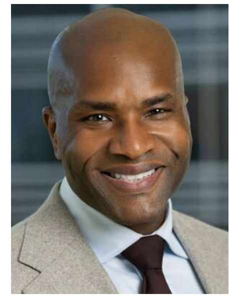
How Litigants Are Testing Conversion Therapy Ruling's Scope

By **Anwar Graves, Lauren Weinstein and Simon Hedlin** (July 15, 2026)



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In the closely watched case of Chiles v. Salazar, the U.S. Supreme Court endorsed a First Amendment challenge to Colorado's ban on conversion therapy.

On March 31, the court held that the ban was subject to strict scrutiny — the highest standard of judicial review used to determine the constitutionality of a statute or government conduct. Because the district court had failed to apply that standard, the Supreme Court remanded for consideration under the proper standard. While the majority characterized the ruling as narrow,[1] the dissent warned of "potential long-term and disastrous implications."[2]

Litigants have already begun deploying Chiles in new — and often surprising — contexts. Companies have used the ruling to challenge statutes regulating the use of pricing algorithms, artificial intelligence and employer speech, to name only a few examples. This article summarizes the decision and analyzes the implications it may have beyond the healthcare context.

The Court's Ruling

The statute at issue in Chiles prohibits licensed mental health counselors from engaging in this therapy with minors.[3] The Minor Conversion Therapy Law defines "conversion therapy" as "any practice or treatment" that "attempts or purports to change an individual's sexual orientation or gender identity."[4]

Kaley Chiles, a licensed counselor and the plaintiff in the underlying case, sought to enjoin the statute on First Amendment grounds for unconstitutionally restricting her speech with patients.[5]

In evaluating Chiles' claim, the U.S. District Court for the District of Colorado determined that the statute is a viewpoint-neutral public health law that regulates professional conduct, thus making it subject to rational basis review — the lowest standard of review.[6] Concluding in its December 2022 decision that Colorado had a legitimate interest in protecting minors against the potential harms of conversion therapy, it rejected Chiles' First Amendment challenge and upheld the law.[7] On appeal, the U.S. Court of Appeals for the Tenth Circuit affirmed in September 2024.[8]

The Supreme Court reversed in an 8-1 decision. Recognizing that pure speech regulations — and, in particular, restrictions on conveying a particular viewpoint — are indisputably subject to strict scrutiny, the court determined that Colorado's attempt to avoid First Amendment review by labeling the therapy at issue as conduct, rather than speech, was not sufficient to evade strict scrutiny.[9] "The First Amendment," the court observed, "is no word game."[10] Nor was it sufficient that the statute mostly regulates nonexpressive conduct or that it applies to a licensed profession.[11]

The court explained that the statute "censors speech based on viewpoint"[12] because it prescribes what views on sexual orientation or gender identity licensed healthcare professionals may express,[13] which "represents an 'egregious' assault" on people's ability to think and speak freely.[14] Accordingly, since the statute regulates "speech as speech," rather than speech incident to conduct, the court held that the statute would have to survive strict scrutiny.[15]

Under strict scrutiny, the government must show that the speech-restricting law, as the court said in 2015 in Reed v. Gilbert, "furthers a compelling interest" and "is narrowly tailored to achieve that interest"[16] — a standard few laws satisfy. Strict scrutiny is often described as strict in theory, but fatal in fact.

Justices Elena Kagan and Sonia Sotomayor, in a separate concurring opinion, explained that the law's inherent viewpoint discrimination made the decision to reverse straightforward.[17] In their view, the case would have presented a more difficult question had Colorado instead enacted a content-based but viewpoint-neutral law.[18]

Justice Ketanji Brown Jackson, writing for herself in dissent, argued that statutes regulating dangerous conduct like conversion therapy should not be subject to strict scrutiny, even if they incidentally burden speech. Moreover, regulations pertaining to a licensed profession like medical care, she argued, are inherently viewpoint-based and cannot automatically result in a presumptive First Amendment violation, because the regulations' purpose is to ensure "competence, not debate."[19] As Justice Jackson put it, the court's decision "opens a dangerous can of worms" that "threatens to impair States' ability to regulate the provision of medical care in any respect."[20]

Although Justice Jackson was the lone dissenter on the court, amici shared her fears. Constitutional law scholars argued that overturning the ban "would erode states' ability to regulate professional services through long-established licensing, tort, and malpractice regimes."[21] And a group of 21 different states shared those concerns because "laws regulate how lawyers speak with their clients, doctors give medical opinions to their patients, pharmacists dispense medication, and on and on."[22]

It is too early to tell whether those fears will prove to be justified, but litigants are already invoking Chiles in contexts far removed from the provision of mental health services.

Attempts To Expand Chiles' Scope

Challenges to State Antitrust Laws

For the last few years, legislatures, state and federal enforcers, and private litigants alike have targeted companies that use algorithmic pricing tools — AI tools that can recommend or set prices — on the grounds that their use violates antitrust laws. Now, targets of those enforcement actions are using Chiles to fight back.

State and federal enforcers have filed antitrust actions claiming that algorithmic pricing tools facilitate price-fixing and collusion. For example, beginning in 2022, dozens of class and government enforcement actions were filed against landlords and RealPage Inc. — a software company that provides landlords and property management companies with AI-based software that helps them manage rental units, including by using algorithms to give rental pricing recommendations.[23] The suits alleged that RealPage and the landlords conspired to systematically raise rents using RealPage's software to fix prices.

Legislatures, meanwhile, have enacted statutes that directly regulate the use of pricing algorithms.

In January, California enacted A.B. 325,[24] which prohibits using "a common pricing algorithm as part of a contract, combination in the form of a trust, or conspiracy to restrain trade" or coercing "another person to set or adopt a recommended price or commercial term recommended by the common pricing algorithm."[25] Under the statute, "common pricing algorithm" means "any methodology, including a computer, software, or other technology ... that uses competitor data to recommend, align, stabilize, set, or otherwise influence a price or commercial term."[26]

Similarly, Connecticut's H.B. 8002, signed into law in November 2025, bans the use of algorithmic pricing tools to set rental rates. The statute outlaws "software that uses one or more programmed or automated processes to perform calculations of nonpublic competitor data" to "set rental rates or occupancy levels for residential dwelling units."[27]

New York enacted a similar law last October, which RealPage is now challenging on First Amendment grounds. S.B. 7882/A.B. 1417-B, codified as Section 349-a of the General Business Law, prohibits "operating or licensing a software, data analytics service, or algorithmic device" that "collect[s] historical or contemporaneous prices"; analyzes the pricing data, "including by using that information to train an algorithm"; and "recommend[s] rental prices, lease renewal terms, [and] ideal occupancy levels" to landlords and residential property managers.[28]

In RealPage v. James, filed in the U.S. District Court for the Southern District of New York, RealPage is seeking to enjoin the portion of the statute prohibiting the use of algorithmic pricing tools with a "coordinating function" in setting rental prices on the grounds that it impermissibly restricts speech.[29]

According to RealPage, Section 340-b facially, and as applied to RealPage, imposes both content-based and viewpoint restrictions, which therefore requires the statute to satisfy strict scrutiny.[30] RealPage claims that the statute is content-based because it applies specifically to the topic of rental prices, and that it is viewpoint-based because it "restricts profit-oriented speech."[31]

In opposition, the New York Attorney General's Office contends that the law is merely a regulation of "anticompetitive conduct" — not a restriction on protected speech.[32] Even assuming that Section 340-b regulates speech, the government argues, "computer code is content-neutral and not subject to strict scrutiny due to its 'functionality.'"[33]

Shortly after the Supreme Court announced the opinion in Chiles, RealPage filed a notice of supplemental authority in the Southern District of New York advising it of the decision. RealPage argues that, under Chiles, statutes regulating the provision of "advice" are content-based and are therefore subject to strict scrutiny.[34] Citing the Chiles majority's observation that the First Amendment "is no word game," RealPage further claims that Chiles refutes the argument that Section 340-b "is merely a 'regulation of conduct,'" not a restriction on free speech.[35]

The government responded that when a regulation "'restricts speech only because it is integrally related to unlawful conduct' [it] is not subject to strict scrutiny."[36] On that basis, the government seeks to distinguish Chiles, since the conduct a counselor engages in when performing conversion therapy generally is lawful, but engaging in conspiracies to restrain trade is not.[37] RealPage's preliminary injunction motion is still pending.

Challenges to AI Regulations

In April, Elon Musk's xAI, which is behind the AI tool Grok, filed a First Amendment challenge to Colorado's S.B. 24-205, a statute written to mitigate algorithmic discrimination.[38]

Under the statute, algorithmic discrimination includes "the use of an artificial intelligence system [that] results in an unlawful differential treatment or impact that disfavors an individual or group," but excludes the use of AI systems to "increase diversity or redress historical discrimination."[39]

The First Amendment argument that xAI advances largely mirrors RealPage's invocation of Chiles to challenge New York's regulation of pricing algorithms. Seeking preliminary and permanent injunctions, xAI claims that S.B. 24-205 compels it to alter "speech-based editorial decisions" by its staff in developing xAI's foundational AI model to "promote Colorado's views about fairness, equity, and 'acceptable' forms of discrimination."[40]

According to xAI, Colorado's S.B. 24-205 regulates speech based on both content and viewpoint, subjecting the law to strict scrutiny. It contends that because the law was silent on "AI systems generating outputs on protein folding, computer coding, and the like," but nevertheless regulated the use of the same systems on "applications for employment, educational, credit, or housing opportunities," S.B. 24-205 is quintessentially content-based.[41]

Additionally, xAI claims that the law discriminates based on viewpoint since it prohibits using AI systems that result in disparate treatment unless those systems are used to increase diversity or redress past discrimination.[42]

The Colorado Attorney General's Office has not yet filed an answer, and the case is currently stayed pending the court's decision on xAI's request for injunctive relief. In May, shortly after the stay was implemented, Colorado enacted S.B. 26-189, which repealed the algorithmic discrimination provisions of S.B. 24-205, leaving the fate of xAI's lawsuit uncertain. Nonetheless, the suit provides a blueprint for challenging similar statutes under the First Amendment.[43]

Challenges to Labor Laws

Chiles has also been invoked in a challenge to a California labor law that regulates how public employers can speak about unions.[44]

The plaintiff-appellant, Shasta County, seeks to overturn the Prohibition on Public Employers Deterring and Discouraging Union Membership, which prohibits California public employers from speaking to employees in a manner that would "deter or discourage" union membership.[45]

Citing Chiles, Shasta County argues that the law discriminates based on viewpoint because the law permits public employers to speak about union membership, but not if that speech is anti-union.[46] The county claims that the law prohibited it from informing its employees of their constitutional right to decline union membership and even forced the county to advertise pro-union messages.[47] The county therefore argues that the law addresses a two-sided public controversy but only burdens expression on one side — the same flaw that doomed the Colorado statute in Chiles.[48]

The case is currently pending before the Third Appellate District of California's state appeals court.

Conclusion

Whether these initial First Amendment challenges will succeed in extending Chiles beyond the healthcare context remains to be seen. Courts may ultimately confine Chiles to its facts despite efforts to extend it into other areas like antitrust, AI and labor regulations.

Regardless, Chiles provides plaintiffs with an additional arrow in their quiver to challenge laws that regulate speech, even speech that is incidental to other conduct, which suggests that the pace of First Amendment litigation may increase significantly.

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[1] Chiles v. Salazar, 146 S. Ct. 1010, 1020 (2026).

[2] Id. at 1049.

[3] Colo. Rev. Stat. § 12-245-224(1)(t)(V) (2025).

[4] Id. § 12-245-202(3.5)(a) (2025).

[5] Chiles, 146 S. Ct. at 1017-18.

[6] Chiles v. Salazar, No. 1:22-CV-02287, 2022 WL 17770837, at *9 (D. Colo. Dec. 19, 2022).

[7] Id.

[8] Chiles v. Salazar, 116 F.4th 1178, 1191 (10th Cir. 2024).

[9] Chiles, 146 S. Ct. at 1023.

[10] Id.

[11] Id. at 1026.

[12] Id. at 1029.

[13] Id. at 1024.

[14] Id. at 1029.

[15] Id. at 1026 (quoting Nat'l Inst. of Family & Life Advocates v. Becerra, 585 U.S. 755, 770 (2018)).

[16] Reed v. Town of Gilbert, 576 U.S. 155, 171 (2015).

[17] Chiles, 146 S. Ct. at 1029 (Kagan, J., concurring).

[18] Id.

[19] Id. at 1043 (Jackson, J., dissenting).

[20] Id. at 1050.

[21] Brief of Constitutional Law and First Amendment Scholars as Amici Curiae at 28, Chiles, 146 S. Ct. 1010 (No. 24-539) (Aug. 26, 2025).

[22] Brief of Washington et al. as Amici Curiae at 30, Chiles, 146 S. Ct. 1010 (No. 24-539) (Aug. 26, 2025).

[23] See generally, e.g., Weaver v. RealPage Inc., No. 22-CV-03224 (D. Colo.); Mackie v. RealPage Inc., No. 23-CV-00011 (D. Colo.); Carter v. RealPage Inc., No. 22-CV-01332 (W.D. Tex.); Kramer v. RealPage Inc., No. 22-CV-03835 (D.D.C.); Precht v. RealPage Inc., No. 22-CV-12230 (D. Mass.); Complaint, United States v. RealPage Inc., No. 24-CV-00710 (M.D.N.C. Aug. 23, 2024).

[24] A.B. 325, 2025-2026 Reg. Sess. (Cal. 2025).

[25] Id.

[26] Id.

[27] H.B. 8002, 2025 Gen. Assemb., Nov. 2025 Spec. Sess. (Conn. 2025).

[28] N.Y. Gen. Bus. Law § 340-b.

[29] RealPage's Memorandum of Law in Support of Its Motion for a Preliminary Injunction at 5-6, RealPage Inc. v. James, No. 25-CV-9847 (S.D.N.Y. Dec. 5, 2025), Dkt. No. 20.

[30] Id. at 11-12, 16.

[31] Id. at 12, 14.

[32] Defendant's Memorandum of Law in Support of Her Motion to Dismiss the Complaint and In Opposition to Plaintiff's Motion for a Preliminary Injunction at 9-10, RealPage Inc. v. James, No. 1:25-CV-9847 (Jan. 9, 2026).

[33] Id. at 22.

[34] RealPage's Letter at 1, RealPage Inc. v. James, No. 25-CV-9847 (Apr. 3, 2026), Dkt. No. 48.

[35] Id.

[36] Defendant's Letter at 1, RealPage Inc. v. James, No. 25-CV-9847 (Apr. 7, 2026), Dkt. No. 49.

[37] Id. at 2.

[38] S.B. 24-205, 74th Gen. Assemb., 2d Reg. Sess. (Colo. 2024), repealed by, S.B. 26-189, 75th Gen. Assemb., 2d Reg. Sess. (Colo. 2026).

[39] Id.

[40] Complaint ¶ 92, X.AI LLC v. Weiser, No. 26-CV-01515 (D. Colo. Apr. 9, 2026).

[41] Id. ¶ 116.

[42] Id. ¶ 119.

[43] S.B. 26-189, 75th Gen. Assemb., 2d Reg. Sess. (Colo. 2026).

[44] Appellants' Opening Brief, Shasta County Board of Supervisors et al v. Public Employment Relations Board, No. C104883, 2026 WL 1304017, (Cal. Ct. App. Apr. 8, 2026).

[45] Id.; Cal. Gov't Code § 3550.

[46] Appellants' Opening Brief at 30, Shasta Cnty. Bd. Supervisors, No. C104883, 2026 WL 1304017.

[47] Id. at 20, 31.

[48] See id. at 29-30.