

The Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

BRIAN TINGLEY,

Plaintiff,

v.

NICHOLAS W. BROWN, in His Official
Capacity as Attorney General for the
State of Washington, et al.,

Defendants.¹

NO. 3:21-cv-05359-TMC

STATE DEFENDANTS'
RESPONSE TO PLAINTIFF'S
MOTION FOR RELIEF FROM
JUDGMENT

NOTE ON MOTION CALENDAR:
July 15, 2026

¹ Attorney General Nicholas W. Brown, Secretary of Health Dennis Worsham, and Assistant Secretary Shawna Fox should be automatically substituted as party defendants. *See* Fed. R. Civ. P. 25(d).

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I. INTRODUCTION

Conversion therapy attempts to change a person’s sexual orientation or gender identity. It doesn’t work: over the past several decades, it has been thoroughly discredited by leading medical and mental health organizations, providers, and academic researchers. And it hurts kids. Research overwhelmingly concludes that it increases depression and suicidal ideation. Accordingly, exercising its well-established authority—and duty—to regulate licensed health professionals and protect vulnerable youths, Washington’s Legislature declared that practicing conversion therapy on minors is “unprofessional conduct.”

Over five years ago, Plaintiff Brian Tingley sued, objecting to Washington’s professional regulation. This Court applied then-binding Ninth Circuit precedent to conclude his free speech, free exercise, and due process claims failed as a matter of law, and that he lacked standing to assert free speech and free exercise claims on behalf of his minor clients. Specifically, this Court held that *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014), controlled, applied rational basis review to Tingley’s free speech claim, and upheld the law. The Ninth Circuit likewise followed its prior precedent, and thus unanimously affirmed dismissal. The Supreme Court then denied Tingley’s cert petition, and this Court’s dismissal became the final resolution of the case.

Then, a few months ago, the Supreme Court’s held in *Chiles v. Salazar*, 146 S. Ct. 1010 (2026), that a free speech claims against a Colorado conversion therapy law must be reviewed under strict scrutiny. *Chiles* significantly impacts the relevance of *Pickup* and the Ninth Circuit’s decision in this case as precedent in future cases. Even so, it is not an extraordinary circumstance that justifies re-opening the judgment under Rule 60(b)(6). Here, profound interests in finality, the nature of the change of the decisional law after the judgment, and the compelling interest in preserving a judgment that protects minors in Washington from physical and psychological harms posed by conversion therapy all weigh against granting relief from the judgment.

This Court should deny Tingley’s Rule 60(b)(6) motion.

II. BACKGROUND

In 2018, Washington’s Legislature enacted Senate Bill 5722, which makes the practice of conversion therapy on minors by licensed professionals “unprofessional conduct.” Conversion therapy, also referred to as sexual orientation and gender identity change efforts, encompasses a range of interventions directed at the specific outcomes of changing a person’s sexual orientation or gender identity. Conversion therapy has been thoroughly discredited by every leading medical and mental health organization, providers, and academic researchers. *Tingley v. Ferguson*, 47 F.4th 1055, 1064 (9th Cir. 2022), *abrogated in part by Chiles*, 146 S. Ct. 1010. Conversion therapy is both ineffective and harmful to youth—posing grave increased risks of depression and suicide attempts. For example, one study “documented that youth who underwent conversion therapy were more than twice as likely to report having attempted suicide.” *Id.* at 1080 (citation modified). Thus, SB 5722 added a new ground for a finding of unprofessional conduct by a licensee: “Performing conversion therapy on a patient under age eighteen[.]” Wash. Rev. Code § 18.130.180(26). The Legislature’s explicit intent was to “regulate the professional conduct of licensed health care providers” 2018 Wash. Sess. Laws, ch. 300, § 1(1). The Legislature found that “Washington has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by conversion therapy.” *Id.*, § 1(2).

In May 2021, Plaintiff Brian Tingley sued the Attorney General, Secretary of Health, and Assistant Secretary of the Health Systems Quality Assurance Division to invalidate SB 5722 and moved for preliminary injunctive relief. Tingley is a state-licensed marriage and family therapist who asserted five claims: Count I alleged violations, facially and as applied, of his personal free speech right under the First Amendment; Count II alleged third-party free speech rights of unnamed clients; Count III alleged a facial due process violation; and Counts IV and V alleged violations of his personal free exercise right under the First Amendment, and

1 the free exercise rights of unnamed clients, respectively. Dkt. #1 at
 2 45-59 ¶¶188-263. Equal Rights Washington permissively intervened. Dkt. #33.

3 Defendants opposed Tingley’s motion for a preliminary injunction and moved to
 4 dismiss under Rule 12(b)(6). Dkts. ##26, 27. Judge Bryan granted the State Defendants’
 5 motion, holding that Tingley had individual standing to pursue his claims but that his free
 6 speech, due process, and free exercise claims were foreclosed by the Ninth Circuit’s prior
 7 decisions in *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014), and *Welch v. Brown*, 834 F.3d
 8 1041 (9th Cir. 2016)—which both had upheld California’s conversion therapy law. *Tingley v.*
 9 *Ferguson*, 557 F. Supp. 3d 1131, 1139-43 (W.D. Wash. 2021). The court also held Tingley
 10 lacked third-party standing to bring free speech and free exercise claims on behalf of his minor
 11 clients. *Id.* at 1138.

12 The Ninth Circuit affirmed the dismissal, holding SB 5722 was a valid exercise of the
 13 State’s power to protect public health and safety by regulating professional misconduct.
 14 *Tingley*, 47 F.4th 1055. Determining that the court remained bound by its prior decision in
 15 *Pickup*, 740 F.3d 1208, the court held that the law regulated conduct, with only an incidental
 16 impact on speech. *Id.* at 1071-77. The court then determined that “[t]he Washington legislature
 17 acted rationally when it decided to protect the ‘physical and psychological wellbeing’ of its
 18 minors by preventing state-licensed health care providers from practicing conversion therapy
 19 on them.” *Id.* at 1078. The Ninth Circuit also rejected Tingley’s free exercise claim, applying
 20 the principles laid out by the U.S. Supreme Court and relied on in *Welch*, in determining the
 21 law was neutral and generally applicable. *Id.* at 1084-89. The court further held Tingley’s due
 22 process claim failed as a matter of law, *id.* at 1089-91, and that Tingley lacked third-party
 23 standing to assert free speech and free exercise claims on behalf of his clients, *id.* at 1069-70.

24 Tingley next sought rehearing en banc, which the Ninth Circuit denied. *Tingley v.*
 25 *Ferguson*, 57 F.4th 1072 (9th Cir. 2023).

26 Tingley then petitioned for certiorari, presenting two questions:

1. Whether a law that censors conversations between counselors and clients as “unprofessional conduct” violates the Free Speech Clause.

2. Whether a law that primarily burdens religious speech is neutral and generally applicable, and if so, whether the Court should overrule *Employment Division v. Smith*, 494 U.S. 872 (1990).

See Pet. for a Writ of Cert. at i, *Tingley v. Ferguson*, No. 22-942 (U.S. Mar. 27, 2023). The Supreme Court denied Tingley’s petition in December 2023. *See Tingley v. Ferguson*, 144 S. Ct. 33 (2023).

Separately, Kaley Chiles, a professional counselor licensed in Colorado, brought an as-applied challenge to Colorado’s law treating conversion therapy as unprofessional conduct. The district court applied rational basis review to Chiles’s free speech claim and denied her motion for preliminary injunction. *Chiles v. Salazar*, No. 1:22-cv-02287-CNS-STV, 2022 WL 17770837 (D. Colo. Dec. 19, 2022). The Tenth Circuit affirmed. *Chiles v. Salazar*, 116 F.4th 1178 (10th Cir. 2024).

The Supreme Court granted cert on the sole issue Chiles presented: “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.” *See* Pet. for a Writ of Cert. at i, *Chiles v. Salazar*, No. 24-539 (U.S. Nov. 9, 2024). The Court then reversed and remanded, “conclud[ing] that the courts below failed to apply sufficiently rigorous First Amendment scrutiny in th[e] case.” *Chiles*, 146 S. Ct. at 1023. The Court held the law turned on the content and viewpoint of speech, and thus should be analyzed under strict scrutiny, abrogating *Tingley*. *See id.* at 1020. The proceedings there remain ongoing.

Nearly five years after this Court’s judgment and two months after the *Chiles* decision, Tingley now moves for relief from the judgment. Dkt. #59.

III. LEGAL STANDARD

Rule 60(b)(6) provides that “[o]n motion and just terms, the court may relieve a party or its legal representative from a final judgment . . . for . . . any . . . reason that justifies relief.”

1 Fed. R. Civ. P. 60(b)(6). “Rule 60(b)(6) should only be applied in extraordinary circumstances.”
 2 *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 212 (2025) (internal quotation marks omitted).
 3 The Supreme Court has “underscored the stringency” of this test, *id.*, and held that “[t]his very
 4 strict interpretation of Rule 60(b) is essential if the finality of judgments is to be preserved,” *id.*
 5 at 213 (internal quotation marks omitted). Generally, a subsequent change in the law after the
 6 entry of judgment alone does not constitute an extraordinary circumstance sufficient to entitle a
 7 court to vacate a final judgment. *See, e.g., Clifton v. Attorney Gen. of State of Cal.*, 997 F.2d 660,
 8 665 (9th Cir. 1993); *U.S. ex rel. Garibaldi v. Orleans Par. Sch. Bd.*, 397 F.3d 334, 339 (5th Cir.
 9 2005) (“It is not extraordinary for the Supreme Court to deny certiorari in a court of appeals case
 10 that it ultimately overrules in the review of a later similar case.”).

11 The Ninth Circuit looks to three primary considerations in evaluating Rule 60(b)(6)
 12 requests for relief: (1) “the nature and relationship of the intervening change in the law,” (2) “the
 13 diligence of the party in seeking relief from the original judgment,” and (3) “additional
 14 considerations relevant to balancing the competing policies of the finality of judgments and the
 15 incessant command of the court’s conscience that justice be done in light of all the facts.” *Fed.*
 16 *Trade Comm’n v. Hewitt*, 68 F.4th 461, 468-69 (9th Cir. 2023) (internal quotation marks
 17 omitted); *see also Phelps v. Alameida*, 569 F.3d 1120, 1135-40 (9th Cir. 2009) (outlining six
 18 factors courts should consider in evaluating a Rule 60(b)(6) motion that seeks relief from the
 19 dismissal of a habeas petition based on intervening changes in the law); *Henson v. Fid. Nat’l*
 20 *Fin., Inc.*, 943 F.3d 434, 446 (9th Cir. 2019) (explaining the *Phelps* factors may be relevant in
 21 non-habeas contexts, but they are not “intended to be a rigid or exhaustive list”).

22 IV. ARGUMENT

23 A. Relief Under Rule 60(b)(6) is Not Justified

24 1. *Chiles* does not support relief

25 The first relevant set of considerations—the nature and relationship of the intervening
 26 change in the law—does not support Rule 60(b)(6) relief.

1 A mere change in decisional law generally does not constitute an “extraordinary
 2 circumstance” for the purposes of Rule 60(b)(6). *See Agostini v. Felton*, 521 U.S. 203, 239
 3 (1997) (“Intervening developments in the law by themselves rarely constitute the extraordinary
 4 circumstances required for relief under Rule 60(b)(6)”); *Cox v. Horn*, 757 F.3d 113, 124
 5 (3d Cir. 2014) (“A post-judgment change in the law on constitutional grounds is not, perforce, a
 6 reason to reopen a final judgment.”). “It is ‘hardly extraordinary’ that the Supreme Court arrives
 7 at a ‘different interpretation’ from ‘then-prevailing’ precedent in [the Ninth] Circuit.” *Hewitt*, 68
 8 F.4th at 468 (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 536-37 (2005)) (declining to find
 9 “extraordinary circumstances” where a district court’s “interpretation was by all appearances
 10 correct under the . . . Circuit’s then-prevailing interpretation”).

11 The State Defendants don’t dispute the close relationship between the free speech claim
 12 here and the holding in *Chiles* regarding the applicable level of scrutiny to laws regulating
 13 conversion therapy as practiced by licensed mental health counselors and therapists. But other
 14 facets of the change in law disfavor Rule 60(b)(6) relief. Significantly, this Court’s judgment
 15 was “consistent with Ninth Circuit precedent at the time.” *Hewitt*, 68 F.4th at 469. Both this
 16 Court and the Ninth Circuit applied then-controlling precedent—*Pickup*—to hold that Tingley’s
 17 claims were subject to rational basis review, and that Washington’s law did not violate Tingley’s
 18 free speech right. *Tingley*, 557 F. Supp. 3d at 1139; *Tingley*, 47 F.4th at 1071. In *Pickup*, the
 19 Ninth Circuit held that California’s law treating sexual orientation-change efforts by licensed
 20 mental health providers as unprofessional conduct regulated conduct, not speech, and satisfied
 21 rational basis review. 740 F.3d at 1231. *Pickup* established the controlling circuit framework for
 22 First Amendment challenges to laws regulating conversion therapy as practiced by licensed
 23 professionals. The subsequent analyses of Tingley’s First Amendment challenge were “bound
 24 by [that framework].” *Tingley*, 47 F.4th at 1071. It was, in other words, “correct under the [Ninth]
 25 Circuit’s then-prevailing interpretation” of the law. *Gonzalez*, 545 U.S. at 536; *see Phelps*, 569
 26 F.3d at 1136 (inquiring whether a “change in the law . . . upset or overturn[ed] a settled legal

1 principle” entrenched in published circuit precedent). Moreover, the Supreme Court denied
 2 certiorari in both *Pickup* and *Tingley*, leaving the Ninth Circuit’s unanimous opinions
 3 undisturbed. *See Pickup v. Brown*, 573 U.S. 945 (2014); *Tingley*, 144 S. Ct. 33.²

4 This Court’s judgment was likewise consistent with “the prevailing view in most other
 5 circuits.” *Hewitt*, 68 F.4th at 469. At the time of this Court’s dismissal order, every other court
 6 to consider a state law restricting conversion therapy as part of professional licensing schemes
 7 had upheld the law. *See Doyle v. Hogan*, 411 F. Supp. 3d 337 (D. Md. 2019), *vacated on*
 8 *immunity grounds*, 1 F.4th 249 (4th Cir. 2021); *Doe ex rel. Doe v. Governor of New Jersey*, 783
 9 F.3d 150 (3d Cir. 2015); *King v. Governor of the State of New Jersey*, 767 F.3d 216 (3d Cir.
 10 2014). The Eleventh Circuit went the other way, but the local ordinances struck down in *Otto v.*
 11 *City of Boca Raton*, 981 F.3d 854 (11th Cir. 2020), were untethered from the state’s system for
 12 licensing healthcare practitioners and “not connected to any regulation of separately identifiable
 13 conduct,” *id.* at 865.

14 The Supreme Court’s decision in *Gonzalez* illustrates why relief is not supported here.
 15 In *Gonzalez*, a district court had denied a prisoner’s habeas petition on statute of limitations
 16 grounds. The prisoner later sought Rule 60(b)(6) relief, arguing that the Supreme Court’s
 17 intervening decision marked a change in the interpretation of the governing law’s statute of
 18 limitations. *Gonzalez*, 545 U.S. at 536. The Supreme Court affirmed the denial of the prisoner’s
 19 Rule 60(b)(6) motion, emphasizing that the district court’s initial ruling on the timeliness of the
 20 habeas petition was consistent with the Eleventh Circuit’s then-prevailing interpretation of the
 21 statute. The Court observed, “[i]t is hardly extraordinary that subsequently, after petitioner’s case
 22 was no longer pending, this Court arrived at a different interpretation,” and “[a]lthough [the
 23 Court’s] constructions of federal statutes customarily apply to all cases then pending on direct
 24

25 ² The precedential status of *Pickup* is also underscored by the *Pickup* plaintiffs’ rejected motion to recall
 26 the Ninth Circuit’s mandate based on the argument that *National Institute of Family and Life Advocates v. Becerra*,
 138 S. Ct. 2361 (2018), abrogated *Pickup*. *Pickup v. Brown*, No. 12-17681, 2018 WL 11226270 (9th Cir. Nov. 6,
 2018). The Supreme Court too denied certiorari. *Pickup v. Newsom*, 139 S. Ct. 2622 (2019).

1 review, not every interpretation of the federal statutes setting forth the requirements for habeas
2 provides cause for reopening cases long since final.” *Id.* (citation omitted).

3 Contrast *Gonzalez* with *Phelps*, where the Ninth Circuit granted relief from dismissal of
4 a habeas petition where the Ninth Circuit favorably changed the law on which the petition’s
5 dismissal had been predicated. 569 F.3d at 1126-27, 1131. In *Phelps*, while the petitioner’s
6 original appeal was pending, the same issue was pending before two different Ninth Circuit
7 panels. *Id.* at 1136. Those panels reached “diametrically opposite outcomes from that reached
8 by the panel reviewing Phelps’ case,” all unpublished and nonprecedential, leaving the law
9 unsettled. *Id.* Thus, the Ninth Circuit determined that the post-judgment “change in the
10 law . . . did not upset or overturn a settled legal principle” because “the law in our circuit was
11 decidedly unsettled at the time [the petitioner]’s habeas petition was before the district court.”
12 *Id.* at 1136 (emphasis removed). The Ninth Circuit concluded that the circumstance favored
13 granting relief, because it meant that the dismissal of the petition had not been based on a
14 “prevailing interpretation” of the law. *See id.*

15 Tingley’s motion for relief ignores the settled nature of the then-prevailing law in this
16 Circuit. *See* Dkt. #59 at 11. But a court that correctly applies its circuit’s controlling precedent
17 that is abrogated years later is a “‘hardly extraordinary’ development of the Supreme Court[.]”
18 *Lopez v. Ryan*, 678 F.3d 1131, 1136 (9th Cir. 2012) (quoting *Gonzalez*, 545 U.S. at 536). The
19 nature of the intervening law disfavors relief from the judgment.

20 **2. Justice in light of all of the facts does not demand relief**

21 Tingley likewise cannot show that justice demands relief under Rule 60(b)(6). *See*
22 *Hewitt*, 68 F.4th at 469-70 (affirming the denial of Rule 60(b)(6) relief after weighing the
23 public’s interest in consumer protection and the magnitude of the harm to consumers against the
24 judgment’s imposition of “crippling financial liability” on the movant and the lack of
25
26

1 Congressional authorization of the monetary judgment). The record and facts do not establish
2 extraordinary circumstances that outweigh the public interest in the finality of judgments.³

3 Regarding finality, this Court disposed of Tingley’s claims through a final judgment,
4 which the Ninth Circuit and Supreme Court left undisturbed—all well before the change in
5 decisional law. Nearly five years have passed from this Court’s dismissal order and the *Chiles*
6 decision. This stands in contrast with cases where Rule 60(b)(6) relief was granted in part
7 because a timely appeal remained pending or a final judgment had not been executed. *See Blue*
8 *Diamond Coal Co. v. Trs. of UMWA Combined Ben. Fund*, 249 F.3d 519, 528 (6th Cir. 2001)
9 (collecting cases).

10 Moreover, the State and the public have profound reliance interests in the final judgment.
11 The State and the public doubtlessly have significant interests in preserving a judgment that
12 protects minors in Washington from physical and psychological harms posed by conversion
13 therapy. As the federal government has emphatically recommended, conversion therapy for
14 minors is “harmful and should *never* be provided.” U.S Dep’t of Health & Hum. Servs.,
15 Substance Abuse & Mental Health Servs. Admin., *Moving Beyond Change Efforts: Evidence*
16 *and Action to Support and Affirm LGBTQI+ Youth* 8 (2023),
17 [https://www.govinfo.gov/content/pkg/GOVPUB-HE20_400-PURL-gpo195344/pdf/GOVPUB-](https://www.govinfo.gov/content/pkg/GOVPUB-HE20_400-PURL-gpo195344/pdf/GOVPUB-HE20_400-PURL-gpo195344.pdf)
18 [HE20_400-PURL-gpo195344.pdf](https://www.govinfo.gov/content/pkg/GOVPUB-HE20_400-PURL-gpo195344/pdf/GOVPUB-HE20_400-PURL-gpo195344.pdf) (emphasis added).⁴

19 Finally, re-opening the judgment would be futile, given that SB 5722 passes
20 constitutional muster under a strict scrutiny analysis. The law addresses a compelling interest, is

21
22 ³ Examples of extraordinary circumstances have included a “citizen [who] was stripped of his citizenship
23 by his Government, without evidence, a hearing, or the benefit of counsel” for four years constituting manifest
24 injustice and extraordinary circumstances, *Klapprott v. United States*, 335 U.S. 601, 615 (1959), and extensive
25 procedural hurdles that prevented courts from reaching a habeas petition on the constitutional issues for over eleven
26 years, *see Phelps*, 569 F.3d at 1123.

⁴ Indeed, even the Cass Review (upon which Tingley relies) rejects conversion therapy, explaining that
“no LGBTQ+ group should be subjected to conversion practice.” Hilary Cass, *Independent review of gender identity
services for children and young people: Final report* 150 (Apr. 2024). The Cass Review acknowledges that “[n]o
formal science-based training in psychotherapy, psychology or psychiatry teaches or advocates conversion therapy.”
Id. at 151. And should a licensed practitioner engage in conversion therapy, the Review asserts “they would be
acting outside of professional guidance, and this would be a matter for the relevant regulator.” *Id.*

1 narrowly tailored, and is the least-restrictive alternative. *See Sable Commc'ns of Cal., Inc. v.*
 2 *F.C.C.*, 492 U.S. 115, 126 (1989).

3 First, SB 5722 identifies the State's compelling interest in "protecting the physical and
 4 psychological well-being of minors" and "protecting its minors against exposure to serious
 5 harms caused by conversion therapy." 2018 Wash. Sess. Laws, ch. 300, § 1(2). The Supreme
 6 Court has repeatedly recognized that "[t]here is a compelling interest in protecting the physical
 7 and psychological well-being of minors." *Sable Commc'ns*, 492 U.S. at 126; *see also New York*
 8 *v. Ferber*, 458 U.S. 747, 756-57 (1982). The State also has a "compelling interest in the practice
 9 of professions within their boundaries," *Goldfarb v. Virginia State Bar*, 421 U.S. 733, 792
 10 (1975), and in "regulating mental health," *NAACP v. Cal. Bd. of Psychology*, 228 F.3d 1043,
 11 1054 (9th Cir. 2000). The State has a separate "weighty" interest in affirming the dignity and
 12 equal worth and treatment of LGBTQ+ people. *Fulton v. City of Philadelphia, Pa.*, 593 U.S.
 13 522, 542 (2021). The law reflects professional consensus agreeing and research showing that
 14 conversion therapy is ineffective and harmful to children. *See Tingley*, 47 F.4th at 1065, 1084.
 15 In addition to its consideration of public health authorities and professional consensus, the
 16 Legislature was aware that many other states and cities have restricted conversion therapy, and
 17 that courts recognize that such prohibitions protect public health. *See* Dkt. #28-3 at 4. The State
 18 may justify its laws "by reference to studies and anecdotes pertaining to different locales
 19 altogether" or even "based solely on history, consensus, and simple common sense." *Fla. Bar v.*
 20 *Went For It, Inc.*, 515 U.S. 618, 628 (1995) (cleaned up); *see also King*, 767 F.3d at 238
 21 (legislatures may "rely on the empirical judgments of independent professional organizations
 22 that possess specialized knowledge and experience concerning the professional practice under
 23 review, particularly when this community has spoken with such urgency and solidarity on the
 24 subject."). Following the overwhelming consensus, Washington's Legislature appropriately
 25 restricted professional conversion therapy to protect youth from serious harms, including a
 26 significantly increased risk of depression and suicide.

Second, SB 5722 is narrowly tailored because (1) it is limited to regulating the practice of conversion therapy on minors and (2) it only applies to licensed practitioners acting or representing themselves as acting in their licensed capacity. As demonstrated by its careful exceptions and limitations for speech and religious practices, the law is targeted squarely at a professional health therapy known to be ineffective and dangerous. *See Pickup*, 740 F.3d at 1223-24; 2018 Wash. Sess. Laws, ch. 300, § 2. The law does not preclude licensed health professionals from discussing conversion therapy with the public or with their clients, and it does not prevent them from expressing their views about conversion therapy, sexual orientation, or gender identity with their clients. Nor does the law prevent practitioners from administering conversion therapy to people 18 and over, or from referring minors to unlicensed counselors, including religious leaders. *Pickup*, 740 F.3d at 1223. Moreover, there is little to no risk of overbreadth because “the statute applies only to personally directed communication between an adult and a person that the adult knows or should know is a minor[.]” *Am. Booksellers Found. for Free Expression v. Strickland*, 601 F.3d 622, 628 (6th Cir. 2010).

Third, the law is the least restrictive alternative. Previously, Tingley had argued that the law is overbroad and should have been limited to physical abuse of children. But limiting the law to aversion therapy only would not adequately protect minors. Research, including from the federal government, presented to the Legislature emphasized the importance of therapy without a predetermined outcome to avoid the risk of harm from conversion therapy. *See, e.g.*, Dkt. #30-3 at 20. (professional consensus on conversion therapy with minors is that “[i]nterventions aimed at a fixed outcome, such as gender conformity or heterosexual orientation, including those aimed at changing gender identity, gender expression, and sexual orientation are coercive, can be harmful, and should not be part of behavioral health treatments”). The restriction on all conversion therapy performed on minors by licensees furthers the State’s compelling interest in protecting minors.

1 Given the weighty interests in finality and protecting youth from harmful practices, this
2 Court should exercise its wide discretion and deny Tingley’s Rule 60(b)(6) motion.

3 **3. The State Defendants do not dispute Tingley’s diligence or timeliness in**
4 **seeking Rule 60(b)(6) relief**

5 The State Defendants do not dispute the “diligence of [Tingley] in seeking relief from
6 the original judgment.” *Hewitt*, 68 F.4th at 469. Tingley sought certiorari on the issue reviewed
7 in *Chiles* and just two months have elapsed between the *Chiles* decision and his motion.
8 Nonetheless, because the remaining considerations—the nature of the change of law and justice
9 in light of all of the facts—weigh sharply against relief, his motion should be denied.

10 **B. If This Court Grants Rule 60(b)(6) Relief, Relief Should Be Limited to the As-**
11 **Applied Free Speech Claim *Chiles* Addressed**

12 Should this Court grant Tingley’s Rule 60(b)(6) motion, it should limit re-opening to
13 Tingley’s as-applied free speech challenge under Count I.

14 Relief under Rule 60(b)(6) is conditioned on whether the changed law “would govern
15 [the] case were it reopened.” *Buck v. Davis*, 580 U.S. 100, 126 (2017). Where it would not,
16 “relief would be inappropriate.” *Id.* Because *Chiles* only addressed the standard of scrutiny that
17 applied to the as-applied free speech challenge, and the only basis for relief Tingley seeks is
18 premised on *Chiles*, any re-opening of the judgment should be limited to Tingley’s as-applied
19 free speech claim and not this Court’s judgment wholesale.

20 The prior judgment in this case rested on multiple holdings that *Chiles* does not touch.
21 These include conclusions that Tingley lacked third-party standing to assert free speech and free
22 exercise claims on behalf of his clients and that SB 5722 comported with free exercise and was
23 not void for vagueness. *Chiles* merely altered the level of scrutiny applicable to free speech
24 challenges to laws treating conversion therapy as unprofessional conduct. It did not address
25 third-party standing, free exercise, or vagueness at all. Thus, if this Court is inclined to grant any
26 relief under Rule 60(b)(6), the judgment should be re-opened only as to Tingley’s as-applied free
speech claim.

V. CONCLUSION

This Court should deny Tingley's Rule 60(b)(6) motion.

DATED this 25th day of June 2026.

I certify that this memorandum contains 4,200 words, in compliance with the Local Civil Rules.

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