

Will a recent SCOTUS decision lead to novel New Jersey CFA claims against parties who assisted gender transitions?

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When the U.S. Supreme Court on March 31 ruled 8-1 in *Chiles v. Salazar*¹ that Colorado's ban on conversion therapy likely discriminates against licensed counselors based on the views they express when speaking with clients, it did more than reframe a long-running First Amendment debate.

The decision materially weakened the doctrinal basis for state restrictions on therapist speech and could lay the groundwork for a novel legal claim under New Jersey's Consumer Fraud Act (CFA) brought by individuals who underwent gender transition efforts but feel they were misled into doing so.

Gender transitioning and conversion therapy

Gender transitioning is a complex medical and psychological process involving social, hormonal, and often surgical changes to align an individual's outward appearance with their internal gender identity. For years, the prevailing medical model in many jurisdictions has been "gender-affirming care," which encourages providers to validate an individual's self-identification of their gender.

On the other end of the spectrum is conversion therapy. Historically, conversion therapy referred to widely discredited practices intended to "repair" or "cure" an individual's homosexuality or gender identity and expression.

In recent years, many states — including New Jersey — banned conversion therapy to prohibit counseling that seeks to change a minor's gender identity or expression. Specifically, under N.J.S.A. § 45:1-55, psychiatrists, psychologists, certified social workers, and other individuals licensed to provide professional counseling under Title 45 "shall not engage in sexual orientation change efforts with a person under 18 years of age."

The statute defines "sexual orientation change efforts" as "the practice of seeking to change a person's sexual orientation, including, but not limited to, efforts to change behaviors, gender identity, or gender expressions, or to reduce or eliminate sexual or romantic attractions or feelings toward a person of the same gender."

However, the statute excludes from that definition "counseling for a person seeking to transition from one gender to another, or counseling that: (1) provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development ... ; and (2) does not seek to change sexual orientation."

While a state may regulate professional conduct, it cannot silence a professional's clinical opinion — especially when that opinion is shared within a private therapeutic relationship.

New Jersey's ban, enacted in 2013, like many others, was designed to protect vulnerable youth from conversion therapy practices. Critics have argued, however, that the prevailing "gender-affirming care" clinical model — though not compelled by the statute itself — discouraged therapists from challenging a minor's self-identification or exploring alternative formulations of gender dysphoria.

In recent years, the federal government has examined gender-affirming care through the lens of consumer protection. As evidenced by the Federal Trade Commission's July 2025 workshop (<https://bit.ly/4vaMv2b>) on "The Dangers of 'Gender-Affirming Care' for Minors," there has been growing concern that the marketing and provision of these life-altering services may involve deceptive practices if the long-term risks are minimized or the scientific evidence is overstated.

The *Chiles v. Salazar* decision

Chiles v. Salazar concerned a challenge to a Colorado law that, similar to New Jersey's, prohibited licensed professionals from

engaging in conversion therapy with minors, broadly defined to include any effort to change a patient's gender identity.

The Supreme Court held that the Tenth Circuit should have applied strict scrutiny to determine whether the Colorado law violates Kaley Chiles' First Amendment rights to express her views when meeting with her therapy clients, and suggested that the ban would fail that test. Writing for the majority, Justice Neil Gorsuch explained that Colorado's ban "censors speech based on viewpoint."

The Chiles and Ferguson decisions together establish a path for individuals who feel they were misled or defrauded by certain parties into proceeding with their gender transition efforts to obtain legal relief against them through the CFA.

The Court explained that the First Amendment reflects "a judgment that every American possesses an inalienable right to think and speak freely, and a faith in the free marketplace of ideas as the best means for discovering truth," and that "any law that suppresses speech based on viewpoint represents an egregious assault on both of those commitments."

The Court further reasoned that governments do not have a "free-floating power" to restrict professional speech simply because it disagrees with the viewpoint being expressed. While a state may regulate professional conduct, it cannot silence a professional's clinical opinion — especially when that opinion is shared within a private therapeutic relationship.

Even before a lower court accepts the Supreme Court's invitation to hold Colorado's law unconstitutional, *Chiles* has removed a key constraint on therapists' efforts to advise their patients to the best of their abilities.

New Jersey therapists who previously operated under the threat of licensure revocation when engaging in sexual orientation change efforts as defined by N.J.S.A. § 45:1-55 can now more freely express dissenting clinical views on all things related to gender identity and transitioning, including providing a counterpoint to the gender-affirming care model that was prevalent over the last decade.

Notably, in 2014, the Third Circuit in *King v. Governor of New Jersey*² upheld New Jersey's conversion therapy ban. Until a plaintiff successfully challenges N.J.S.A. 45:1-55 under *Chiles*, New Jersey therapists who engage in conduct that the statute reaches still face risk of running afoul of the ban.

Post-*Chiles*, we can expect more frank conversations between therapists and their patients, with some patients leaving those

conversations believing they were misled into pursuing gender transition efforts, including surgery.

After concluding that they may have been unlawfully deceived by medical providers and others who assisted with or facilitated their transition efforts, some will seek legal redress. A decade-old CFA case may hold the key to these individuals prevailing in their lawsuits.

***Ferguson v. JONAH* established 'ascertainable loss' for CFA claims stemming from conversion therapy**

New Jersey's CFA, codified at N.J.S.A. 56:8-1 et seq., is one of the most powerful consumer protection statutes in the U.S. on account of its treble damages and mandatory attorneys' fees for prevailing plaintiffs.

To prevail on a claim under the CFA that a defendant engaged in deceptive, fraudulent, or unconscionable practices concerning the sale or advertisement of goods and services, a plaintiff must show that (1) the defendant engaged in unlawful conduct, (2) they, the plaintiff, suffered an ascertainable loss, and (3) there was a causal relationship between the two.

In its June 2014 decision in *Ferguson v. JONAH*³ the New Jersey Superior Court, Law Division, laid the groundwork for plaintiffs to sufficiently allege that they suffered ascertainable damages in connection with conversion therapy.

In *Ferguson*, six plaintiffs sued Jews Offering New Alternatives for Healing ("JONAH") and others, alleging that their business practices violated the CFA. JONAH was a nonprofit corporation that educates the Jewish community about the social, cultural, and emotional factors that lead to same-sex attractions. Through counseling and other methods, JONAH purports to help individuals eliminate unwanted same-sex attractions.

Specifically, the plaintiffs alleged JONAH violated the CFA by engaging in "unconscionable commercial practice, deception, fraud, false pretense, false promise, and misrepresentation" by claiming that homosexuality is a mental disorder and, in the face of empirical evidence to the contrary, that same-sex attractions can be reduced or eliminated through therapy."

The plaintiffs alleged JONAH caused them to incur two types of ascertainable losses under the CFA: money they spent on JONAH's services and money they spent on reparative therapy necessitated by JONAH's services. JONAH moved for partial summary judgment on the basis that the second category of loss is not recoverable under the CFA.

The court held that reparative treatment and counseling following the plaintiffs' receipt of services from JONAH could constitute an ascertainable loss cognizable under the CFA. In so holding, the court observed that the "underlying transaction in the case involved reducing or eliminating same-sex attractions through emotional and mental health counseling."

In the court's view, "just as the purchaser of a home is a consumer of a product, the recipient of conversion therapy is a consumer of services."

If “JONAH’s conversion therapy damaged the individuals it was meant ‘to cure,’” the court continued, “any subsequent costs of repairing plaintiffs’ mental or emotional health are the direct and proximate result of JONAH’s actions and, hence, should be borne by JONAH, [assuming] plaintiffs tender evidence both competent and sufficient to establish such damages.”

Besides holding that an ascertainable loss under the CFA includes the cost of reparative therapy caused by alleged CFA violations, the court additionally held that even if subsequent treatment costs were not ascertainable losses under the CFA, they constitute “damages sustained” under the CFA.

A year after this decision, a jury unanimously found that JONAH violated the CFA and awarded the plaintiffs \$72,400 in damages.

A forthcoming flurry of CFA claims related to gender transitioning?

The *Chiles* and *Ferguson* decisions together establish a path for individuals who feel they were misled or defrauded by certain parties into proceeding with their gender transition efforts to obtain legal relief against them through the CFA.

These individuals could bring CFA claims against certain parties for their misleading statements regarding gender transitioning, relying on *Ferguson* to support their arguments that any reparative expenses they incurred to “undo” their transition efforts are ascertainable losses under the CFA.

Obviously, they would have to sufficiently allege that the providers engaged in deceptive, fraudulent, or unconscionable practices concerning the sale or advertisement of gender transitioning services.

Notably, the earliest wave of patients who began gender transition as minors did so roughly five to seven years ago. They are now in their early-to-mid twenties. CFA claims carry a six-year limitations period,⁴ tolled during minority and potentially extended by the discovery rule, which gives the cohort that began transition in adolescence roughly a two-to-three-year window before discovery-rule arguments become essential.

A critical distinction between *Ferguson* and the cases this article anticipates is the nature of the defendant.

JONAH was a non-profit corporation operated by lay counselors and not licensed mental health professionals. That

distinction matters because under *Macedo v. Dello Russo*⁵ the N.J. Supreme Court held that “learned professionals,” such as physicians and lawyers, are generally exempt from CFA liability when operating within their professional capacities.

Subsequent decisions, such as *Atlantic Ambulance Corp. v. Cullum*⁶ have extended that exemption to other regulated health-care providers.

Because JONAH’s counselors were not learned professionals, they had no *Macedo* shield. Plaintiffs asserting gender transitioning-based CFA claims against licensed therapists, psychiatrists, endocrinologists, and surgeons will not be similarly situated, and counsel must plead facts that take their CFA theory outside the professional core.

Two avenues are most promising.

First, New Jersey courts have recognized that learned professionals may face CFA liability for the “entrepreneurial” or “commercial” aspects of their practice, such as deceptive advertising, billing practices, intake marketing, and the like.

Gender-affirming care clinics that engaged in aggressive direct-to-consumer marketing, ran social media campaigns targeted at adolescents, or promoted standardized “affirmation pathways” through promotional materials may have exposed themselves to claims grounded in those commercial activities.

Second, pharmaceutical manufacturers and compounding pharmacies that marketed puberty blockers or cross-sex hormones for off-label pediatric use generally do not qualify as learned professionals and likely remain within the CFA’s reach.

To be sure, these gender-transition CFA cases will be novel, politically sensitive, and technically complex. Whether they survive the learned professional exception, satisfy the CFA’s misrepresentation element, and produce verdicts that hold up on appeal will determine whether the path forged by *Chiles* and *Ferguson* becomes a burgeoning new area of New Jersey law.

Notes:

¹ No. 24-539.

² 767 F.3d 216 (3d Cir. 2014).

³ 445 N.J. Super. 129.

⁴ N.J.S.A. 2A:14-1.

⁵ 178 N.J. 340 (2004).

⁶ 451 N.J. Super. 247 (App. Div. 2017).

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