



Clarifying the Supreme Court's Conversion Therapy Ruling

The Supreme Court did not broadly approve conversion therapy; it protected client self-determination in therapy.

By [Anna Bryner](#) and [Daniel Frost](#)

LEGAL

April 7, 2026

The Supreme Court recently [ruled](#) that a Colorado law banning “conversion therapy” for minors is unconstitutional to the extent that it prohibits talk therapy. Commentators from across the political spectrum immediately began using the case, *Chiles v. Salazar*, as fodder for one political narrative or another, often without context or discussion of how the justices came to their conclusion.

But interpreting the case as “mere politics” misses crucial details and ignores what the opinion actually said. The fact that eight members of the Court (including two Democrat-appointed justices) signed on to the decision suggests that this case might be

more interesting than ordinary politics—it might teach us something about the Constitution.

But first, what happened?

Kaley Chiles is a licensed mental health counselor in Colorado. She is also a Christian. Some of her clients are minors who experience same-sex attraction and gender dysphoria.

When these clients come to Ms. Chiles, she lets them dictate the kind of help they want. Some want to acknowledge their experiences with sexuality without making it the focus of their identity. Others don't. For example, some of her clients who experience gender dysphoria want Ms. Chiles' help to feel more comfortable with their biological sex. Others prefer to focus on affirming their gender identity. She adapts to the client's goal.

Crucially for this case, Ms. Chiles employs only talk therapy in her practice. The counselor and client speak—that's it. No medications, procedures, or other treatments involved.

Did the Supreme Court Just Reinstate Conversion Therapy?

In conducting her practice, Ms. Chiles ran into a law that Colorado passed in 2019. The law is aimed at banning conversion therapy for minors. Conversion therapy is therapy that attempts to change the sexual orientation or gender identity of the patient. Historically, it has included horrifying aversive techniques—including electric shock therapy—that have caused great suffering. Ms. Chiles does not use these methods, and no one in the case defends them.

But Colorado's anti-conversion therapy law uses sweeping language. It doesn't just ban these repudiated behaviors or attempts to change someone's gender identity or sexual orientation. Under the law, if Ms. Chiles so much as talks to clients who come in asking for help to reconcile their gender experience with their biological sex, or asking for help to lessen their same-sex romantic behaviors, Ms.

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Chiles could be in trouble. The law only allows her to affirm gender identity and sexual orientation. Should the client have other goals, she cannot help them.

In defense of the Colorado legislature, drafting laws is hard. Legislators try to define acceptable behavior as precisely as they can, but it's easy for laws to miss the mark. They are often drafted broadly to ensure they fully encompass their aim—but the scope of the law often extends far beyond the bullseye. Activities that were never intended to be affected sometimes are.

Broad laws lead to startling headlines like [“Supreme Court Allows Licensed Mental Health Practitioners to Traumatize Children.”](#) It gives the sense that the Supreme Court is saying full-steam ahead for shock therapy for people who experience same-sex attraction or gender dysphoria. None of us want that!

And thankfully, that's not what happened here. The way Colorado operationalized “conversion therapy” was very broad, encompassing far more than the typical definition of “conversion therapy.” What Ms. Chiles was discussing in her practice, always at the request of the client, was on the outer edges of the law's potential reach.

Importantly, this case didn't strike down Colorado's entire law. Because it was an “as-applied” challenge, the ruling only renders Colorado's law unconstitutional when the context mirrors Ms. Chiles' practice. Put differently, the law is only unconstitutional when it stops counselors from discussing differing approaches to gender dysphoria and same-sex attraction with their clients—and even then, only when they are using strictly talk therapy. Aversive techniques are still prohibited.

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As one survivor of conversion therapy [put it](#) when defending the kind of therapy in this case: “Those are not the coercive practices of my youth. They are value-congruent goals that even secular clinicians may support.”

For people with same-sex attraction or gender dysphoria, particularly faithful Christians, this ruling is [welcome relief](#). It means they can talk with their counselors freely and choose their own paths, not being coerced by the state to pursue only one path. For Christians seeking to find peace with their sexual identity and discipleship,

this ruling actually preserves their ability to have fully frank conversations with their counselors, to grapple with all of the hard questions and the complexity of their experience. How painful would it be to have counselors who had to shut down those conversations?

The ruling can be seen as preserving choice for everyone, no matter your approach to LGBT+ issues. As Justices Kagan and Sotomayor point out in their concurrence, a hypothetical law that is the mirror image of Colorado's—in other words, one that bars therapy affirming a minor's sexual orientation and gender identity—would also be unconstitutional under this ruling. To ban one perspective but not the other is viewpoint discrimination, and that is almost always disallowed under the Constitution.

This ruling preserves the right of mental health counselors to speak with their clients, whatever path their clients decide to take. This is good news in a highly contested and very sensitive area.

The Future of Speech and Conduct

This case does not resolve all issues related to “conversion therapy”—not by a long shot. The ruling relied heavily on the fact that Ms. Chiles was only using speech in her practice. If she had offered medication or medical procedures, the whole analysis could change. That's because it would then raise the question of whether the speech was “incidental to conduct,” a fancy legal way of acknowledging that speech and action are often connected to each other. For example, doctors are often required to provide informed consent to a patient before prescribing a medication or performing a surgery. The government can compel the doctor to provide this factual information because it is related to the treatment. But just how far the government can compel speech incidental to conduct is tricky to say.

Justice Jackson, the lone dissenter, said that a counseling session should be treated as conduct that a state can regulate as part of its police powers. In her eyes, if you are experiencing gender dysphoria, there are a number of treatments you might pursue: medication, surgery, and counseling. Since she views counseling as just another form of treatment, and because the other treatments constitute conduct that the state can regulate, she thinks counseling should also be regulated as conduct, notwithstanding the fact (which she admits) that the conduct itself is pure speech.

On its face, the argument seems plausible. But we think she misses how talk therapy is different from other kinds of treatment. Various treatments exist because people want different outcomes in a given situation. Counseling as a treatment allows the patient to explore the patient's own goals. It has greater flexibility than other treatments, allowing the patient to drive the direction.

In other words, the form of the treatment is actually very significant. Talk therapy is not the same treatment as medication for a reason. Its flexibility to the patient's goals is its hallmark. And further, it involves only speech, which is protected by the First Amendment.

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Talk therapy is often chosen by people who, for faith or other reasons, prefer to form their sense of self around something other than the sexual feelings they experience. For some, the experience of same-sex attraction or gender dysphoria is a prominent part of their lives, yet the focal point is being a disciple of Christ, including living the law of [chastity](#). Some may say this is a denial of who they "really are," but this presupposes that the person is constituted fundamentally by their [sexual desires](#)—an assumption that many people [reject](#). Talk therapy provides an opportunity for people to decide for themselves how they will take a stand on their identity.

The Culture Wars, Still Unresolved

Again, though it's easy to cheer or boo at this case based on your political leanings, it's important to take a step back and see what this case actually changed—or didn't change. Therapists can still talk to clients about the client's preferred approach to their sexual desires or feelings about gender. States can still ban harmful conversion therapy that involves medications or treatments that go beyond mere speech. What this case did not do is provide any kind of "resolution" to the ongoing cultural battles over sex, gender, and identity that have been going on for decades. Perhaps the work of finding "resolution" is not the Court's job but is instead reserved for [all of us](#).

About the authors





Anna Bryner

Anna Bryner is the managing editor of Public Square Magazine. She lives in Lehi, UT, and holds her J.D. and B.A. from BYU.

Daniel Frost

Daniel Frost is the Director of Public Scholarship in the School of Family Life at Brigham Young University and Editor-in-Chief of Public Square Magazine. He has a Ph.D. in Politics from Princeton University.

