

24-539 CHILES V. SALAZAR

DECISION BELOW: 116 F.4th 1178

LOWER COURT CASE NUMBER: 22-1445, 23-1002

QUESTION PRESENTED:

Kaley Chiles is a licensed counselor who helps people by talking with them. A practicing Christian, Chiles believes that people flourish when they live consistently with God's design, including their biological sex. Many of her clients seek her counsel precisely *because* they believe that their faith and their relationship with God establishes the foundation upon which to understand their identity and desires. But Colorado bans these consensual conversations based on the viewpoints they express. Its content- and viewpoint-based Counseling Restriction prohibits counseling conversations with minors that might encourage them to change their "sexual orientation or gender identity, including efforts to change behaviors or gender expressions," while allowing conversations that provide "[a]cceptance, support, and understanding for ... identity exploration and development, including ... [a]ssistance to a person undergoing gender transition." Colo. Rev. Stat. § 12- 245-202(3.5).

The Tenth Circuit upheld this ban as a regulation of Chiles's conduct, not speech. In doing so, the court deepened a circuit split between the Eleventh and Third Circuits, which do not treat counseling conversations as conduct, and the Ninth Circuit, which does.

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

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