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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT TACOMA**

11 **BRIAN TINGLEY,**

12 Plaintiff,

13 v.

14 **NICHOLAS W. BROWN**, in his official
15 capacity as Attorney General for the State
16 of Washington; **DENNIS WORSHAM**, in
17 his official capacity as Secretary of Health
18 for the State of Washington; and **SHAWNA**
19 **FOX**, in her official capacity as Assistant
20 Secretary of the Health Systems Quality
21 Assurance division of the Washington State
22 Department of Health,

23 Defendants.

Case No. 3:21-cv-05359-RJB

**PLAINTIFF'S REPLY IN
SUPPORT OF MOTION FOR
RELIEF FROM JUDGMENT**

NOTE FOR MOTION DATE:

July 15, 2026

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Introduction

Brian Tingley is chilling his constitutionally protected speech after losing a case that wrongly applied rational-basis review to a restriction that “censors speech based on viewpoint.” *Chiles v. Salazar*, 146 S. Ct. 1010, 1029 (2026).

Washington doesn’t dispute that. Nor does it disavow enforcing its law against speech-only counseling following *Chiles*. Instead, it doubles down, contending that its censorship satisfies strict scrutiny—the most exacting constitutional standard. And Washington opposes reopening this case, so it can apply the erroneous judgment to him anyway.

That’s unjust. And it’s tailor-made for Rule 60(b)(6)’s “grand reservoir of equitable power” allowing courts “to vacate judgments” to “accomplish justice.” *Phelps v. Almeida*, 569 F.3d 1130, 1135 (9th Cir. 2009) (citation modified). All the Rule 60(b)(6) factors align: a directly on-point change in law, Tingley diligently pursuing relief, and no reliance interests or detrimental change of position. Plus, with free-speech rights at stake, justice favors reopening.

Washington barely responds. It admits the change in the law, Tingley’s diligence, and its enforcement intent. It instead rests entirely on vague finality interests—interests the Ninth Circuit has repeatedly said don’t carry the day. And it tries to justify its censorship under strict scrutiny in a case that never progressed beyond the pleadings.

None of that works. The Court should reopen the case and decide it under the correct constitutional standard. That’s the only way to properly address the counseling law’s “egregious assault” on the First Amendment. *Chiles*, 146 S. Ct. 1029 (citation modified).

Argument

Washington concedes four of the six factors the Ninth Circuit considers for Rule 60(b)(6) motions based on changes in law. It admits that *Chiles* overruled *Tingley*, Tingley’s diligence and promptness in seeking relief, and it doesn’t contest the lack of comity interests. *See* Defs.’ Resp., Dkt. 75 at 11-12; *Henson v. Fid. Nat’l Fin., Inc.*, 943 F.3d 434, 446 (9th Cir. 2019) (listing factors); *Phelps*, 569 at 1132–33 (same). That’s enough to grant relief. *See Henson*, 943 F.3d at 455 (reversing denial of 60(b)(6) where majority, but not all, factors favored relief).

Washington’s also wrong on the remaining two factors. There are no “profound reliance interests” in continuing to restrict Tingley’s speech based on viewpoint. Dkt. 75 at 4-10. Nor was the law settled at the time of the original decision. Regardless, the conceded factors and profound equities in deciding Tingley’s free-speech rights under the correct constitutional standard easily warrant relief.

I. Washington has no reliance interests in continuing to violate Tingley’s constitutional rights.

Washington lacks any “reliance interest in the finality of the case.” *Phelps*, 569 F.3d at 1137. This factor applies when the prior judgment “caused” the non-moving party to “change his legal position” in some detrimental fashion. *Id.* at 1138. A classic example is a party relying on a judgment conveying property by installing expensive appurtenances. *Id.* at 1137. That’s the kind of detrimental reliance that triggers this factor. *Id.* at 1137–38.

No such interests exist here. Washington enforced its counseling law before, during, and after Tingley’s case. For Washington, the judgment changed nothing—and Washington doesn’t argue otherwise. Instead, Washington identifies only a general interest in its law continuing. Dkt. 75 at 4. But that’s exactly the kind of “abstract interest in finality” that doesn’t satisfy this factor. *Henson*, 943 F.3d at

1 450. As in *Henson* and *Phelps*, there are no “past effects of the judgment” that
 2 preclude reopening. *Id.* at 450 (citation modified). Rather, if the Court grants
 3 Tingley’s motion, the parties would “simply pick up where they left off,” which
 4 “weigh[s] heavily” in Tingley’s favor. *Id.* (citation modified).

5 Washington also lacks a legitimate interest in violating the Constitution. As
 6 *Chiles* showed, Tingley’s counseling is protected speech, and laws like Washington’s
 7 are viewpoint discriminatory. *Chiles*, 146 S. Ct. 1029. Viewpoint discrimination is
 8 generally fatal and has never been permitted by the Supreme Court. *See Free*
 9 *Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 484–85 (2025).

10 Washington recognizes that Tingley’s case mirrors *Chiles* (Dkt. 75 at 6) and
 11 that *Tingley* applied the wrong constitutional standard. Dkt. 75 at 9-12. Without a
 12 detrimental change in position, there are no reliance interests in the finality of an
 13 admittedly incorrect judgment. The abstract desire for finality can’t outweigh
 14 Washington’s “egregious assault” on the First Amendment. *Chiles*, 146 S. Ct. at
 15 1029 (citation modified).

16 **II. Tingley’s diligence after the change in unsettled law justifies relief.**

17 Washington contends that *Chiles* does not favor relief because *Tingley* merely
 18 applied settled precedent. Dkt. 75 at 1-3. That’s wrong on the law, the facts, and the
 19 equities.

20 **A. Changes in substantive law often favor relief.**

21 “[I]t is hardly extraordinary” under Rule 60(b)(6) that the law changes.
 22 *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005). So some legal changes—such as
 23 procedural changes—don’t favor relief. *Id.* at 536 & n.9. But courts must review “all
 24 of the circumstances” to determine “whether the specific nature of the change in the
 25 law” justifies relief. *Henson*, 943 F.3d at 446–447.

26 When a change in law places previously prohibited conduct “beyond the
 27 power of the ... law-making authority to proscribe,” that favors relief. *Cf. Bousley v.*

1 *United States*, 523 U.S. 614, 620 (1998). This is just such a case because it involves
 2 a violation of First Amendment rights.

3 **B. *Tingley* addressed an open question.**

4 The effect of *National Institute of Family & Life Advocates (NIFLA) v.*
 5 *Becerra*, 585 U.S. 755 (2018), on prior circuit precedent was an open question at the
 6 time of *Tingley*. *NIFLA* rejected that “professional speech” was subject to
 7 diminished First Amendment protection. 585 U.S. at 767. It abrogated *Pickup v.*
 8 *Brown*, 740 F.3d 1208 (9th Cir. 2014), the then-existing circuit precedent, by name.
 9 *Id.* This left *Pickup*’s status unsettled at best, and *Tingley* reasonably argued that
 10 *NIFLA* overruled it entirely. Pl.’s Mot. Prelim. Inj., Dkt. 2. In *Tingley*, the Ninth
 11 Circuit (incorrectly) adopted the “highly debatable view” that *Pickup* “survived at
 12 least in part.” *Tingley v. Ferguson*, 144 S. Ct. 33, 35–36 (2023) (Alito, J., dissenting
 13 from denial of certiorari) (citations omitted); *Tingley v. Ferguson*, 57 F.4th 1072,
 14 1084 (9th Cir. 2023) (O’Scannlain, J., dissenting from denial of rehearing en banc).
 15 So Ninth Circuit law wasn’t settled at the time of *Tingley*. And the Supreme Court
 16 ultimately vindicated “the legal position” that *Tingley* “advocated all along,” which
 17 weighs in his favor. *Henson*, 943 F.3d at 446.

18 There was also a three-way circuit split before and after *Tingley* on the issue
 19 presented, with *only* the Ninth Circuit declining heightened scrutiny. *Compare Otto*
 20 *v. Boca Raton*, 981 F.3d 854 (11th Cir. 2020), *Cath. Charities of Jackson, Lenawee &*
 21 *Hillsdale Ctys. v. Whitmer*, 162 F.4th 686, 696 (6th Cir. 2025), *and King v. Governor*
 22 *of the State of New Jersey*, 767 F.3d 216 (3d Cir. 2014), *with Tingley v. Ferguson*, 47
 23 F.4th 1055 (2022), *abrogated by Chiles*, 146 S. Ct. 1010. This added ambiguity to the
 24 proper standard governing *Tingley*’s claims. So *Tingley* didn’t just apply settled law.

C. Circuit precedent supports relief.

Although Washington belabors whether the law was “settled,” it fails to identify a case relying on that factor without some lack of diligence. And Washington here concedes Tingley’s diligence. Dkt. 75 at 12.

Consider *Gonzalez*, 545 U.S. 524. There, a change to the habeas statute of limitations did not justify reopening a petition that would have been timely filed under the new standard. The Court emphasized that the change in law was procedural and noted that reopening might be appropriate for “*substantive*” changes. *Id.* at 536 n.9. The Court also pointed to the petitioner’s “lack of diligence” in failing to appeal, petition for rehearing, or seek certiorari. *Id.* at 537. None of that applies here. Tingley was diligent, and the legal change was substantive: moving from rational basis to at least strict scrutiny.

Federal Trade Commission v. Hewitt is similar—featuring the moving party’s “lack of diligence[.]” 68 F.4th 461, 468 (9th Cir. 2023). There, a telemarketer sought relief from a ten-year-old monetary award based on a later Supreme Court decision invalidating such awards. *Id.* at 464. But the telemarketer “never challenged” the award “when it was originally issued” and “never” argued that the Supreme Court ultimately accepted. *Id.* at 468–69. Here, however, Tingley was diligent and made the very argument that *Chiles* adopted.¹

Ninth Circuit precedent supports relief for diligent parties after a change in the law. *Phelps*, 569 F.3d at 1136 (extolling petitioner’s “diligence”); *Henson*, 943 F.3d at 455 (reversing denial where five of six factors were neutral or favored relief); *Bynoe v. Baca*, 966 F.3d 972, 986 (9th Cir. 2020) (noting “long delay can be offset by a petitioner’s diligence”).

¹ *Clifton* presents even less diligence. There, the district court entered relief from judgment without a party asking for it. *Clifton v. Att’y Gen. of Calif.*, 997 F.2d 660, 665 (9th Cir. 1993).

While ignoring *Henson* and *Bynoe*, Washington tries to distinguish *Phelps*, saying the issue there “was pending before two different Ninth Circuit panels” and thus unsettled. Dkt. 75 at 8. But a similar conflict was happening with this counseling issue on a national scale. As Tingley’s case progressed, similar cases across the nation did too, leading to *Chiles*. *Chiles*, 146 S. Ct. 1029. Plus, *Phelps* emphasized the petitioner’s diligence in pressing “all possible avenues of relief.” 560 F.3d at 1137. The same is true here. The unsettled nature of the law, along with Tingley’s conceded diligence, makes this case like *Phelps*, *Henson*, and *Bynoe*.

III. Justice favors relief from judgment.

Tingley has chilled his speech because of Washington’s law for years. Justice supports relieving him of this unconstitutional burden. Washington concedes *Tingley* applied the wrong standard. See Dkt. 75 at 9. But it says the judgment should stand because the law satisfies strict scrutiny.

That misses the point. *Chiles* condemned applying Colorado’s law to speech-only counseling, labeling it an “egregious assault” on the First Amendment. *Chiles*, 146 S. Ct. at 1029. And the Court “reversed,” rather than “vacating,” the Tenth Circuit’s judgment, obviating further analysis. *Id.* Plus, viewpoint discrimination typically “end[s] the matter.” *Iancu v. Brunetti*, 588 U.S. 388, 399 (2019). So justice favors reopening this case to stop a per se constitutional violation.

At a minimum, the law must pass strict scrutiny. *Chiles*, 146 S. Ct. at 1021. Since *Tingley* wrongly applied rational basis, as did the lower courts in *Chiles*, justice favors reopening. Nor can the Court apply strict scrutiny on the pleadings. Strict scrutiny is the government’s burden, not something resolved at the motion-to-dismiss stage. *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015); *Soltysik v. Padilla*, 910 F.3d 438, 447 (9th Cir. 2018) (declining to apply lower scrutiny at motion-to-dismiss stage). “[O]nly once” has the Supreme Court held that a speech restriction “triggered but satisfied strict scrutiny,” and that restriction was content-based, not

viewpoint-based. *Free Speech Coal.*, 606 U.S. at 484. Indeed, in *Chiles* itself, Colorado stipulated to a preliminary injunction on remand. Stipulated Order for Preliminary Injunction, *Chiles v. Salazar*, No. 22-cv-2287-GPG-STV (D. Colo. June 2, 2026), Dkt. 115. And no court has upheld a law like Washington’s under strict scrutiny.

Washington’s restriction fails. As Tingley has argued, client-driven voluntary conversations don’t harm anyone. Dkt. 2 at 12-13; Pl.’s Mot. Prelim. Inj., Dkt. 70 at 16-23. Nor is Washington’s censorship narrowly tailored since it restricts speech like Tingley’s that causes no harm while failing to regulate harmful counseling methods and similar speech from unlicensed people. Dkt. 2 at 13-15; Dkt. 70 at 23-28. Nor is it the least restrictive means of achieving Washington’s objective since the state could limit its law to harmful conduct, educate the public, or just enforce malpractice laws. Dkt 2. at 15-17; Dkt. 70 at 27-28. The Court should at least consider these arguments in a reopened case, not on two pages in Washington’s response. If Washington were so confident it could satisfy strict scrutiny, it should welcome the chance. Tingley merely asks for the opportunity to make his case now that the law has changed. Justice demands it.

IV. Scope

Chiles implicates each of Tingley’s claims, so reinstating each is appropriate. *Buck*, which Washington cites, looks at what precedent “would govern [movant’s] case were it reopened.” *Buck v. Davis*, 580 U.S. 100, 126 (2017). *Chiles* governs not only Tingley’s free-speech claim but also his due-process claim, which alleges Washington’s discretion to discriminate based on viewpoint, and his free-exercise claim, which alleges violations of the hybrid-rights doctrine involving free-speech concerns. So the Court should reopen all these claims and evaluate them after full briefing.

Conclusion

For these reasons, Plaintiff Brian Tingley respectfully requests that this Court grant his motion for relief from judgment.

Respectfully submitted this 15th day of July, 2026.

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Certification

I certify that this memorandum contains 2,096 words, in compliance with the Local Civil Rules.

Certificate of Service

I hereby certify that on July 15, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/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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