IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-cv-2287-GPG-STV

KALEY CHILES,

Plaintiff,

v.

PATTY SALAZAR, in her official capacity as Executive Director of the Department of Regulatory Agencies;
REINA SBARBARO-GORDON, in her official capacity as Program Director of the State Board of Licensed Professional Counselor Examiners and the State Board of Addiction Counselor Examiners;
JENNIFER LUTTMAN, AMY SKINNER, KARENVAN ZUIDEN, MARYKAY JIMENEZ, KALLI LIKNESS, SUE NOFFSINGER, RICHARD GLOVER, and ERIKA HOY, in their official capacities as members of the State Board of Licensed Professional Counselor Examiners; and
KRISTINA DANIEL, HALCYON DRISKELL, CRYSTAL KISSELBURGH, ANJALI JONES, THERESA LOPEZ, and JONATHAN CULWELL, in their official capacities as members of the State Board of Addiction Counselor Examiners,

Defendants.

PLAINTIFF'S RENEWED PRELIMINARY-INJUNCTION MOTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

CERTIFICATION

Plaintiff Kaley Chiles submits the following Renewed Preliminary-Injunction Motion. Plaintiff's counsel conferred with Defendants' counsel about this motion on May 11, 2026. Defendants' counsel stated that they opposed the motion because Defendants are willing to stipulate to a preliminary injunction and believe briefing is unnecessary. On May 13, 2026, Plaintiff's counsel sent Defendants' counsel a proposed order stipulating to a preliminary injunction. Defendants' counsel has not responded to that proposal, necessitating this motion.

MOTION

Under Federal Rules of Civil Procedure 65, Plaintiff requests the following injunction:

1. During the pendency of this case, Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order are enjoined from enforcing Colo. Rev. Stat. § 12-245-224(1)(t)(V) against Plaintiff's counseling conversations.
2. During the pendency of this case, Defendants, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order are enjoined from requiring Plaintiff to respond to licensing complaints filed with the Division of Professions and Occupations raising allegations that Plaintiff's counseling conversations violate Colo. Rev. Stat. § 12-245-224(1)(t)(V).

INTRODUCTION

Kaley Chiles is a licensed counselor who lives and practices in Colorado. For years, a Colorado law has been censoring her voluntary conversations with clients on issues of gender and sexuality based on the viewpoint of her speech.

The Supreme Court recently reversed the denial of Chiles's motion for preliminary injunction, holding that Colorado's viewpoint discrimination is an "'egregious' assault on" First Amendment "commitments." *Chiles v. Salazar*, 146 S. Ct. 1010, 1029 (2026). Under that ruling, this Court should enter Chiles's requested preliminary injunction—consistent with the Supreme Court's reversal—that prohibits Colorado from enforcing Colo. Rev. Stat. § 12-245-224(1)(t)(V) to censor her counseling speech. After years of chilling Chiles's speech, Colorado's censorship must stop.

BACKGROUND

The Plaintiff. Kaley Chiles is a licensed counselor. Verified Complaint (V.C.) ¶ 28, ECF No. 1. She has devoted her career to counseling young people with various struggles, including issues related to gender and sexuality. V.C. ¶¶ 82–89.

Chiles's clients "determine the goals that they have for themselves." V.C. ¶ 108. When minors seek her services, she counsels them only if their parents consent and the minors "are internally motivated to seek counseling (as opposed to being required to come)." V.C. ¶ 106. Chiles does not "impose her values" on those clients or determine their goals. V.C. ¶ 104.

Chiles views her work as an outgrowth of her Christian faith. V.C. ¶¶ 104–06, 110–11. Many of her clients are also Christians who seek her help because of their shared religious beliefs. V.C. ¶ 110. These clients believe "that God"—"rather than their attractions or perceptions"—"determines their identity." V.C. ¶ 110. When her clients seek it, Chiles provides faith-informed counseling. V.C. ¶ 106.

Chiles has counseled minor clients who want to discuss their gender, sexuality, and identity. V.C. ¶ 83. Some believe they are living "inconsistent with their faith or values" on these issues, leading to "internal conflicts, depression, [or] anxiety." V.C. ¶ 111. They desire counseling "to reduce or eliminate unwanted sexual attractions, change sexual behaviors, or" regain comfort "with [their] physical body." Order at 7, ECF No. 55. As "a client-directed counselor," V.C. ¶ 108, Chiles "seeks … to assist [those] clients" in pursuing those "desires and objectives," V.C. ¶¶ 1, 87.

"Speech is the only tool that [Chiles] uses in her counseling with minors seeking to discuss" these issues. V.C. ¶ 84. She never invokes conduct-based "aversive techniques" and knows no counselor who does in this context. V.C. ¶ 82.

The Counseling Restriction. In 2019, Colorado enacted a counseling restriction that forbids a counselor from engaging in so-called "[c]onversion therapy with a client who is under eighteen years of age." Colo. Rev. Stat. § 12-245-224(1)(t)(V). The law prohibits counseling to include "any practice or treatment"—including speech—"that attempts or purports to change an individual's sexual orientation or gender identity." Colo. Rev. Stat. § 12-245-202(3.5)(a). This includes efforts to "change behaviors or gender expressions or to eliminate or reduce" same-sex sexual "attraction[s] or feelings." *Chiles*, 146 S. Ct. at 1018 (citing Colo. Rev. Stat. § 12–245–202(3.5)(a)).

The statute favors the expression of some views over others. On gender identity, it bans speech encouraging minors who identify as the opposite sex to regain peace with their bodies or realign their identity with their sex. But it allows speech that pushes those minors to "transition" away from their sex. Colo. Rev. Stat. § 12-245-202(3.5)(b)(II). And on sexual orientation, it bans conversations that seek to "change" any identity, behavior, or feeling related to sexual orientation, while allowing discussions affirming the status quo on those issues. *Id.* § 12-245-202(3.5)(a).

The Evidence. Science doesn't support banning Chiles's counseling for minors seeking change. When asked at oral argument before the U.S. Court of Appeals for the Tenth Circuit for evidence that Chiles's speech causes harm, Colorado's counsel conceded that she "kn[e]w of no … studies" focusing on "talk therapy" by a licensed counselor with a willing minor seeking change on issues of gender identity or sexual orientation. Oral Arg. Audio at 13:42–15:32, perma.cc/2VKB-LJSN.

Consistent with this concession, Colorado has identified no study proving that voluntary counseling by a licensed professional *causes* harm when it aims to help young people seek change on issues of gender identity or sexuality. And its materials *concede* that the State cannot make that showing. *See* Glassgold Decl. at 36-37, ECF No. 45-1; Am. Psych. Ass'n, Task Force on Appropriate Therapeutic Responses to Sexual Orientation (APA Report) at 3, 42, 82–83, 91, ECF No. 45-3; Glassgold Decl. 7 n.7 (citing a 2021 systematic review—Amy Przeworski et al., *A Systematic Review of the Efficacy, Harmful Effects, and Ethical Issues Related to Sexual Orientation Change Efforts*, 28 Clinical Psychology: Science and Practice 81, 95 (2021)—that confirms "there is virtually no research regarding potential harmful effects of attempts to alter gender identity"). As an example, Colorado's materials admitted that the cited studies "cannot determine causal effects" and "cannot determine causality." Glassgold Decl. at 37.

The Penalties. Chiles faces steep penalties if she helps clients pursue one of the forbidden change goals. She may be fined up to $5,000 for each violation, suspended from practice, and even stripped of her counseling license altogether. Colo. Rev. Stat. § 12-245-225. So Chiles is avoiding the banned speech.

The Lawsuit. Because of the ongoing irreparable harm that Colorado's law causes, Chiles filed this suit, arguing that the statute violates the Free Speech

Clause. V.C. ¶¶ 115–25. She moved to preliminarily enjoin the law as applied to her counseling, arguing that at least strict scrutiny applied to Colorado's viewpoint discrimination. *See* Mot. for Prelim. Inj., ECF No. 29. The State developed a complete record and argued that its law satisfied strict scrutiny. The district court denied the motion. Order, ECF No. 55. On appeal, the State again argued that its law satisfied strict scrutiny, and a divided panel of this Court affirmed denial of the preliminary injunction, upholding the restriction under rational-basis review. *Chiles v. Salazar*, 116 F.4th 1178, 1205, 1215–21 (10th Cir. 2024).

The Supreme Court's decision. Chiles sought a writ of certiorari. The Supreme Court accepted review and reversed in an 8-1 ruling. The Court ruled that Chiles has standing to challenge Colorado's counseling restriction as applied to her desired speech. *Chiles*, 146 S. Ct. at 1019 n.*. It then applied ordinary First Amendment principles to reject Colorado's censorship. *Id.* at 1020–29. And it held that Colorado's law restricted Chiles's speech based on viewpoint. *Id.* at 1021–22; *Id.* at 1030 (Kagan, J., concurring) (calling Colorado's statute "textbook" "viewpoint discrimination"). The Court concluded: "The judgment of the Tenth Circuit is *reversed*, and the case remanded for further proceedings consistent with this opinion." *Chiles*, 146 S. Ct. at 1029 (emphasis added). Then it sent the judgment to the Tenth Circuit.

On May 27, 2026, the Tenth Circuit issued its order, judgment, and mandate. *See Chiles v. Salazar*, No. 22-1445, Doc. 209 (per curiam) (slip opinion attached as Exhibit A). Judge Hartz dissented. In his view, the Tenth Circuit should have resolved the motion itself because the law "does not come close to satisfying" strict scrutiny. *Id.* at 1 (Hartz, J., dissenting). He noted that the law is underinclusive because it "place[s] no restriction on" similar conversations "by those without licenses." *Id.* at 2.

Consistent with the Supreme Court's opinion, Chiles now asks this Court to enter a preliminary injunction.

ARGUMENT

On remand, this Court must issue an order that is consistent with the Supreme Court's mandate. *Cherokee Nation v. State of Okla.*, 461 F.2d 674, 677–78 (10th Cir. 1972); 28 U.S.C. § 2106. It should therefore enter a preliminary injunction prohibiting the enforcement of Colorado's law as applied to Chiles's speech.

I. The Supreme Court's directive requires entry of a preliminary injunction.

The Supreme Court held that Colorado's counseling-censorship law "suppresses speech based on viewpoint" and thus "represents an 'egregious' assault" on the First Amendment. *Chiles*, 146 S. Ct. at 1029; *see id.* (Kagan, J., concurring) ("The Court today decides that the Colorado law challenged here, as applied to talk therapy, conflicts with core First Amendment principles"). As Justice Kagan (who joined the Court's opinion) put it in her concurrence, "because the State has suppressed one side of a debate, while aiding the other, the constitutional issue is straightforward." *Id.* at 1030 (Kagan, J., concurring).

The *Chiles* majority further explained that the State's concern for "public health and safety" could not justify the State's "effort to enforce orthodoxy in thought or speech." *Id.* at 1029 (majority). The Supreme Court therefore directed: "The judgment of the Tenth Circuit is reversed, and the case remanded for further proceedings consistent with this opinion." *Id.*

Chiles's requested preliminary injunction follows directly from the procedural posture of the case and the Supreme Court's decretal language.

Chiles filed this "suit in federal court and sought a preliminary injunction prohibiting the State from enforcing [its law] against her." *Chiles*, 146 S. Ct. at 1018. But "both the district court and this Tenth Circuit denied Ms. Chiles's request for a preliminary injunction." *Id.* at 1019. The lower-court "judgment[]" that the Supreme Court agreed to "review," *Jennings v. Stephens*, 574 U.S. 271, 277 (2015), "AFFIRM-[ED] the district court's denial of Ms. Chiles's motion for a preliminary injunction," *Chiles*, 116 F.4th at 1225.

The Supreme Court has now "reversed" that judgment, *Chiles*, 146 S. Ct. at 1029, "overturn[ing]" this Court's order denying a preliminary injunction, *Reverse*, Black's Law Dictionary (12th ed. 2024) ("To overturn (a judgment or ruling), esp. on appeal). Accordingly, a preliminary injunction must issue under the terms of the Supreme Court's mandate. *See Citizen Band Potawatomi Indian Tribe of Okla. v. Okla. Tax Comm'n*, 969 F.2d 943 at 945–48 (10th Cir. 1992) (directing district court to implement Supreme Court mandate); *cf. United States v. Skrmetti*, 605 U.S. 495, 525–26 (2025) ("affirm[ing]" the lower court's judgment reversing a preliminary injunction after agreeing with resolution of the dispositive legal issue).

No additional analysis remains to be done. The Supreme Court resolved the dispositive legal issue as to the law's constitutionality applied to Chiles and thus reversed the denial of the preliminary injunction. When the Supreme Court resolves an issue that leaves the lower court's judgment in question (but does not overturn that judgment), the Court's consistent practice is to "vacate" the judgment below (rather than reverse) and remand for further proceedings. *See*, *e.g.*, *Moody v. NetChoice, LLC*, 603 U.S. 707, 717, 745 (2024) (vacating injunctions issued by the Fifth and Eleventh Circuits because "neither [court] properly considered the facial nature of [the] challenge"); *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 313

(2025) (vacating and remanding "for application of the proper prima facie standard"); *Vacate*, Black's Law Dictionary (12th ed. 2024) ("To nullify or cancel; make void").

Because the Supreme Court reversed rather than vacated, this Court should enter a preliminary injunction, consistent with the Supreme Court's directive.

II. The Supreme Court's ruling confirms that the preliminary-injunction factors are satisfied.

For a preliminary injunction, Chiles must show "(1) a likelihood of success on the merits; (2) a likelihood that [she] will suffer irreparable harm if the injunction is not granted; (3) the balance of equities is in [her] favor; and (4) the preliminary injunction is in the public interest." *Republican Party of N.M. v. King*, 741 F.3d 1089, 1092 (10th Cir. 2013). "In the First Amendment context, the likelihood of success on the merits" is usually decisive "because of the seminal importance of the interests at stake." *Verlo v. Martinez*, 820 F.3d 1113, 1126 (10th Cir. 2016). And the Supreme Court resolved that issue in Chiles's favor. So this Court should enter a preliminary injunction both under the Supreme Court's directive to reverse, *see* § I, *supra*, and as an order "consistent with" the Supreme Court's opinion. *Chiles*, 146 S. Ct. at 1029.

A. Chiles is likely to succeed on the merits of her free-speech claim.

The first factor is easy. The Supreme Court held that Colorado's viewpoint discrimination is "an 'egregious' assault" on the First Amendment. *Chiles*, 146 S. Ct. at 1029. That ruling "is the law of the case." *Cherokee Nation*, 461 F.2d at 678 (citation modified). This Court must follow it as "to everything decided 'either expressly or by necessary implication.'" *Id* (citation modified). Because the Supreme Court held that Colorado's viewpoint discrimination is inconsistent with the freedom of speech and, separately, because that discrimination cannot satisfy strict scrutiny, Chiles is likely to succeed on the merits of her First Amendment claim.

1. The Supreme Court ruling shows that Chiles is likely to succeed on the merits of her free-speech claim.

The Supreme Court ruled that Colorado's viewpoint discrimination, as applied to Chiles's desired counseling conversations, is inconsistent with the First Amendment. *Chiles*, 146 S. Ct. at 1029; *see id.* (Kagan, J., concurring). This confirms that Chiles is likely to succeed on the merits of her free-speech claim.

To interpret the scope of the Supreme Court's mandate, this Court reviews the "majority, concurring, and dissenting" opinions. *Cherokee Nation*, 461 F.2d at 677–78. The majority held that Colorado's viewpoint discrimination is "an 'egregious' assault" on the First Amendment. *Chiles*, 146 S. Ct. at 1029 (citation omitted). No matter how "well-intentioned," because the law "censors speech based on viewpoint," it conflicts with "First Amendment" principles. *Id.*

Colorado's viewpoint discrimination satisfies no level of First Amendment review. As Justice Kagan writes, this case is "textbook." *Id.* at 1030 (Kagan, J., concurring). The "constitutional issue is straightforward." *Id.* By enabling speech "on only one side" of "an ideologically charged issue," Colorado "regulates" speech "based on viewpoint." And that isn't allowed even within "unprotected categories of speech." *Id.* So she says the majority condemned Colorado's law, "as applied to [Chiles's speech]," because it "conflicts with core First Amendment principles." *Id.* at 1029–30.

Justice Jackson similarly interprets the majority ruling. The ruling "block[s]" Colorado from enforcing its law to regulate the expression of viewpoints in the counseling room. *Id.* at 1032 (Jackson, J., dissenting);. According to "the majority," that "violates the Constitution." *Id.* at 1050 (Jackson, J., dissenting).

In sum, the Supreme Court made its "intent" clear: it has never upheld a viewpoint-based regulation of speech; nor, as the various opinions show, did it intend

for this case to be the first. *Cherokee Nation*, 461 F.2d at 678. The Supreme Court resolved that Chiles is likely to succeed on her First Amendment claim.

2. The Supreme Court condemned Colorado's viewpoint discrimination, which cannot satisfy strict scrutiny.

The Supreme Court held that Colorado has *no* legitimate interest in restricting Chiles's speech based on viewpoint. *Chiles*, 146 S. Ct. at 1029. That "finding of viewpoint bias end[s] the matter" on the merits. *Iancu v. Brunetti*, 588 U.S. 388 at 399 (2019). This fits both with "history" and "tradition" and the application of strict scrutiny. *See Chiles*, 146 S. Ct. at 1028–29. For only once in "the First Amendment context" has the Supreme Court held that "a law triggered but satisfied strict scrutiny," *Free Speech Coalition, Inc. v. Paxton*, 606 U.S. 461, 484 (2025); and that content-based law targeted terrorism, a context that is irrelevant here, *id*. (citing *Holder v. Humanitarian Law Project*, 561 U.S. 1, 27–29 (2010)).

Strict scrutiny requires Colorado to show that its counseling restriction is "narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). The only circuits to have addressed such a counseling-censorship law under strict scrutiny have condemned it on evidence nearly identical to that here. *See Cath. Charities of Jackson, Lenawee, & Hillsdale Cntys. v. Whitmer*, 162 F.4th 686, 696 (6th Cir. 2025); *Otto v. City of Boca Raton*, 981 F.3d 854, 868–70 (11th Cir. 2020); Ex. A at 2 (Hartz, J., dissenting) (noting Colorado's law "does not come close to satisfying" strict scrutiny).

On the compelling-interest prong, Colorado must "prove" that Chiles's counseling "cause[s]" harm; it is not enough to show only a "correlation." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 800 (2011). But Colorado concedes that it cannot make this showing. For one thing, Colorado admits that it "know[s] of no … studies"

focusing on "talk therapy" by a licensed counselor with a willing minor seeking change on the issues covered by the statute. *See* p. 4, *supra*; *see also Chiles*, 116 F.4th at 1243–44 (Hartz, J., dissenting) (confirming this about the APA's 2009 and 2021 reports). And for another, Colorado's own expert materials *concede* that the State cannot prove "causal effects" or "causality" of harm. Glassgold Decl. at 37.

On narrow tailoring, Colorado's law also comes up short. "Broad prophylactic rules in the area of free expression are suspect." *NAACP v. Button*, 371 U.S. 415, 438 (1963). "Precision must be the touchstone when it comes to regulations of speech," which explains why narrow tailoring is essential. *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 775 (2018) (*NIFLA*) (citation modified). To satisfy that requirement, a law cannot be overinclusive or underinclusive. *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 793 (1978). "If a less restrictive alternative" is available, the government "must use" it. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000). Colorado's law fails under all these inquiries.

Overinclusiveness. Colorado's counseling restriction is overinclusive because it "burden[s] substantially more speech than is necessary." *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (citation modified). The statute reaches far beyond aversive conduct and bans voluntary counseling conversations with willing and motivated clients, despite the lack of evidence that such counseling causes any harm. Glassgold Decl. at 36–37; APA Report at 3, 42, 82–83, 91.

Within the topics of gender identity and sexual orientation, the ban has stunning scope. It forbids compassionate conversations to help clients wanting to change any "behavior[ ]," "expression[ ]," "identity," or "feeling[ ]" associated with those subjects—except changes that pursue a "gender transition." Colo. Rev. Stat. § 12-245-202(3.5). This means Chiles could not counsel a religious young person who

seeks to change only his same-sex sexual behavior by becoming celibate, despite the APA's recognition that "clinical articles and surveys of individuals indicate … some may find such a life fulfilling." APA Report at 61. Given this sweep, Colorado cannot show that "each activity within the proscription's scope is an appropriately targeted evil." *Frisby* v. *Schultz*, 487 U.S. 474, 485 (1988).

The statute also goes too far by muzzling exploratory conversations pursued for change. Though the statute allows counselors to express "[a]cceptance, support, and understanding for the facilitation of an individual's coping, social support, and identity exploration and development," counselors may *not* express those messages if "the counseling … seek[s] to change" any aspect of "sexual orientation or gender identity." Colo. Rev. Stat. § 12-245-202(3.5)(b)(I). Young people often experience uncertainty about their sexuality, gender, and body. That they desire change—and that their counselor supports them in that goal—should not bar those exploratory discussions. By forbidding even that, Colorado's law is hopelessly overinclusive.

Underinclusiveness. Underinclusiveness is constitutionally problematic because it "raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Brown*, 564 U.S. at 802. Here, Colorado invokes an interest in prohibiting harmful counseling. But it does not forbid other counseling that the APA opposes as unsafe. *E.g.*, American Psychological Ass'n, *Special Issue on Harmful Treatments in Psychotherapy* (May 24, 2021), perma.cc/3P9G-N8MJ (opposing "critical incident stress debriefing" to help with trauma and "[s]cared [s]traight" interventions for unruly minors). By singling out counseling expressing certain views on two controversial topics, Colorado betrays its "special hostility towards" those views. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 396 (1992).

Further undercutting the State's asserted interests is its decision to allow everyone *except* certain licensed mental-health professionals to provide the prohibited counseling. This includes life coaches, mentors, social-media influencers, and more. Colo. Rev. Stat. § 12-245-217(2)(f). So Colorado's statute is "ineffective" because "the vast majority of conversion therapy [78 percent] is performed by unlicensed professionals." Cameron J. Rachford, *Botched Bans: Analyzing Conversion Therapy Bans After A Decade of Legal Challenges*, 99 Ind. L.J. 1403, 1411–12 (2024). Such "wild[ ] underinclusive[ness]" alone defeats the statute. *Brown*, 564 U.S. at 802.

The law is also underinclusive because it allows this purportedly dangerous counseling for all adults. Colo. Rev. Stat. § 12-245-224(1)(t)(V). The APA opposes this counseling regardless of age, so it makes no sense that the law applies only when minors seek counseling. Consent cannot explain the discrepancy between the State's treatment of minors and adults. Colorado lets minors consent to counseling *starting at age 12*. Colo. Rev. Stat. § 12-245-203.5; APA Report at 74 (APA claims that "adolescents are cognitively able to participate in some health care treatment decisions"). So 12-year-olds acting without parental approval may access counseling to affirm a transgender identity, but those same children cannot obtain counseling to realign their identity with their sex, even if they and their parents support it.

Less Restrictive Alternatives. The availability of less restrictive alternatives further dooms Colorado's case. Under strict scrutiny, "the legislature must use" a "less restrictive alternative" when it "would serve the [g]overnment's purpose." *Playboy*, 529 U.S. at 813. Here, Colorado has many less restrictive options besides its viewpoint-based ban on speech. Consider a few:

1. Colorado could ban just aversive conduct seeking to change gender identity or sexual orientation.

2. Colorado could enforce existing laws if counselors (unlike Chiles) try to override their clients' goals or autonomy. Colo. Rev. Stat. § 12-245-224(1)(j); *Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 619 (2003) (preferring "a properly tailored" action over a prophylactic rule).
3. Colorado could use "its own speech," *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 578 (2011)—by running a "public-information campaign," *NIFLA*, 585 U.S. at 775—to express the State's views about the kind of counseling that Chiles provides.
4. Or Colorado could list on government websites its preferred counselors for minors experiencing gender-identity and sexual-orientation issues. *United States v. Alvarez*, 567 U.S. 709, 729 (2012) (plurality).

"[R]egulating speech must be a last—not first—resort." *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 373 (2002). Yet Colorado has not shown that it "seriously" tried or "considered" these alternatives, much less "demonstrate[d]" they "would fail" to work. *McCullen*, 573 U.S. at 494–95. That alone is decisive under strict scrutiny and not something that can be remedied on remand; Colorado simply cannot meet its "obligation" to prove an "alternative will be ineffective" if it never considered that option. *Playboy*, 529 U.S. at 816. As applied to Chiles's counseling conversations, Colorado's "prophylactic … and unduly burdensome" speech ban violates the First Amendment. *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 800 (1988).

B. The remaining preliminary-injunction factors are satisfied.

Irreparable Harm. "[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Verlo*, 820 F.3d at 1127 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality)); *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 at 1145 (10th Cir. 2013). Colorado's counseling

restriction continues to silence Chiles's constitutionally protected speech. That ongoing loss of freedom is irreparable.

Balance of Equities and Public Interest. The balance of equities and public interest—factors that "merge" when the government is the defendant, *Nken v. Holder*, 556 U.S. 418, 435 (2009)—also favor an injunction. For starters, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Verlo*, 820 F.3d at 1127; *Hobby Lobby*, 723 F.3d at 1145. Beyond that, the equities and public interest weigh decisively in Chiles's favor because Colorado's muzzling of Chiles harms the young people who have been denied the counseling they need. Again, as Colorado's own evidence admits, some who have experienced counseling that Chiles wants to offer have reported that it was "helpful." APA Report at 3. It "helped them live in a manner consistent with their faith," find "a sense of community," reduce "isolation," reduce "stress," and alter "how problems are viewed." *Id.* Colorado has no valid reason to deprive Coloradoans seeking this help from engaging in voluntary conversations with Chiles. What's more, Colorado had its chance to submit evidence to satisfy strict scrutiny, and the evidence it introduced shows that the State cannot meet its high burden. Colorado lost and should not get another chance while Chiles and her clients suffer irreparable harm.

CONCLUSION

The Supreme Court held that Colorado's counseling restriction is an egregious assault on the First Amendment. Consistent with that ruling and the Court's directive reversing the denial of a preliminary injunction, this Court should enter a preliminary injunction prohibiting Colorado from applying its law to further censor Chiles's speech while this suit proceeds.

Respectfully submitted this 27th day of May, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of May, 2026, I electronically filed the foregoing document with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record who are registered users of the ECF system.

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