconstitutional and heightened scrutiny applies; if it is viewpoint neutral, however, the trademark registration bar need only be reasonable in light of the purpose of the trademark system.⁸⁶

In her *Chiles* concurrence, Justice Kagan appears to suggest a similar approach may be appropriate for “content-based but viewpoint-neutral laws regulating speech in doctors’ and counselors’ offices,” where, as in trademark, “experience and reason alike showed ‘no significant danger of idea or viewpoint’ bias.”⁸⁷

Justice Kagan’s proposal is challenging to assess in the abstract. Asking judicial scrutiny of content-based but viewpoint-neutral laws to account for “complexity and nuance” invites trouble; those are endlessly malleable terms, as Justice Jackson’s dissent suggests. And as the district court and Tenth Circuit made clear in this case, courts will vary in their assessments of the “danger” a law poses to a given idea or view, or if it even concerns speech at all. In an early response to *Chiles*, legal scholar Erwin Chemerinsky argued that “Kagan’s approach would provide that only viewpoint restrictions,

⁸⁴ *Id.* at 301.

⁸⁵ *Id.* In a notable break from her colleagues, Justice Barrett wrote separately to question the utility of historical analysis and evidence. *See id.* at 312, 319 (Barrett, J., concurring) (instead of “treating the supposed history and tradition of the clause as determinative,” trademark restrictions “whether new or old, are permissible so long as they are reasonable in light of the trademark system’s purpose of facilitating source identification.”).

⁸⁶ *Id.* at 329 (Sotomayor, J., concurring).

⁸⁷ *Chiles*, 607 U.S. at 658 (Kagan, J., concurring) (citation omitted).

not subject-matter restrictions, must meet strict scrutiny”—a result that “would substantially lessen the Constitution’s protection for speech.”⁸⁸

Chemerinsky is flattening Justice Kagan’s position somewhat. She does not appear to be proposing that *all* content-based but viewpoint-neutral laws receive lesser scrutiny. And good thing she is not; that strict a line would incentivize lawmakers to take entire subjects off the table. If Colorado’s law prohibited counselors from saying anything at all about a client’s sexuality or gender identity, the First Amendment violation would be expanded, not eliminated.

But Chemerinsky’s concern is reasonable. And Justice Kagan may face that “different and more difficult question” soon enough. Two months after the Court announced its decision in *Chiles*, Colorado enacted a law establishing a private cause of action for those harmed by “conversion therapy,” now defined as “any practice or treatment by a licensed mental health-care provider that seeks to direct a patient toward a predetermined sexual orientation or gender identity outcome, or eliminate or reduce sexual or romantic attractions or feelings toward individuals of a particular sex or gender, regardless of the sexual orientation or gender identity the patient is directed toward.”⁸⁹

Because the law burdens counseling that attempts to reduce attraction, but not counseling that attempts to affirm it, it is as viewpoint-based as its predecessor. But another clause tries again to pose the “more difficult question.” Although the law’s definition exempts counseling “related to a patient’s sexual behaviors, practices, or relationships,” broadly, it does not exempt speech that “seeks to direct the patient toward a predetermined sexual orientation or gender identity.”⁹⁰ Colorado would argue this restriction is “viewpoint neutral”; counselors can’t direct patients to *any* orientation or identity. But it means an entire subject of conversation now carries a liability risk. That’s the “risk of censorship—of ‘official suppression of ideas’”—that Justice Kagan may have to weigh in the future.⁹¹

⁸⁸ Erwin Chemerinsky, *Conversion Therapy and Professional Speech*, SCOTUSBLOG (Apr. 9, 2026), <https://www.scotusblog.com/2026/04/conversion-therapy-and-professional-speech>.

⁸⁹ H.B. 1322, 2026 Leg., Reg. Sess. (Colo. 2026).

⁹⁰ *Id.*

⁹¹ *Chiles*, 607 U.S. at 658 (Kagan, J., concurring) (citation omitted).

C. Justice Jackson's Dissent

Writing the lone dissent, Justice Jackson breaks sharply with the rest of the Court on the central question of whether Chiles is speaking or doing something more. To Justice Jackson, “Chiles is not speaking in the ether; she is providing therapy to minors as a licensed healthcare professional.”⁹² Colorado isn’t silencing speech; it is using its traditional power to regulate the practice of medicine to prohibit “a dangerous therapy modality that, incidentally, involves provider speech.”⁹³ “Yes, Chiles happens to be talking when she’s providing therapy to patients,” writes Justice Jackson, but Colorado’s law “regulates the provision of medical treatments by licensed medical professionals, which States are fully empowered to do.”⁹⁴

After reviewing the history of conversion therapy and reports from professional associations about its negative impact, Justice Jackson takes on the First Amendment argument. Perhaps nodding to her concurring colleagues, Justice Jackson argues the Court has not “mechanically held that the First Amendment protects all communicative content; rather, we have evaluated First Amendment claims in a nuanced way, sensitive to both core principles and the specific circumstances under which the claim arises.”⁹⁵ And this “nuanced” approach means that the “larger regulatory scheme” embodied by Colorado’s regulation of health care “matters for First Amendment purposes.”⁹⁶

To situate Chiles’s speech within this larger scheme, Justice Jackson proffers a definition of “professional medical speech”: A “medical professional” speaking “to a client (1) in the context of the professional-patient relationship; (2) on matters within the provider’s professional expertise as defined by the medical community; (3) for the purpose of providing medical care.”⁹⁷ Regulating this subset of speech inside a larger licensing scheme shouldn’t trouble the Court, Justice Jackson argues, because it’s almost entirely detached from the

⁹² *Id.* at 660 (Jackson, J., dissenting).

⁹³ *Id.*

⁹⁴ *Id.* at 669–70.

⁹⁵ *Id.* at 665–66.

⁹⁶ *Id.* at 666.

⁹⁷ *Id.* at 675.

traditional theoretical underpinnings of the First Amendment's protection of speech.

Professional medical speech “does not intersect with the marketplace of ideas.”⁹⁸ Indeed, it “does not necessarily involve the expression of ideas or messages” at all.⁹⁹ It is inherently viewpoint-based, as doctors prescribe one course of action and not another; adhering to the standard of care will, for example, “prohibit a doctor from encouraging a patient to commit suicide.”¹⁰⁰ And as for the right to receive information, the client's interests as listeners are sharply proscribed, because “only information about treatments that are within the standard of care advances patients' interests.”¹⁰¹ It also makes doctors functionally into robots: “[W]ith respect to professional medical speech, healthcare providers do not have autonomy; when it comes to providing treatments for their patients, they are bound by the standard of care and are not generally free to ‘choose the content’ of their message.”¹⁰² Under Justice Jackson's conception of professional medical speech, replacing doctors with artificial intelligence chatbots should prove uncontroversial.

Justice Jackson finally turns to history as further justification for Colorado's restriction, arguing that “[s]tates have regulated professional conduct related to the provision of all kinds of medical care—and incidentally restricted speech—without constitutional affront for eons.”¹⁰³ That long tradition “helps us to be confident that what Colorado is doing here is actually regulating medical care, not suppressing messages.”¹⁰⁴ Justice Jackson again seems to tune her argument to the concurrence's concerns, reassuring her fellow Justices to “rest easy,” because, like the trademark provision at issue in *Vidal*, Colorado's restriction is part of a time-tested system aimed only at worthy policy outcomes.¹⁰⁵ Besides, argues Justice Jackson, Chiles can talk all she wants outside her practice. The law “does not prevent

⁹⁸ *Id.* at 677.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 678.

¹⁰¹ *Id.* at 680.

¹⁰² *Id.*

¹⁰³ *Id.* at 686.

¹⁰⁴ *Id.* at 687.

¹⁰⁵ *Id.*

Chiles from speaking out in favor of conversion therapy, promoting conversion therapy, or otherwise lending credence to efforts to validate that therapy.” Rather, it only prevents her from “providing this *treatment*”—emphasis added—to minor patients, just as “Colorado and other States have been doing in the indisputably valid exercise of their police powers for centuries.”¹⁰⁶

Fundamentally, Justice Jackson rejects the notion that Chiles is speaking in a meaningful way for First Amendment purposes. She’s providing medical care, and states may regulate medical care. That kind of regulation generally is not aimed at suppressing speech, so no need to worry here. But categorically relabeling Chiles’s talk therapy as treatment—even when it is all talk, and only talk—does not provide a satisfactory answer to the majority’s concern about viewpoint discrimination and states choosing sides in medical debates via statute. What about the changing medical consensus regarding homosexuality? Within each Justice’s lifetime, doctors widely understood homosexuality as a disorder requiring treatment. Justice Jackson argues that the disciplinary debates that precipitate societal change can proceed unabated even while laws like Colorado’s remain on the books. Practitioners may still effect change by “writing papers, giving speeches, and pushing the bounds of the community’s knowledge through experimentation,” she argues, and “the standard of care for a medical treatment can be greatly influenced and changed by virtue of such speech.”¹⁰⁷

But this gravely discounts the chilling effect that accompanies a statutory ban on a given view, and places too much trust in the state and society not to impose consequences on professionals and others who dare to advocate for its reconsideration. Fifty years ago, when being gay was a mental disorder and sodomy was a criminal act in 42 states, doctors who advocated for changes in the standards of care risked severe consequences for doing so.

For example, in 1972, psychiatrist Dr. John Fryer identified himself as gay on a panel at an American Psychiatric Association conference to challenge the practice’s classification of homosexuality. He appeared as “Dr. Henry Anonymous,” wearing an oversized suit and a rubber Richard Nixon mask, because he spoke out at a time when

¹⁰⁶ *Id.* at 688.

¹⁰⁷ *Id.* at 677.

“homosexuality was categorized as a mental illness, so acknowledging it would result in the revocation of one’s medical license, and the loss of a career.”¹⁰⁸ Dr. Fryer’s speech prompted the APA to change its standard of care the next year. “By removing the diagnosis from the Diagnostic and Statistical Manual of Mental Disorders, or D.S.M., psychiatry removed the legal basis for a wide range of discriminatory practices: for denying gay people the right to employment, citizenship, housing and the custody of children; for excluding them from the clergy and the military and the institution of marriage.”¹⁰⁹

That history demonstrates the threat of enshrining (or condemning) viewpoints in statute, and what the majority characterized as the dissent’s belief “that state-imposed orthodoxies in speech pose few dangers and many benefits in this field (and who knows what others).”¹¹⁰ Ultimately, Justice Jackson’s faith in government-backed consensus is belied by the same painful history that gave rise to conversion therapy in the first place.

IV. *Chiles’s Impact*

Chiles has had immediate impacts in both the legislature and ongoing court cases and has laid the foundation for future First Amendment litigation. The ruling has already been felt in Colorado, where state lawmakers quickly responded to the decision by passing a new, albeit similarly flawed, statute. The ruling has also had an instant impact on ongoing challenges to other conversion therapy bans.¹¹¹ Long-dismissed ones, too; *Chiles* appears to have resuscitated the

¹⁰⁸ Ellen Barry, *He Spurred a Revolution in Psychiatry. Then He “Disappeared,”* N.Y. TIMES (June, 2023), <https://www.nytimes.com/2022/05/02/health/john-fryer-psychiatry.html>.

¹⁰⁹ *Id.*

¹¹⁰ *Chiles*, 607 U.S. at 646.

¹¹¹ See, e.g., *Wyatt Bury, LLC v. City of Kan. City*, No. 25-2566, 2026 U.S. App. LEXIS 19389, at *6–7 (8th Cir. July 2, 2026) (reversing district court’s dismissal of counselors’ First Amendment challenge to city and county ordinances banning conversion therapy and noting defendants “pressed the same speech-conduct distinction the Supreme Court rejected in *Chiles* before the district court and before us, and this distinction featured prominently in the district court’s order.”); *Buchman v. City of La Crosse*, No. 23-cv-105-wmc, 2026 U.S. Dist. LEXIS 157080, at *1–2 (W.D. Wis. July 14, 2026) (order noting *Chiles* decision “appears to control the outcome of this case” because challenged city ordinance “nearly identical to the one that the Supreme Court rejected in *Chiles*.”).

litigation against the Washington State ban that the Ninth Circuit dismissed in *Tingley*.¹¹²

But *Chiles* should resonate beyond these immediate consequences. (As a near-unanimous rejection of a statute banning a controversial practice, it might be surprising if it did not.) Specifically, *Chiles*'s clarity should help settle the contested boundaries of First Amendment protections in two areas. First, by reinforcing *NIFLA*'s suspicion of professional speech regulations and centering the threat of viewpoint discrimination in the professional context, *Chiles* should protect speech not only against mirror-image threats to speech regarding, say, gender affirmation, but also against bars on other politically charged professional questions. Second, by again emphasizing the necessity of guarding "speech as speech," *Chiles* arrives just in time to act as a shield against mounting governmental attempts to rebrand protected speech as proscribable conduct on a variety of fronts.

A. Protecting "Professional Speech"

NIFLA was clear: "Speech is not unprotected merely because it is uttered by 'professionals.'"¹¹³ Like water, however, censorship finds a way in. The *NIFLA* Court acknowledged the long-standing permissibility of regulating speech incidental to conduct, drawing a distinction between the notice requirement invalidated in that case, which was unrelated to any specific medical procedure, and the informed consent requirement upheld in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, which mandated patient approval before an abortion.¹¹⁴ Seizing on that distinction, the Tenth Circuit's decision in *Chiles* sought to get around *NIFLA* by concluding that Colorado's conversion therapy ban was the functional equivalent of Pennsylvania's informed consent requirement, as both regulated speech only "as part of the practice of medicine."¹¹⁵ In the Tenth Circuit's

¹¹² Press Release, Alliance Defending Freedom, Court Revives Counselor's Lawsuit Against Washington State's Censorship (July 31, 2026), <https://adfmedia.org/press-release/court-revives-counselors-lawsuit-against-washington-states-censorship/>.

¹¹³ 585 U.S. at 767.

¹¹⁴ *Id.* at 769–70 (citing *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 881, 884 (1992)).

¹¹⁵ *Chiles*, 116 F.4th at 1209 (citation omitted) ("Like the law in *Casey*, the MCTL implicates mental health professionals' speech only as part of their practice of mental health treatment. Under *NIFLA*, this is precisely the type of regulation that 'regulate[s] professional conduct . . . incidentally involv[ing] speech.'" (quoting *NIFLA*, 585 U.S. at 768)).

telling, Colorado’s law didn’t silence Chiles; it regulated “the provision of therapeutic modality—carried out through use of verbal language.”¹¹⁶

The Court emphatically rejected that recharacterization—and in so doing, reinforced *NIFLA*’s core rationale. *NIFLA* identified a host of reasons why the First Amendment does not permit the government greater leeway to target so-called “professional speech.” Most centrally, the Court made clear the “dangers associated with content-based regulations of speech”—like state suppression of dissenting or controversial ideas—are no less present “in the context of professional speech.”¹¹⁷ If anything, censorship is even more dangerous in professional contexts like “medicine and public health, where information can save lives.”¹¹⁸ And because doctors, lawyers, and other professionals have “a host of good-faith disagreements, both with each other and with the government, on many topics in their respective fields,” allowing the government to police and shut down debate ultimately means “the people lose.”¹¹⁹

Just as the *NIFLA* Court had warned, here was Colorado, attempting to use its licensing power as “a powerful tool to impose ‘invidious discrimination of disfavored subjects.’”¹²⁰ And more than regulating just “the content of Ms. Chiles’s speech,” Colorado went “a step further, prescribing what views she may and may not express.”¹²¹ *Chiles* thus provided the Court an opportunity to substantiate *NIFLA*’s core suspicion of professional speech regulations: “The fact that the State’s viewpoint regulation targets only licensed healthcare professionals like Ms. Chiles changes nothing.”¹²² Because the majority and the concurrence both emphasized that “the First Amendment would apply in the identical way” to a law banning gender affirmation talk

¹¹⁶ *Id.* at 1208.

¹¹⁷ *NIFLA*, 585 U.S. at 771.

¹¹⁸ *Id.* (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011)).

¹¹⁹ *Id.* at 772. The Court noted, too, that the problems posed by regulating professional speech are only exacerbated by the threshold conceptual hurdle of defining who may be considered a “professional.”

¹²⁰ *Id.* at 773 (quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423 n.19 (1993)).

¹²¹ *Chiles*, 607 U.S. at 644–645.

¹²² *Id.* at 646.

All Talk: Chiles v. Salazar and the Application of Neutral Principles

therapy,¹²³ *Chiles* provides a ready-made deterrent to mirror-image laws from legislatures tempted to reconfirm Newton's third law of motion.¹²⁴

Chiles's focus on viewpoint discrimination increases the reach of its holding. There are many different kinds of professionals, as the *NIFLA* Court noted, and they say many different things, presenting a target-rich environment for government action. To that end, Justice Clarence Thomas, writing for the *NIFLA* majority, sketched the range of debates potentially endangered by state regulation of professional speech:

Doctors and nurses might disagree about the ethics of assisted suicide or the benefits of medical marijuana; lawyers and marriage counselors might disagree about the prudence of prenuptial agreements or the wisdom of divorce; bankers and accountants might disagree about the amount of money that should be devoted to savings or the benefits of tax reform.¹²⁵

Justice Thomas's warning has proved prescient; *Chiles* has already been cited as dispositive authority beyond the context of conversion therapy. For one early example, in *Planned Parenthood v. Indiana State Department of Health*, the Seventh Circuit repeatedly invoked *Chiles* in affirming a permanent injunction against an Indiana state law forbidding "knowingly or intentionally aiding or assisting an unemancipated pregnant minor in obtaining an abortion." Indiana argued the court must "look at the aid-or-assist law in its full range of applications," but the panel concluded that "*Chiles* and its predecessors require a narrower focus on plaintiff's as-applied challenge." As applied to *Planned Parenthood*, Indiana's law "regulates 'speech as speech'"—here, information about and referrals to legal abortion practices outside of Indiana—in just the same way Colorado's law had regulated *Kaley Chiles*. Likewise, because the Indiana statute "allows conversations on the subject of abortion but forbids a

¹²³ *Id.* at 657 (Kagan, J., concurring); see *id.* at 645.

¹²⁴ "Whenever one object exerts a force on another object, the second object exerts an equal and opposite on the first." Newton's Laws of Motion, NASA: Glenn Rsch. Ctr., <https://www1.grc.nasa.gov/beginners-guide-to-aeronautics/newtons-laws-of-motion> (last visited Aug. 3, 2026).

¹²⁵ *NIFLA*, 585 U.S. at 772.

certain point of view,” the Seventh Circuit held it to be as viewpoint-discriminatory as Colorado’s law.¹²⁶

For another example, in *Institutional Shareholder Services. v. Kobach*, the U.S. District Court for the District of Kansas relied on *Chiles* to enjoin a state law regulating speech by “proxy advisors” to shareholders regarding shareholder votes.¹²⁷ Per the law, if proxy advisers recommend a vote *against* company management to their clients, they must provide a series of thorough disclosures about their work and the basis of their recommendation to each shareholder and the company’s board of directors. But if the proxy advisers recommend a vote *in favor of* company management, no such disclosures are required. Citing the “similar circumstances” at issue in *Chiles*, the district court judge declared the law “viewpoint-based on its face because the law draws a distinction based on the message conveyed.”¹²⁸

The Kansas statute challenged in *International Shareholder Services* may not have the front-page sizzle of Colorado’s law. But it is easy enough to imagine any number of variations that would—a law imposing similar disclosure requirements for proxy recommendations on votes for (or against) “sustainability” or “diversity, equity, inclusion” measures, say. As with *Chiles*, such a law would regulate speech as speech. The possibilities for enforcing state-mandated silence on specific topics or conformity with specific viewpoints are as varied as the work “professionals” do, as Indiana’s “aid-or-assist” law illustrates. If applied as written, *Chiles* should provide an all-purpose bulwark against legislatures aiming to dragoon professionals into the culture wars.

B. Rejecting “Speech as Conduct” Relabeling

Chiles centers on the distinction between speech and conduct. Colorado’s argument hinged on the notion that Chiles did not simply talk to her clients—instead, as Justice Jackson put it, she offered “treatment-related speech rendered in the context of providing

¹²⁶ *Planned Parenthood Great Nw. v. Comm’r of the Ind. State Dep’t of Health*, No. 24–2219 at *1 (7th Cir. Aug. 18, 2026). *Id.* at *31. *Id.* at *34. (quoting *Chiles*, 607 U.S. at 650 (quoting *NIFLA*, 585 U.S. at 770)). *Id.* at *39.

¹²⁷ No. 2:26-cv-02254-HLT-RES, 2026 U.S. Dist. LEXIS 140075, at *2, 18, 30 (D. Kan. June 24, 2026).

¹²⁸ *Id.* at *19–29.

medical care.”¹²⁹ The district court and Tenth Circuit accepted that characterization and thus concluded Colorado’s law did not pose any First Amendment problem. But eight Justices disagreed, and the majority opinion is clear: “[S]peech does not become conduct just because the State may call it that.”¹³⁰

“Under the First Amendment, what matters is not how a government describes its law or whether the law may regulate conduct in other circumstances,” wrote Justice Gorsuch.¹³¹ “What matters is whether, in fact, the law regulates speech in the case at hand.”¹³² Because would-be censors regularly attempt to justify silencing pure speech by claiming they seek only to punish conduct, Justice Gorsuch’s admonition will be put to work.

Recent threats illustrate the point. The current President of the United States filed suit against the pollster J. Ann Selzer, alleging that an October 2024 *Des Moines Register* poll constituted fraud under Iowa’s consumer protection law because it showed him down three points in the state, which he won the next month.¹³³ Citing the state’s Deceptive Trade Practices Act, Texas’s attorney general issued sweeping civil investigative demands against Media Matters for America, a left-leaning news site, after the outlet criticized Elon Musk’s social media platform.¹³⁴ The former US Attorney General and the former Secretary of Homeland Security coerced Facebook and Apple into taking down a Facebook group and an App Store application containing video recordings about federal law enforcement, calling the plainly protected content illegal “doxxing” and threatening prosecution “to the fullest extent of the law.”¹³⁵ The Texas A&M University System shut down drag shows on campus, claiming that

¹²⁹ *Chiles*, 607 U.S. at 681 (Jackson, J., dissenting).

¹³⁰ *Id.* at 645.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Trump v. Selzer: Donald Trump Sues Pollster J. Ann Selzer for “Consumer Fraud” Over Iowa Poll*, FOUND. FOR INDIVIDUAL RTS. AND EXPRESSION, <https://www.fire.org/cases/trump-v-selzer-donald-trump-sues-pollster-j-ann-selzer-consumer-fraud-over-iowa-poll> (last visited Aug. 4, 2026).

¹³⁴ *Media Matters for Am. v. Paxton*, 138 F.4th 563, 569 (D.C. Cir. 2025).

¹³⁵ *Rosado v. Bondi*, No. 26 C 1532, 2026 U.S. Dist. LEXIS 84760, at *10–11 (N.D. Ill. Apr. 17, 2026) (issuing preliminary injunction).

the theatrical performances are actually “unwelcome and objectively offensive conduct based on sex.”¹³⁶

In each case, political or ideological opponents of the core speech at issue recharacterized it as something more—fraud, “doxing,” sexual harassment—in an attempt to silence it. And those disappointed with the outcome because of the subject matter of the speech at issue should note the ongoing federal investigation of gender-affirming care advocacy as fraud.¹³⁷

To be sure, these efforts are not exactly new. Right after brute force, characterizing speech as conduct to shut it down is the oldest trick in the censor’s book. The development of modern First Amendment law is the story of the Court distinguishing—slowly but surely—protected expression from punishable action, from *Stromberg’s* flag¹³⁸ to *Cohen’s* jacket,¹³⁹ from *McIntyre’s* anonymous leaflets¹⁴⁰ to the Westboro Baptist Church’s neon-colored signs.¹⁴¹ “But the effort to recast speech as conduct failed in those cases,” wrote Justice Gorsuch, “and it must here too.”¹⁴² *Chiles* is thus a reminder to courts to remain vigilant against the tireless attempts of would-be censors to repackage protected speech as actionable conduct, especially when the speech

¹³⁶ *Tex. A&M Queer Empowerment Council v. Mahomes*, 772 F. Supp. 3d 792, 797, 799 (S.D. Tex. 2025) (issuing preliminary injunction).

¹³⁷ *See, e.g., World Pro. Ass’n for Transgender Health v. FTC*, No. 26-532 (JEB), 2026 U.S. Dist. LEXIS 101518, at *3, *11, *16 (D.D.C. May 7, 2026) (issuing preliminary injunction barring Federal Trade Commission from enforcing civil investigative demand against nonprofit organization “dedicated to promoting science-based medical care, education, research, and public policy in transgender health.”).

¹³⁸ *Stromberg v. California*, 283 U.S. 359, 369 (1931) (invalidating statute banning display of a red flag “as a sign, symbol or emblem of opposition to organized government” because it reached expressive “conduct which the State could not constitutionally prohibit.”).

¹³⁹ *Cohen v. California*, 403 U.S. 15, 18 (1971) (reversing conviction of man arrested for wearing jacket reading “Fuck the Draft” and noting “[t]he only ‘conduct’ which the State sought to punish is the fact of communication.”).

¹⁴⁰ *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334, 342 (1995) (“an author’s decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.”).

¹⁴¹ *Snyder v. Phelps*, 562 U.S. 443, 461 (2011) (barring tort liability for church’s picketing of Marine’s funeral because First Amendment “protect[s] even hurtful speech on public issues to ensure that we do not stifle public debate”).

¹⁴² *Chiles*, 607 U.S. at 645.

at issue is politically unpopular. Once an inch is given—here, with conversion therapy—more will be claimed. As the majority warned: “If a government could reclassify talk therapy as speech incident to conduct, it might just as easily do the same for speech incident to ‘teaching or protesting’”—“both are activities, after all.”¹⁴³

V. Conclusion

Chiles is the latest in a string of recent decisions issued by the Court reaffirming fundamental First Amendment limits on governmental power. In *Moody v. NetChoice*, the Court restated the right of private speakers—in that case, social media platforms—to determine for themselves what speech they carry, free from government interference. “On the spectrum of dangers to free expression,” wrote Justice Kagan, “there are few greater than allowing the government to change the speech of private actors in order to achieve its own conception of speech nirvana.”¹⁴⁴ In *National Rifle Association v. Vullo*, the Court reiterated the First Amendment’s bar on censorship by coercion. A government official “can share her views freely and criticize particular beliefs,” wrote Justice Sotomayor, but she cannot “attempt to coerce private parties in order to punish or suppress views that the government disfavors.”¹⁴⁵ And in *First Choice Women’s Resource Centers v. Davenport*, decided the same Term as *Chiles*, the Court held that a subpoena from New Jersey’s attorney general demanding a wide range of donor information inflicted a First Amendment injury.¹⁴⁶ If left unchecked, the government’s claimed power to compel “disfavored groups” to reveal their membership “could achieve exactly what the First Amendment forbids,” wrote Justice Gorsuch, “marginalizing dissident voices and reshaping the

¹⁴³ *Id.* at 648 (quoting *Otto*, 981 F. 3d at 865). The Court’s ruling should also remind lower courts hearing as-applied pre-enforcement challenges to focus not on every potential application of the law, but on its specific application to a given plaintiff. The majority emphasized that, for purposes of *Chiles*’s as-applied pre-enforcement challenge, “speech is all Colorado seeks to regulate.” *Id.* at 647. In other words, while the law may reach a range of conduct, its only impact on *Chiles* was to prevent her from speaking with clients—and “a law regulating the content of speech cannot avoid searching First Amendment review just because it mostly regulates non-expressive conduct.” *Id.* at 642.

¹⁴⁴ *Moody v. NetChoice, LLC*, 603 U.S. 707, 741–42 (2024).

¹⁴⁵ *NRA of Am. v. Vullo*, 602 U.S. 175, 180, 188 (2024).

¹⁴⁶ 146 S. Ct. 1114, 1124 (2026).

marketplace of ideas to its pleasure, all while evading any legal challenge to its actions.”¹⁴⁷

Like *NetChoice*, *Vullo*, and *First Choice*, *Chiles* underlines the First Amendment’s bar against government punishment of disfavored or dissenting views. These decisions illustrate the necessity of neutral principles—if one side of the partisan divide feels itself empowered to violate the First Amendment, the other side will soon follow, leading only to mutually assured destruction. *Chiles* and the recent precedents it accompanies will prove as valuable as later courts decide them to be. But the overarching instruction from the Court is clear: The First Amendment means the government may not burden, punish, commandeer, or silence speakers on the basis of the viewpoints they express. If faithfully applied, the neutral principles these decisions strengthen should remain durable armor.

Because of the parties involved and the speech at issue, it is easy to interpret *Chiles* as yet another culture war battle, complete with victor and vanquished. But that kind of zero-sum accounting is a mistake, and it fuels the corrosive cynicism on which culture warriors rely. Rather, *Chiles* could serve as a step toward a more stable peace in jurisprudence and legislation (if not on social media feeds and cable news networks). Optimism may prove little match for our political reality, to be sure. But *Chiles* does suggest a way forward. By identifying neutral principles, the Court dismantled a culture war trap, preventing it from ensnaring others in the future. Moving forward, *Chiles*’s straightforward rationale is at once a useful tool for First Amendment litigants and a warning to would-be censors.

¹⁴⁷ *Id.* at 1130.