

Supreme Court to decide if Colorado's law banning conversion therapy violates free speech

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The US Supreme Court will hear oral arguments for yet another case involving the LGBTQ+ community.

Saul Loeb/AFP via Getty Images

The constitutionality of a Colorado law that bans so-called “conversion therapy” is scheduled to go before the Supreme Court on Oct. 7, 2025. The question at the center of the case, *Chiles v. Salazar*, is whether a therapist who uses talk therapy to try to convince minors to change their sexual orientation or gender identity is protected by a First Amendment right to free speech.

Twenty-three other states and the District of Columbia also ban conversion therapy.



Colorado Gov. Jared Polis is applauded as he signs a law banning the use of conversion therapy on minors.

Aaron Ontiveroz/The Denver Post via Getty Images

I am a legal scholar who has explored aspects of the rights of the LGBTQ+ community, and this case is an important test of the status of the community's rights and protections at the Supreme Court.

Why it matters

The case has similarities to the court's 2025 decision in *United States v. Skrmetti* that upheld state laws banning gender-affirming care for transgender minors, such as the use of puberty-blocking hormones. LGBTQ+ persons viewed those bans as hurting the community, whereas bans like Colorado's on conversion therapy are viewed as protecting the community.

Technically, the legal issue in *Skrmetti* was different: The court addressed whether the ban violated the equal protection clause of the 14th Amendment, which prohibits states from discriminating against particular protected classes, such as race or gender, absent a particularly strong state interest. In the *Skrmetti* decision, the court held there was no discrimination on the basis of sex, which meant the law received no heightened scrutiny.

Instead, the court assessed whether there was a "rational basis" for the law and held that Tennessee had "plausible reasons" for the ban: protecting minors from harms such as sterility and treatments whose long-term effects are unclear. The court upheld the law banning gender-affirming care even though major U.S. medical professional associations oppose such bans and support such care.

The facts of Chiles

In Chiles, the issue is freedom of speech, not equal protection. But this time the Colorado ban on conversion therapy aligns with leading medical associations.

Kaley Chiles is a licensed professional counselor who uses talk therapy in her counseling practice. Chiles identifies as Christian and often works with Christian clients. Chiles “does not try to help minors change their attractions, behavior, or identity, when her minor clients tell her they are not seeking such change.” She would like to use talk therapy with clients “who have same-sex attractions or gender identity confusion and who also prioritize their faith above their feelings” and who “are seeking to live a life consistent with their faith,” according to court filings.

Chiles sued Colorado to invalidate the statute as unconstitutional for violating her freedom of speech and religion under the First Amendment of the U.S. Constitution. Both the federal district court in Colorado and the U.S. Court of Appeals for the 10th Circuit denied her request for a preliminary injunction, rejecting both arguments.

The Supreme Court agreed only to hear her free speech claim, leaving the 10th Circuit’s rejection of her religious liberty claim in place.

Is ‘talk therapy’ speech or conduct?

The Supreme Court first will need to address whether talk therapy is protected speech under the First Amendment. This decision likely will determine the case’s outcome.

Chiles contends that talk therapy is protected speech and that Colorado is impermissibly regulating the content of her potential speech. The law permits her to help minor clients embrace their sexual orientation or gender identity through talk therapy but not to change it. If this therapy is speech, it would be regulating the content of her speech because the law determines what can and cannot be said. Affirming talk therapy is allowed, but conversion therapy is prohibited.

Colorado, however, insists that the statute regulates medical conduct, which is not protected by the First Amendment, even if there is an incidental burden on speech.

A state undisputably can regulate medical activity, such as the prescription of a medicine. If the therapy involved the use of medicines, there would be no dispute because no speech would be involved. The Colorado conversion therapy ban is part of a broader statute, the Mental Health Practice Act, which prohibits acts that could harm patients. Thus, talk therapy, according to Colorado, is treatment – like providing medicine - that the state is free to regulate.

Conversion therapy is also deemed ineffective and harmful to children by leading medical associations, such as the American Psychiatric Association and the American Medical Association. The 10th Circuit noted that the Colorado ban regulates treatment, not expression, because Chiles is free to share her views on conversion therapy, even with minors. She simply cannot engage in actual therapy under the law.



Members of both sides of the debate stand in front of the U.S. Supreme Court on Dec. 5, 2022. The high court heard oral arguments in a case involving the owner of a website design company in Colorado who refused to create websites for same-sex weddings despite a state antidiscrimination law.

Kent Nishimura/Getty Images

The Supreme Court will need to decide whether talk therapy is speech or conduct. The court often takes a broad view of what constitutes speech, particularly in the area of LGBTQ+ rights. In *303 Creative LLC v. Elenis*, another case out of Colorado, the court held that creating a wedding webpage was deemed protected speech. This 2023 decision permitted the webpage designer to deny services to same-sex couples requesting webpages for their weddings, in violation of Colorado's law prohibiting sexual orientation discrimination.

If the court concludes that conversion therapy is conduct, then the Colorado law is subject to the same standard used in *Skrmetti* – rational basis – and likely will survive. In light of *303 Creative*, however, the court may deem it speech.

If talk therapy is speech, can Colorado ban it?

Simply because an act constitutes speech protected by the First Amendment does not mean the state cannot regulate it. For example, the state can rightly regulate defamatory statements or obscene material.

Courts, however, apply an exacting standard of review, known as strict scrutiny, and rarely does a law survive such analysis. Colorado must show that its ban on conversion therapy is narrowly tailored to achieve a compelling state interest. Colorado contends that ensuring minors receive safe and effective mental health care is a compelling interest, and the law is narrowly tailored because “(i)t prohibits only specific harmful treatment while leaving therapists free to engage in any other appropriate therapy.”

Chiles’ strongest argument is that the law is not narrowly tailored for a number of reasons. Chiles contends the law is too broad because it bans more speech than necessary to protect against any harms to LGBTQ+ minors, including any therapy to change behavior, expression, identity or feeling.

For example, she argues she could not counsel a gay client toward celibacy. It is also not properly tailored, Chiles argues, because it exposes minors to the harms of conversion therapy by its omissions: It applies only to licensed mental health professionals and not others, such as life coaches, and it applies only to minors. If conversion therapy is as harmful as Colorado alleges, these gaps show the lack of proper tailoring, says Chiles.

The court has frequently struck down laws that regulate the content of speech. If the court concludes that talk therapy is protected speech, it is likely the court will find the Colorado ban on conversion therapy unconstitutional.

Such a decision would contrast sharply with *Skrmetti*. If the court strikes down the Colorado law, then a law meant to protect LGBTQ+ minors will be invalidated while one deemed harmful to trans minors will stand.

The court again will have gone against the predominant view of medical experts in a way detrimental to the LGBTQ+ community, potentially adding to criticism of the Supreme Court as being too political.

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