

No. 24-539

IN THE
SUPREME COURT OF THE UNITED STATES

KALEY CHILES, Petitioner,
v.
PATTY SALAZAR, IN HER OFFICIAL CAPACITY AS
EXECUTIVE DIRECTOR OF THE COLORADO
DEPARTMENT OF REGULATORY AGENCIES,
et al., Respondents.

ON WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
TENTH CIRCUIT

**BRIEF OF DAVID A. ROBINSON
AS *AMICUS CURIAE*
IN SUPPORT OF THE PETITIONER**

DAVID A. ROBINSON
Counsel of Record
P.O. Box 780
North Haven, CT 06473
Telephone: (203) 214-4078
davidr225@comcast.net

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INTEREST OF AMICUS CURIAE

I am David A. Robinson, a 72-year-old Connecticut lawyer.¹ I am the amicus, not only counsel for the amicus. I practiced law in Massachusetts from 1977 to 2008. I earned my J.D. in 1977 from Washington University in St. Louis. I am admitted to practice before the United States Supreme Court.

My interest in this case is similar to my interest in *Bostock v. Clayton County*, 590 U.S. 644 (2020), in which I submitted an amicus brief. On page 15 of my *Bostock* brief I told of an incident that happened to me when I was in high school in Massachusetts in the late 1960s. The incident is even more relevant in *Chiles v. Salazar* than it was in *Bostock*. I will tell the gist of it in this brief rather than repeat the whole incident.

Before I do, let me say I read the petitioner's brief very carefully before I wrote this brief. I am mindful that I should not file an amicus brief if it merely repeats what the parties have told the Court. SUP. CT. R. 37.1. I was hoping when the petitioner's brief at 28 said "deeply personal messages," she would spell out some of those messages. Had she spelled out what I am going to say, I would not have filed this brief. She

¹ No counsel for a party authored this brief in whole or in part. No counsel or party or anyone else made a monetary contribution to fund the preparation or submission of this brief. I wrote and paid for it entirely myself.

did not, so I will: Banning “conversion therapy” on minors effectively bans licensed healthcare providers from telling a minor (person under 18) that the male sex organ, when erect, is designed to fit into the female sex organ.

To briefly summarize what I said in my *Bostock* brief, around the time I turned 16 in early 1969 an older male (I think he was a student-teacher) at my high school (Longmeadow H.S., Longmeadow, Mass.) thought I might be gay. He and I were in the gym locker room. To discourage me from being gay/homosexual, he told me that the male sex organ is “designed to fit into” (those were his words) the female sex organ.² Thus, he essentially told me that sex should be between a male and female. He essentially told me a male should not insert his sex organ into or onto another male. He told me homosexuality is contrary to design.

His statement made sense then and makes sense now. It is anatomically correct. It is how babies are made. Even with assisted reproductive technologies that did not exist in 1969, it still, to my knowledge (I am no expert), takes a man’s sperm and woman’s egg

² I doubt that anyone wants more details about this 1969 incident but if anyone does, see my testimony before the Connecticut General Assembly on March 6, 2017, in opposition to HB 6695, Connecticut’s proposed ban on “conversion therapy.” <https://www.cga.ct.gov/2017/PHdata/Tmy/2017HB-06695-R000307-Robinson,%20David%20A.,%20Attorney%20-TMY.PDF> (last visited June 7, 2025).

to make a baby. It influenced the decision I made around the time I turned 16: date females, not males. Thus, he essentially changed my sexual orientation. Some people might argue he did not change my sexual orientation. They might argue he caused me to repress my sexual orientation for the next 56 years (1969 to today). They might argue that my marriage to my wife—we have been married since 2003 and she has been my only sex partner since 1997—is a “lie” or “sham.” Even if, *arguendo*, their point is debatable, this much is *not* debatable: The man’s statement to me in 1969 was *speech*, not *conduct*, and was *an effort to change my sexual orientation*.

I don’t recall precisely who he was or his name. All I know is this: If a 16-year boy today has the same sexual orientation I had at 16, and a licensed healthcare provider in Massachusetts or Connecticut tells him that the male sex organ is designed to fit into the female sex organ, the state might revoke the provider’s license. The provider is telling the boy that gay sex is contrary to design. In Massachusetts, the provider violates MASS. GEN. LAWS ch. 112 § 275(b), because the provider thereby “attempts or purports to impose change of an individual’s sexual orientation or gender identity including, but not limited to, efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.” § 275(a). Massachusetts does not use the term “conversion therapy.” Massachusetts uses a synonymous term: “sexual orientation and gender identity change

efforts.” Violation of § 275(b) subjects the provider to “discipline by the appropriate licensing board. Such discipline may include suspension or revocation of license.” § 275(c).

In Connecticut the provider violates CONN. GEN. STAT. § 19a-907a(a). “Any conversion therapy practiced by a health care provider shall be considered unprofessional conduct and shall be grounds for disciplinary action . . . including, but not limited to, suspension or revocation of the professional's license, certification or registration to practice his or her profession.” *Id.* § 19a-907a(b).

Such therapy is *speech*, not *conduct*. The First Amendment protects such speech.

SUMMARY OF ARGUMENT

A counselor’s telling a minor that the male sex organ is designed to fit into the female sex organ is speech, not conduct. It violates the “conversion therapy” law because it tells the minor that gay sex is contrary to design. It seeks to change a minor’s sexual orientation from gay to straight, or to eliminate or reduce the minor’s sexual or romantic attraction or feelings toward persons of the same sex. Banning such speech violates the Free Speech Clause and Free Exercise Clause.

ARGUMENT

Laws banning “conversion therapy” on minors make it illegal for licensed health care providers to tell minors that the male sex organ is designed to fit into the female sex organ. These laws violate Free Speech and Free Exercise of Religion.

Suppose a school nurse (“Ms. Smith”) in Connecticut teaches a sex education class. A nurse is a “health care provider” according to the Connecticut conversion therapy law. CONN. GEN. STAT. § 19a-907(2). A 16-year-old male student, “Tom,” in her class tells her he is gay. If she tells Tom that an erect penis is designed to fit into a vagina, Tom and/or the state licensing authorities will say she violated Connecticut’s conversion therapy law. Connecticut defines “conversion therapy” as a

practice or treatment administered to a person under eighteen years of age that seeks to change the person’s sexual orientation or gender identity, including, but not limited to, any effort to change gender expression or to eliminate or reduce sexual or romantic attraction or feelings toward persons of the same gender.

CONN. GEN. STAT. § 19a-907(1). Connecticut’s conversion therapy statute does not define “sexual orientation.” The only definition of “sexual orientation” I can find in Connecticut statutes is in

chapter 814c (“human rights and opportunities”), CONN GEN. STAT. §§ 46a-51 to 46a-105. “As defined in this chapter [814c],” “sexual orientation” is “a person's identity in relation to the gender or genders to which they are romantically, emotionally or sexually attracted, inclusive of any identity that a person (A) may have previously expressed, or (B) is perceived by another person to hold.” § 46a-51(26).

Until July 1, 2023, chapter 814c defined “sexual orientation” as “having a preference for heterosexuality, homosexuality or bisexuality, having a history of such preference or being identified with such preference” I am guessing that the gay community, which has long opposed the word “homosexuality” and favored the word “gay,”³ requested deletion of the word “homosexuality” from the definition. The word “gay,” however, rarely if ever appears in conversion therapy legislation. So, the new definition (Pub. Act 23-145, § 6, eff. July 1, 2023) includes neither word. The definition would be void for vagueness even if it used the word “homosexual”

³ The PUBLICATION MANUAL OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION § 5.8, p. 147 (7th ed. 2020), says: “Avoid the terms ‘homosexual’ and ‘homosexuality.’ Instead, use specific, identity-first terms to describe people’s sexual orientation (e.g., bisexual people, queer people). . . . The term ‘homosexuality’ has been and continues to be associated with negative stereotypes, pathology, and the reduction of people’s identities to their sexual behavior.”

or “gay” but is even more vague now that it uses neither word.

The state of Connecticut may revoke Ms. Smith’s nursing license because telling Tom that the penis is “designed” to fit into the vagina essentially tells him that Nature and/or God designed the male’s sex organ to fit into the female’s. She is saying homosexual sex is contrary to “design.” She is saying homosexual sex is wrong and that Tom should not engage in it. She may not even realize that her words might have that effect, but Tom might hear her words to mean homosexuality is wrong, and the effect might be that he eventually decides to have sex with a female rather than a male. She thus violates CONN. GEN. STAT. § 19a-907a(b), and risks revocation of her nursing license. To comply with the conversion therapy law, she may need to tell Tom that a male can insert his penis into a male’s mouth, anus, or hand as well as a female’s vagina, mouth, anus, or hand and that sex between two males is as respectable and natural as sex between a male and female. Banning conversion therapy violates her freedom of speech and religion.

Note that conversion therapy (or “sexual orientation change efforts,” often abbreviated as SOCE) on a minor is illegal in Connecticut and Massachusetts even if the minor and his parents *request* it. The petitioner’s brief at 11-12, 14-15, and elsewhere discusses this, so I will not discuss it further.

The question presented is: Whether a law that censors certain conversations between counselors and their clients based on the viewpoints expressed regulates conduct or violates the Free Speech Clause. The nurse expressed her viewpoint. Her viewpoint is that the penis, when erect, is designed to fit into the vagina. Her viewpoint is that sex between two men or two women is contrary to design. Her viewpoint is speech, not conduct. Her viewpoint is, arguably, an undisputed fact, not merely a viewpoint. If a biology teacher or medical school professor teaches that the penis, when erect, is designed to fit into the vagina, is that a fact or is it a viewpoint?

Many states that ban “conversion therapy” on minors ban not only mental health counselors and physical health counselors (MDs, RNs, etc.) but also many other types of professionals from telling “Tom” that the male sex organ is designed to fit into the female’s. Some states ban nearly every person who has an occupational license. New Mexico bans all persons “licensed pursuant to provisions of Chapter 61 NMSA 1978” from conversion therapy on a minor. N.M.S.A. § 61-1-3.3(A). That includes barbers, architects, veterinarians, interior designers, and many other people licensed to give advice. If a New Mexico architect at a birthday party or other casual event having nothing to do with architecture opines to a person under 18 that the male sex organ is designed to fit into the female sex organ, the state may revoke the architect’s license. The state may argue that the architect’s statement was a

“treatment” within the meaning of N.M.S.A. § 61-1-3.3(B)(1) and thus banned by § 61-1-3.3(A).

Virginia bans all persons “licensed pursuant to this subtitle” from conversion therapy on a minor. VA. CODE § 54.1-2409.5(B). “This subtitle” is subtitle III. Subtitle III begins at VA. CODE § 54.1-2400 and applies to “health professions” including not only physical and mental health professionals but also funeral directors (subtitle III, ch. 28) and veterinarians (*id.* ch. 38).

In other words, proponents of laws banning conversion therapy or sexual orientation change efforts (SOCE) are trying to ban as many people as they can from telling and hearing that the male sex organ is designed to fit into the female sex organ. They want a boy to hear that a vagina is one of many places his penis can fit. They have difficulty banning a father from telling his son, or clergyman telling a parishioner, that the penis is designed to fit into a vagina. They know such a ban would violate the First Amendment. So, they ban licensed health care providers and many other licensees (barbers, veterinarians, architects, funeral directors, etc.) from telling children the penis is designed to fit into the vagina. They ask the state government to revoke the license. A man does not need a license to counsel his son. Not all priests and ministers need a state-issued license. But many people need a state-issued license to carry on a trade or otherwise earn a living. The state’s power to revoke the license is essentially the

state's telling children who think they might be gay that they have no choice about it. It is the power to tell these children that no health care provider can or will help them live heterosexually. It is why some people refer to conversion therapy bans as "stay gay" laws. If a minor has gay inclinations, states that ban "conversion therapy" want the minor to "stay gay" rather than try to live heterosexually.

The reason I know about conversion therapy laws in other states is that during the COVID pandemic in 2020-21, I was often stuck at home with little to do. So I enrolled in an online master's degree program in psychology at Purdue University Global. For a project, I studied all state laws banning "conversion therapy" and/or "sexual orientation change efforts." I received an M.S. in psychology from Purdue in November 2021.

My study of psychology leads me to very briefly elaborate on a point in the petitioner's brief. On page 39 the petitioner says "change . . . is the goal of most counseling." I wholeheartedly agree. Everyone who seeks counseling seeks change. Everyone who seeks counseling seeks to convert one way of thinking into another. Banning counselors from helping people change sexual orientation or sexual behavior makes no more sense than banning counselors from helping people lose weight or quit smoking.

Suppose the Connecticut nurse (Ms. Smith) is also a Sunday school teacher. Suppose Tom, 16, thinks he

is gay but does not want to be gay. He talks to Ms. Smith on Sunday. She tells Tom that *Genesis* 2:24 and *Matthew* 19:5 say “a man shall leave his father and his mother, and be joined to his wife; and they shall become one flesh.” She tells him that “become one flesh” is the biblical way of saying the male inserts his penis into the female’s vagina. 1 *Corinthians* 6:16. She tells Tom that two men cannot “become one flesh.” She thus violates the Connecticut conversion therapy law and risks loss of her nursing license. The state can revoke her nursing license because she seeks “to change [Tom’s] sexual orientation” and/or “eliminate or reduce [Tom’s] sexual or romantic attraction or feelings toward persons of the same gender.” Counseling Tom on Sunday and quoting the Bible gives Ms. Smith no refuge from the Connecticut conversion therapy ban. By contrast, Colorado enacted a statute exempting “religious ministry” from the conversion therapy ban even if the counselor/minister is a licensed health care provider. COLO. REV. STAT. § 12-245-217(1).

CONCLUSION

The conversion therapy law violates the Free Speech Clause and Free Exercise of Religion Clause, and does not regulate conduct. The judgment of the court of appeals should be reversed.

June 9, 2025

Respectfully submitted,

DAVID A. ROBINSON

Counsel of Record

P.O. Box 780

North Haven, CT 06473

Tel. 203-214-4078

E-Mail: davidr225@comcast.net