



COURTLY OBSERVATIONS

Conversion therapy and professional speech

By ERWIN CHEMERINSKY

APR 9, 2026



(Jonathan Newton/The Washington Post via Getty Images)

Courtly Observations is a recurring series by Erwin Chemerinsky that focuses on what the Supreme Court's decisions will mean for the law, for lawyers and lower courts, and for people's lives.

The Supreme Court's decision in *Chiles v. Salazar*, essentially declaring unconstitutional the Colorado law prohibiting talk therapy to attempt to change a minor's sexual orientation or gender identity, continues a pattern of inconsistent decisions by the government to regulate speech by professionals. Although it is a step forward, it could put in danger the countless ways in which the government regulates speech.

The history of professional speech in the court

Chiles v. Salazar is not the first time the Supreme Court has had to deal with a First Amendment challenge to laws that regulate speech by professionals in advising clients and patients. What is striking about the decisions is their inconsistency.

OPINIONS AND ORAL
ARGUMENT LIVE BLOG



Wednesday at 9:30 a.m.
ET

Follow live

upheld a law that required doctors to provide information to a woman deciding whether to proceed with an abortion. The Pennsylvania law compelled the doctor to tell the woman about the nature of the abortion procedure, the health risks of abortion and of childbirth, the probable gestational age of the unborn child, and the availability of printed materials describing the fetus, medical assistance for childbirth, potential child support, and agencies that would provide adoption services or other alternatives to abortion. The court rejected a challenge that this was impermissible compelled speech and declared: “[w]e...see no reason why the State may not require doctors to inform a woman seeking an abortion of the availability of materials,” including those related to consequences of the pregnancy such as fetal development, “even when those consequences have no direct relation to her health.”

Yet in *NIFLA v. Becerra*, the court declared unconstitutional a California law that required that reproductive health care facilities post a notice that women who economically qualify can receive free or low-cost contraceptives and abortions paid by the state. The law also required that unlicensed facilities post a notice that they were not licensed to provide medical care. The Supreme Court held that the law was compelled speech in violation of the First Amendment. Justice Clarence Thomas, in his majority opinion, declared that “this Court has not recognized ‘professional speech’ as a separate category of speech.” The court made little effort to distinguish *Casey*. The cases are difficult to reconcile except that both came to conclusions favored by opponents of abortion rights.

Or compare 1991’s *Rust v. Sullivan* with 2001’s *Legal Services Corporation v. Velazquez*. *Rust* involved a challenge to a federal regulation that prohibited recipients of federal funds for family-planning services from providing “counseling concerning the use of abortion as a method of family planning or provid[ing] referral for abortion as a method of family planning.” The regulations prohibited recipients of federal money from referring a pregnant woman to an abortion provider, even upon specific request. Also, the rules “broadly prohibit[ed] a [recipient of funds] . . . from engaging in activities that ‘encourage, promote, or advocate abortion as a method of family planning.’” This clearly involved a restriction on speech by doctors and health professionals. But Chief Justice William Rehnquist, writing for the court, upheld the regulation on the ground that the government activity to subsidize.

By contrast, in *Legal Services Corporation v. Velazquez* (which the court declared unconstitutional a federal law that prohibited attorneys from the federal Legal Services Corporation from bringing challenges to welfare laws and regulations. Justice Anthony Kennedy, who wrote for the court, explained: “Restricting LSC attorneys in advising their clients and in presenting arguments and analyses to the courts distorts the legal system by altering the traditional role of the attorneys.”

OPINIONS AND ORAL
ARGUMENT LIVE BLOG

Wednesday at 9:30 a.m.
ET

Follow live



Or compare the court's two most recent cases dealing with state regulation of professionals. In last year's *United States v. Skrametti*, the court upheld a Tennessee law prohibiting gender affirming care for transgender youth and proclaimed the need to defer to the state legislature in making decisions with regard to medical treatment. But in *Chiles v. Salazar*, there is not a word about deference to the judgment of the Colorado legislature that conversion therapy is ineffective and dangerous. To be fair, *Skrametti* was not a First Amendment case and the court did not use heightened scrutiny, but there still is a striking difference in the underlying question of whether there should be judicial deference to the judgment of a legislature when regulating professional care.

Looking at these cases reveals a stark pattern that explains the differences among them: it is all about the court making a value choice about whether it likes the government regulation.

The future of government regulation of professional speech

Besides being inconsistent with the court's own precedent, the decision in *Chiles v. Salazar* also has some deeply troubling implications which the majority makes no attempt to address. Based on this decision, can the states effectively regulate any professional speech? For example, could a state adopt a law prohibiting therapists from advising patients to commit suicide?

Perhaps the easy answer is that such a law would meet strict scrutiny – that is, it would achieve a compelling government interest (to prevent people from committing suicide). But the court made no such findings in *Chiles v. Salazar* when faced with a form of medical care that evidence shows to be ineffective and harmful.

Instead, Justice Neil Gorsuch's majority opinion in *Chiles v. Salazar* suggested that the medical malpractice is the way of dealing with harmful professional speech. The court, however, has held since 1964's *New York Times v. Sullivan* that civil liability for speech violates the First Amendment. Moreover, a state should be able harm rather than waiting for the injury to lead to a tort suit.

This was Justice Ketanji Brown Jackson's central point in dissent: "[s]peech uttered for purposes of providing medical treatment is not protected by the First Amendment when the State reasonably regulates the speaker's provision of medical care to its patients." She concluded her opinion: "To do anything else opens the door to a host of new and old worms. It threatens to impair States' ability to regulate the provision of medical care in any respect. It extends the Constitution into uncharted territory in an utterly irrational fashion. And it ultimately risks grave harm to Americans' health and wellbeing."

OPINIONS AND ORAL
ARGUMENT LIVE BLOG

Wednesday at 9:30 a.m.
ET

Follow live



Justice Sotomayor, but Justice Kagan argued what would be a significant change in First Amendment law. She began her opinion by stating: “I write only to note that if Colorado had instead enacted a content-based but viewpoint-neutral law, it would raise a different and more difficult question.”

Under current law, a content-based restriction on speech must meet strict scrutiny. A law can be found to be content-based in either of two ways: a subject matter-restriction or a viewpoint restriction. In many cases, the court has held that subject-matter restrictions – laws that regulate speech based on their topic – are content-based restrictions that must meet strict scrutiny.

For example, in *Reed v. Town of Gilbert*, the court struck down a municipal ordinance that regulated the presence of outdoor signs, but that had 23 categories of exceptions. Under the ordinance, political signs could be quite large and remain up throughout the election season, while signs giving directions to events had to be small and could be posted for only a short time. The court unanimously declared this unconstitutional. The court said that “[o]n its face, the Sign Code is a content-based regulation of speech. We thus have no need to consider the government’s justifications or purposes for enacting the Code to determine whether it is subject to strict scrutiny.”

The law in *Reed* was a subject-matter restriction on speech – favoring political expression over other topics – but nonetheless received strict scrutiny. Kagan’s approach would provide that only viewpoint restrictions, not subject-matter restrictions, must meet strict scrutiny. That would substantially lessen the Constitution’s protection for speech.

Moreover, Kagan’s objection to the Colorado law as being viewpoint-based still misses the crucial issue: Does Colorado have a sufficient interest in protecting gay, lesbian, and transgender youth from being subjected to treatment that is ineffective and harmful? It is notable that only Jackson in her dissent discusses the medical evidence supporting the Colorado law.

Conclusion

If the court follows its approach in *Chiles v. Salazar*, it will make it more difficult for professionals and to hold them liable to protect their patients and in a strong sense that, at least for some of the justices, the case is less about other professional speech cases, much more about the court’s fear. Last year, in a number of cases, the conservative majority on the court has refused to provide constitutional protection for gay, lesbian, and transgender individuals. *Chiles v. Salazar* is the court keeping the legislatures – in Colorado and 25 other states – from doing so as well.

OPINIONS AND ORAL
ARGUMENT LIVE BLOG

Wednesday at 9:30 a.m.
ET

Follow live



Recommended Citation: Erwin Chemerinsky, *Conversion therapy and professional speech*, SCOTUSblog (Apr. 9, 2026, 9:30 AM), <https://www.scotusblog.com/2026/04/conversion-therapy-and-professional-speech/>

SHARE

Copy

Twitter

Email

Each weekday, we present news articles and commentary related to the Supreme Court in a smart, approachable way.

Your email address

Submit

THIS SITE IS PROTECTED BY RECAPTCHA AND THE GOOGLE [PRIVACY POLICY](#) AND [TERMS OF SERVICE](#) APPLY.

Stay informed on every decision

Receive essential Court news every morning.

Your email address

Subscribe Free

THIS SITE IS PROTECTED BY RECAPTCHA AND THE GOOGLE [PRIVACY POLICY](#) AND [TERMS OF SERVICE](#) APPLY.

SCOTUSblog

The premier source for Supreme Court news, analysis, and data since 2002. Index

OPINIONS AND ORAL
ARGUMENT LIVE BLOG

Wednesday at 9:30 a.m.
ET

Follow live

[Cases](#)[Podcasts](#)[Newsletters](#)[About](#)

 © 2026 SCOTUSblog. All rights reserved.

[Archive](#) [Privacy Policy](#) [Editorial Policy](#) [Terms of Use](#)

OPINIONS AND ORAL
ARGUMENT LIVE BLOG

Wednesday at 9:30 a.m.
ET

[Follow live](#)