

Health Care in Motion

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April 8, 2026

This is Not Medical Advice: The Supreme Court and Conversion Therapy

On March 31, [International Transgender Day of Visibility](#), the Supreme Court ruled unconstitutional on First Amendment grounds a Colorado law banning conversion therapy for LGBTQ+ minors. In [Chiles v. Salazar](#), the Court paved the way for challenges to similar state laws across the country and set a particularly high burden for state regulators who hope to restrict access to talk therapies that deviate from medical consensus. The decision is a stark juxtaposition against the outcome last summer in [United States v. Skrametti](#), where the Court upheld a Tennessee ban on gender-affirming care for minors and strengthened the ability of states to regulate certain medical interventions. To distinguish *Skrametti*, the majority opinion in *Chiles* took careful steps to outline where and when it is appropriate for states to intervene in medical practices, making one thing clear: the First Amendment protects speech, and talk therapy is just that. Read on for more about the case, its possible implications, and how undermining conversion therapy bans aligns with other policy priorities of the Trump Administration.

The Case of the Conversion Therapist

Kaley Chiles, the plaintiff in the case, is a licensed mental health counselor in Colorado, where she offers talk therapy through a Christian faith-based lens. Chiles challenged the [Colorado ban on conversion therapy](#) as [viewpoint discrimination](#), claiming an infringement on her First Amendment rights. Both the federal district court and the Tenth Circuit Court of Appeals denied Chiles's request for a preliminary injunction. The courts reasoned that any infringement on Ms. Chiles's rights and therapy practice were simply incidental to the regulation of conduct—in this case talk therapy—and such regulation need only pass a minimal standard of review. The Supreme Court disagreed.

In an [8-1 decision](#), the majority of the Supreme Court found that Ms. Chiles's practice of using therapy to reinforce cisgender and heterosexual identity was “speech,” and was entitled to the highest level of First Amendment scrutiny (known as “strict scrutiny”). In the words of the Court, “All she does is speak, and speech is all Colorado seeks to regulate.” The Court distinguishes practices that are exclusively based in speech from physical interventions and those with clear biological impacts on the

What is conversion therapy, and why is it harmful?

“[‘Conversion therapy’](#) refers to attempts to change a person’s sexual orientation, gender identity, or related behaviors. Sometimes called ‘reparative’ or ‘reorientation’ therapy, these practices stem from the scientifically discredited belief that being LGBTQ+ is a mental illness that should be cured.” The practice is known to result in increased risk of suicidality, chronic depression and anxiety, and symptoms of post-traumatic stress disorder for survivors. It also typically results in increased social isolation and can have lasting damaging impacts on family and community relationships.

body, such as surgery or the prescribing of medications by a physician, which states are allowed to regulate. The Court also distinguished the Colorado law from other common regulations of medical care, like licensing laws, malpractice, or informed consent requirements.

Care that is Also Speech

Having concluded that the lower courts should have and must evaluate Chiles’s free speech claim under strict scrutiny, the Court concluded that the Colorado ban very likely fails that test. The decision in *Chiles* will likely impact the 22 other states across the country with similar bans, because these restrictions will no longer be enforceable.

To reach its conclusion, the majority had to draw careful lines distinguishing medical practice from speech. These lines, however, are not so simple in practice. In her dissenting opinion, Justice Ketanji Brown Jackson notes this tension: “the Court’s opinion... will eventually prove untenable for those who rely upon the long-recognized responsibility of States to regulate the medical profession for the protection of public health.” She goes on to point to medical advice regarding suicidal ideation, smoking, and the treatment of eating disorders—all of which entail clear restrictions on speech to uphold appropriate medical standards. For instance, regardless of personal beliefs on suicide, it would not be appropriate for a medical professional to encourage or worsen suicidal ideation, and the public should be able to rely on policymakers to intervene should that troubling practice emerge within therapeutic settings. Unfortunately, the same can no longer be said about challenging an LGBTQ+ patient to ignore or repress their internal sense of self.

Stand Still, Don’t Think, Detransition

The practice of using conversion therapy to discourage queer sexual orientation has fortunately grown more [unpopular in public opinion](#) over the last several decades, but it appears the Trump Administration and its allies may be seeking to revive and proliferate this practice as part of their efforts to erase transgender identities. Previous issues of Health Care in Motion have covered [proposed rules](#) that seek to significantly restrict gender-affirming care for minors. Deep within the HHS report on [Treatment for Pediatric Gender Dysphoria](#), the government advocates for additional use of what appears to be the newest rebranding of conversion therapy—which they euphemistically call “exploratory therapy.” Although the report only focuses on slowing down *pediatric* medical interventions for gender dysphoria, other actions by the Administration suggest they hope to apply the practice more broadly.

Earlier this year, the Administration [released new guidance](#) upending almost a decade of access to gender-affirming care for people in federal prison and made clear that the federal government now intends to forcibly detransition people in their custody through both medical and social restrictions. The policy also indicates that anyone presenting with gender dysphoria will be provided access to psychotherapy, and in fact, it should be prioritized. However, when a transgender person is held in a facility that aligns with their sex at birth—as opposed to their gender—and is denied access to medically necessary transition care, psychotherapy is much more akin to conversion therapy than the recognized standard of care. There is no indication yet that this practice will be applied more broadly by medical professionals practicing outside carceral facilities, but it certainly does not bode well for transgender people who are witnessing intense trends of discrimination and criminalization across the nation. And for those in federal custody, facing a mandate to medically detransition

and refusals to accommodate social transition, exploratory therapy could be the new substitution for gender-affirming care.

Next Steps

Advocates against conversion therapy have already begun to respond to the decision in *Chiles* by urging states and the public to [consider expanding](#) the ability to bring civil suits against conversion therapists. Doing so would better enable survivors of the practice to later pursue malpractice suits, a tool the Supreme Court very much left intact in their ruling. Conversion therapy is still condemned by every major [medical](#) and [mental health](#) organization in the United States. Despite the Supreme Court's confirmation that therapists may engage in these practices, it is still discredited, unethical, and potentially subject to civil action. These facts will remain important in the coming years as the impacts of current attacks on the LGBTQ+ community unfold, and as the fight for medically necessary, lifesaving care for transgender children and adults continues.

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