GENDER THERAPY FALSE EQUIVALENCY

SCOTT SKINNER-THOMPSON*

ABSTRACT

One critical dispute surrounding the rights of LGBTQ people and societal recognition of their existence is the legal debate regarding very different types of gender therapy. On the one hand, several states have banned the provision of gender-affirming medical care to transgender youth, positing that it is a dangerous form of mutilation. A separate set of states has banned the practice of so-called gay or gender conversion therapy that seeks to transform youth away from their queer identities, concluding that it is a form of abuse. Both sets of laws have been challenged in courts with the Supreme Court recently delineating constitutional standards applicable to each, with subsequent litigation and societal debate to follow. The Supreme Court concluded that laws banning certain kinds of gender-affirming care for minors do not violate the Equal Protection Clause to the extent they do not draw lines on the basis of sex or transgender identity. Conversely, the Supreme Court just ruled that as applied to talk therapy, Colorado's ban on conversion therapy for minors must survive strict scrutiny under the First Amendment. But with litigation and legislative evaluation surrounding these laws set to continue, it would be a mistake to conflate each category of law and the practices they seek to regulate.

As this Article explains as its central thesis, the differences between these two types of laws exist along two important dimensions, one centered on harm and the other centered on science. In terms of harm, allowing gender-affirming care reduces harm because individuals are permitted to choose their care and explore their identity (subject to medical ethics and parental constraints), whereas in the case of conversion, they undergo practices designed to forcibly change or quash their sexual identity, with resulting psychological, emotional, and sometimes physical trauma. In terms of science, states have grounded their prohibitions of conversion practices on studies indicating that gender identity and sexual orientation are not susceptible to forced erasure. In contrast, bans on gender-affirming care ignore the diversity of our biological world and the scientific reality of gender diversity. By appreciating these two dimensions during a time of legislative and judicial skepticism toward medical

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expertise and evidence-based research, the false equivalency between these two approaches to gender therapy can be brought into sharper relief, guiding lawmaking and constitutional evaluation of the different regulatory regimes, while preserving the role of science as an important (albeit occasionally imperfect) knowledge institution supporting our constitutional democracy.

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INTRODUCTION

Roughly half of all states in America ban or restrict the practice of what is typically referred to as conversion therapy for minors,[1] wherein providers attempt to "convert" LGBTQ youth to be straight or cisgender.[2] In the past few years, a surge of laws have been enacted in the other half of states forbidding certain types of gender-affirming medical care for transgender youth[3]—care that is designed to help youth embody their gender as only they can know it.[4] In *United States v. Skrmetti*,[5] de-

1. As others have noted, because attempts to forcibly alter people's sexual orientation or gender identity are not effective, therapeutic, or humane, the widely used phrase "conversion therapy" is in many ways a misnomer. *See, e.g.*, David J. Kinitz, Nguyen K. Tran, & Kinnon R. MacKinnon, *Expanding Policy and Programming to Address Conversion Therapy and 2SLGBTQ+ Health Inequity: A Discussion of Challenges*, 22 HEALTHCARE PAPERS 46, 50 (2024). In its place, some rightly prefer to refer to such interventions as "sexual orientation change efforts (SOCE)" or "gender identity change efforts (GICE)," or "sexual orientation and gender identity change efforts (SOGICE)." *E.g.*, Jessica N. Fish & Stephen T. Russell, *Sexual Orientation and Gender Identity Change Efforts are Unethical and Harmful*, 110 AM. J. PUB. HEALTH 1113, 1113 (2020) (deploying SOGICE). For the sake of brevity and because "conversion therapy" is the term used in many of the laws at issue, I will refer to such efforts as conversion practices for the most part with occasional deployment of the inaccurate but pervasive phrase "conversion therapy."

2. *Conversion "Therapy" Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/conversion_therapy (last visited Oct. 24, 2025).

3. Scott Skinner-Thompson, *Trans Animus*, 65 B.C. L. REV. 965, 989 (2024) (documenting that over twenty states have excluded minors from medically necessary gender-affirming care).

4. *Cf.* JULIAN GILL-PETERSON, HISTORIES OF THE TRANSGENDER CHILD vii–viii (2018) (arguing that trans children should be trusted and that "radical skepticism and verification" regimes

cided in June 2025, the Supreme Court upheld a Tennessee ban on certain types of gender-affirming care (puberty blockers and hormones) for transgender youth, reasoning that the law did not classify individuals on the basis of sex or transgender status and therefore is not subject to heightened scrutiny under the Equal Protection Clause.[6] Months earlier, in March 2025, the Supreme Court also granted certiorari in a case out of the Tenth Circuit, *Chiles v. Salazar*,[7] challenging Colorado's ban on conversion therapy for minors as impermissibly infringing on a therapist's First Amendment speech rights, with oral argument conducted in October 2025.[8] As this Article went to print in 2026, the Supreme Court issued its opinion in *Chiles*, concluding that as applied to talk therapy, Colorado's ban on conversion therapy was a viewpoint-based restriction subject to strict scrutiny, remanding to lower courts to determine if Colorado could satisfy that exacting standard.[9]

But notwithstanding the Court's decisions in *Skrmetti* and *Chiles*, legislative and judicial evaluation of these bans on very different kinds of gender therapy will continue. Bans on gender-affirming care will likely be evaluated for their constitutionality under other legal theories, potentially bodily autonomy and privacy. And to the extent they implicate therapists' speech rights, courts will evaluate whether bans on conversion practices survive strict scrutiny. Moreover, citizens and their representatives will continue to deliberate on whether to institute or keep these different kinds of bans.

As this judicial and societal discussion ensues, it is critical to understand that in many important and constitutionally salient ways, laws seeking to ban gender affirmation and ban gender or sexual orientation conversion practices are very different, and it would be a grave mistake

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be abandoned, while observing that even where gender-affirming care is "legal," access to such care is often predicated on a deep questioning of children's identities, preventing access to such care should the child desire it); M. Gessen, *The Supreme Court's Blindness to Transgender Reality*, N.Y. TIMES (June 19, 2025), https://www.nytimes.com/2025/06/19/opinion/the-supreme-court-fails-to-see-transgender-teens.html ("Don't ask me how you know that you are transgender: That question is no more appropriate or relevant than asking people how they know that they are gay or Jewish or Black.").

5. 145 S. Ct. 1816 (2025).

6. *Id.* at 1826, 1829, 1833. Before the Supreme Court, I joined an amicus brief of legal scholars in support of those advocating against the legality of Tennessee's ban on gender-affirming care, arguing that Tennessee's law was a sex-based classification subject to heightened scrutiny. *See* Brief Amici Curiae of Legal Scholars and National Women's Law Center In Support of Petitioner and of Respondents in Support of Petitioner at 2, United States v. Skrmetti, 145 S. Ct. 1816 (2025) (No. 23-477).

7. 116 F.4th 1178 (10th Cir. 2024), *cert. granted*, 145 S. Ct. 1328 (2025).

8. *Id.* at 1191 (upholding as constitutional Colorado's ban on conversion therapy for minors). Before both the Supreme Court and the Tenth Circuit, I submitted an amicus brief in support of the State of Colorado, arguing that the law did not offend First Amendment free speech principles. *See* Brief of Amici Curiae Constitutional Law and First Amendment Scholars in Support of Respondents at 2–3, Chiles v. Salazar, 145 S. Ct. 1328 (2025) (No. 24-539); Brief of Amicus Curiae Constitutional Law & First Amendment Scholars in Support of Defendants-Appellees at 6–8, Chiles v. Salazar, 116 F.4th 1178 (10th Cir. 2024) (Nos. 22-1445, 23-1002).

9. Chiles v. Salazar, No. 24-539, slip op. (U.S. March 31, 2026).

for courts and society to treat them as if they were cut from the same cloth.[10] While *Skrmetti* and *Chiles* are currently the law of the land, understanding the key differences between these two types of "therapies" and their respective regulation will be key as the propriety of these regulations is evaluated by courts, legislatures, and the people. And, with an eye to the future,[11] appreciating these differences could help the Court recognize why bans on conversion practices survive even strict scrutiny[12] while simultaneously laying the groundwork for a time when the Court may reconsider the providence of its ruling in *Skrmetti* upholding bans on gender-affirming care for minors.

As this Article explores, the differences between these two types of laws exist along at least two important dimensions, one centered on individual harm and the other centered on science. In terms of harm, allowing gender-affirming care reduces harm because people are permitted to choose their care (subject to medical standards of care and, in the case of youth, parental input) that alleviates gender dysphoria, whereas in the case of conversion practices, they are made to believe they need (and are often forced) to try to change their sexual and/or gender identity, leading to a litany of harms. In terms of science, prohibitions on conversion practices are supported by manifold studies suggesting that gender identity and sexual orientation are not readily susceptible to forced erasure and that forcible attempts to do so cause the patient harm. In contrast, bans on gender-affirming care ignore the diversity of our biological world and the scientific reality of gender diversity.

This Article musters much of the scientific evidence regarding each form of "therapy" because members of the Supreme Court in *Skrmetti* were, at various turns, skeptical[13] or outright hostile[14] toward the validity

10. Kinitz, Tran, & MacKinnon, *supra* note 1, at 48 (observing the need to differentiate "conversion practices from evidence-informed gender-affirming healthcare" when implementing bans on conversion therapy); Florence Ashley, *Homophobia, Conversion Therapy, and Care Models for Trans Youth: Defending the Gender-Affirmative Approach*, 17 J. LGBT YOUTH 361, 361–62 (2019) (dispelling attempts to conflate gender-affirming care with anti-LGBTQ conversion therapy); Lui Asquith, *Ensuring Trans Protection within a Ban on Conversion Practices*, *' in* BANNING 'CONVERSION THERAPY': LEGAL AND POLICY PERSPECTIVES 153, 156, 161–62 (Ilias Trispiotis & Craig Purshouse eds., 2023) (emphasizing the need to distinguish gender-affirming care that creates space for exploring one's identity from attempts to quash non-normative sexual and gender identities); *see also* Kevin Eamon Muehleman, *Conversion Therapy—Not Gender Affirming Care—Is Real 'Child Abuse,'* NEWSWEEK (March 29, 2022), https://www.newsweek.com/conversion-therapynot-gender-affirming-care-real-child-abuse-opinion-1692564 (explaining critical distinctions between conversion therapy and gender-affirming care).

11. *See* Dawn E. Johnsen, *Lessons from the Right: Progressive Constitutionalism for the Twenty-First Century*, 1 HARV. L. & POL'Y REV. 239, 242 (2007) (advocating the need to develop compelling and coherent progressive legal principles notwithstanding conservative legal hegemony).

12. Clay Calvert, *Weaponizing Proof of Harm in First Amendment Cases: When Scientific Evidence and Deference to the Views of Professional Associations Collide in the Battle Against Conversion Therapy*, 2021 MICH. ST. L. REV. 765, 788–89, 807–09 (2022) (explaining that because of the ethical prohibitions on conducting experimental research on minors that undergo conversion practices, judicial demand for causal proof that conversion practices cause psychological distress is inappropriate and impossible).

13. *Skrmetti*, 145 S. Ct. at 1836–37.

of gender-affirming care for minors, and in *Chiles* the Court decided that bans on conversion practices need to satisfy heightened scrutiny to the extent they infringe on therapists' First Amendment speech rights and therefore must be justified by a compelling government interest.[15] Mustering—and defending—scientific evidence (when it exists) is critical not only to the liberty of queer and trans people implicated by this constitutional litigation, but is of broader constitutional importance at a time when knowledge institutions of all stripes are being undermined in public discourse and in terms of public resources.[16] To be clear, it's not my claim that rights for sexual minorities hinge on scientific proof of their existence or some universal explanation for why some of us are different—not at all.[17] Queer people, including trans children, are best arbiters of their identities.[18] Rather, my claim is that *in the context of regulating the practice of medicine*, the science regarding the efficacy or inefficacy of that medicine in reducing or inducing harm matters to the constitutional analysis.

I. CONVERSION PRACTICES ARE NOT SCIENTIFICALLY SUPPORTED AND CAUSE HARM

A. Conversion Practices Are Not Grounded in Science (that is, they don't work)

Efforts to forcibly change a person's queer sexual orientation or gender identity via conversion practices have a long and troubled history in the United States. As early as the late nineteenth century, negative attitudes toward sexual minorities coupled with the pathologization of those identities gave rise to several different pseudoscientific efforts to correct or change people's nonnormative identities.[19] However, even

14. *Id.* at. 1840 (Thomas, J., concurring) (questioning the integrity of the evidence offered in support of the efficacy of gender-affirming care for adolescents).

15. *Cf.* Otto v. City of Boca Raton, 981 F.3d 854, 868–70 (11th Cir. 2020) (enjoining municipal bans on conversion therapy because in court's view there was insufficient evidence of harm caused by talk therapy).

16. *See* Vicki C. Jackson, *Knowledge Institutions in Constitutional Democracies: Preliminary Reflections*, 7 CAN. J. COMPAR. & CONTEMP. L. 156, 163–64 (2021) (explaining the role of science as fundamental to the functioning of constitutional democracy in that it helps produce knowledge upon which lawmakers can rely, even if sometimes science makes mistakes).

17. SUSAN STRYKER, TRANSGENDER HISTORY: THE ROOTS OF TODAY'S REVOLUTION 22 (2d. ed. 2017) ("[I]t's more important to acknowledge *that* some people experience gender differently from how most do than to say *why* some people experience gender differently from how most do."); JOANNA WUEST, BORN THIS WAY: SCIENCE, CITIZENSHIP, AND INEQUALITY IN THE AMERICAN LGBTQ+ MOVEMENT 203 (2023) ("It is fortunate that achieving meaningful equality does not depend much at all on 'knowing' the true nature of desire or identity . . . . But while thwarting political foes oftentimes does call for evidence of what sexual orientation and gender identity are *not*—that is, injurious or infectious—we need not pin down their elusive origins and ontology to be politically or personally liberated.").

18. GILL-PETERSON, *supra* note 4, at 6.

19. Judith M. Glassgold, *Research on Sexual Orientation Change Efforts: A Summary*, *in* THE CASE AGAINST CONVERSION "THERAPY": EVIDENCE, ETHICS, AND ALTERNATIVES 19, 22 (Douglas C. Haldeman ed., 2022).

with the continued, but inconsistent, de-pathologization of LGBTQ identities in the late twentieth and early twenty-first centuries, certain conversion practices persisted toward sexual minorities, including among certain religious communities.[20]

Conversion practices can include an array of techniques, including aversion (wherein patients are exposed to different kinds of physical or psychological discomfort when experiencing and exhibiting queer tendencies), biofeedback, and masturbation reconditioning, among others.[21] Some (but not all) of these techniques involve so-called talk therapy (more accurately, talk practices) wherein words are the tools of the practitioners' interventions.[22] As the American Medical Association (AMA) has concluded:

> Underlying these techniques is the assumption that any non-heterosexual, non-cisgender identities are mental disorders, and that sexual orientation and gender identity can and should be changed. *This assumption is not based on medical and scientific evidence. Professional consensus rejects pathologizing sexual and gender identities.* In addition, empirical evidence has demonstrated a diversity of sexual and gender identities that are normal variations of human identity and expression, and not inherently linked to mental illness.[23]

Similarly, the American Psychological Association (APA) has resolved "that there is insufficient evidence to support the use of psychological interventions to change sexual orientation."[24] Likewise with respect to gender identity, the APA "opposes the dissemination of inaccurate information about gender identity, gender expression, and the efficacy of GICE [Gender Identity Change Efforts], including the claim that gender identity can be changed through treatment."[25] Indeed, nearly every repu-

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20. *Id.*

21. *Issue Brief: Sexual Orientation and Gender Identity Change Efforts (So-Called "Conversion Therapy")*, AM. MED. ASS'N (2022), [hereinafter AMA *Issue Brief*], https://www.ama-assn.org/system/files/conversion-therapy-issue-brief.pdf.

22. Ilias Trispiotis, *The Legal Duty to Ban 'Conversion Therapy,' in* BANNING 'CONVERSION THERAPY': LEGAL AND POLICY PERSPECTIVES 29, 33 (Ilias Tripiotis & Craig Purshouse eds., 2023) (explaining that all forms of conversion practices, even so-called talk therapy, are harmful and autonomy reducing).

23. AMA *Issue Brief*, *supra* note 21 (emphasis added).

24. *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts*, AM. PSYCH. ASS'N (June 2022), https://www.apa.org/about/policy/sexual-orientation ("Be it further resolved that the American Psychological Association concludes that there is insufficient evidence to support the use of psychological interventions to change sexual orientation").

25. *APA Resolution on Gender Identity Change Efforts*, AM. PSYCH. ASS'N 4 (Feb. 2021) [hereinafter *APA GICE Resolution 2021*], https://www.apa.org/about/policy/resolution-gender-identity-change-efforts.pdf; *see also* Douglas C. Haldeman, *Introduction: A History of Conversion Therapy, From Accepted Practice to Condemnation*, *in* THE CASE AGAINST CONVERSION "THERAPY": EVIDENCE, ETHICS, AND ALTERNATIVES 3, 4 (2022) ("There is no empirical basis for the theories of SOCE and no evidence of its success. To the contrary, there is ample evidence that SOCE can significantly harm people. No training protocols for SOCE exist, and nearly every major health care organization in the United States opposes SOCE. Therefore, to refer to these methods as

table medical professional organization has concluded that there is no basis in medicine or science for believing that conversion practices are efficacious—that they work.[26] This conclusion is buttressed by multiple studies[27] and by at least one jury that has concluded that practitioners of conversion therapy are violating consumer protection law by misleading patients.[28] In that case, *Ferguson v. JONAH*,[29] the trial judge ruled as a matter of law that "the theory that homosexuality is a disorder is not novel but—like the notion that the earth is flat and the sun revolves around it—instead is outdated and refuted. Homosexuality was listed as a mental disorder in the [Diagnostic and Statistical Manual of Mental Disorders] until its removal in 1973."[30] Subsequently, the jury concluded that efforts to change sexual orientation through so-called therapy was consumer fraud.[31] Importantly, some of the organizations opposed to conversion therapy have also gone to lengths to emphasize that notwithstanding that sexual orientation or gender identity may be fluid, evolve over time, or be influenced by exploration and play, such identities may not—and should not—be forcibly altered through conversion practices.[32]

In light of the scientific consensus that being queer is not a pathology in need of curing, roughly half of states currently prohibit licensed

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therapy in any form elevates them to a status of which they are undeserving. In recent years, as the transgender community has gained more visibility, methods similar to SOCE have been used on gender-nonconforming individuals—primarily children—to try to make them identify with their sex assigned at birth. As with SOCE, these methods are neither empirically substantiated nor demonstrated to be effective. In fact, they may be very dangerous, as they are implicated in the disproportionate rate of serious mental health concerns and number of suicide attempts by transgender individuals.").

26. *United States Joint Statement Against Conversion Efforts* (Aug. 23, 2023), https://usjs.org/usjs-final-version/.

27. *See, e.g.*, John P. Dehlin, Renee V. Galliher, William S. Bradshaw, Daniel C. Hyde, & Katherine A. Crowell, *Sexual Orientation Change Efforts Among Current or Former LDS Church Members*, 62 J. COUNSELING PSYCH. 95, 102 (2015) (observing that "[a]lmost no evidence of [same-sex attraction] being eliminated via SOCE could be found in this sample"); *see* Jo Fjelstrom, *Sexual Orientation Change Efforts and the Search for Authenticity*, 60 J. HOMOSEXUALITY 801, 822 (2013) (documenting how SOCE would often result in the repression of queer sexual orientation in participants, but not change their orientation); A. Lee Beckstead & Susan L. Morrow, *Mormon Clients' Experiences of Conversion Therapy: The Need for a New Treatment Approach*, 32 COUNSELING PSYCH. 651, 681 (2004) (noting qualitative study participants "reported no generalized or substantial increase in heterosexual arousal and did not deny their tendency to be aroused by the same sex.").

28. Peter R. Dubrowski, *The* Ferguson v. JONAH *Verdict and a Path Towards National Cessation of Gay-to-Straight "Conversion Therapy*,*"* 110 NW. U. L. REV. ONLINE 77, 79 (2015) (discussing pathbreaking jury verdict against conversion practitioners under New Jersey law).

29. No. HUDL547312, 2015 WL 609436 (N.J. Super. Ct. Law Div. Feb. 5, 2015).

30. *Id.* at *9 .

31. Dubrowski, *supra* note 28, at 79.

32. *E.g.*, *APA Resolution on Sexual Orientation Change Efforts*, AM. PSYCH. ASS'N 3 (Feb. 2021) [hereinafter *APA SOCE Resolution 2021*], https://www.apa.org/about/policy/resolution-sexual-orientation-change-efforts.pdf (emphasizing that just because "sexual orientation can evolve and change for some does not mean that it can be altered through intervention or that it is advisable to try"); *see also* Florence Ashley, *Transporting the Burden of Justification: The Unethicality of Transgender Conversion Practices*, 50 J. LAW, MED. & ETHICS 425, 430 n. 37 (2022) ("While gender identity may be dynamic and evolve over time, this does not entail that it can be externally changed through conversion practices.").

healthcare providers from subjecting minors to so-called conversion therapy.[33]

B. Conversion Practices Cause Harm

In addition to the lack of scientific and medical support for efforts to change a core component of someone's sexual identity, conversion practices cause incredible harm to those subjected to them. Numerous studies have documented that such harm includes significant psychological distress, such as depression, anxiety, lowered self-esteem, internalized trans- and homophobia, sexual dysfunction, alienation, and social isolation.[34] As summarized by the APA in its 2021 resolution against

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33. *LGBTQ Policy Spotlight: Laws Protecting LGBTQ Youth From Conversion "Therapy,"* MOVEMENT ADVANCEMENT PROJECT (July 2025), https://www.mapresearch.org/file/MAP-Conversion-Therapy-Report-2025.pdf.

34. AMA *Issue Brief*, *supra* note 21, at 2; *see also* Amy E. Green, Myeshia Price-Feeney, Samuel H. Dorison, & Casey J. Pick, *Self-Reported Conversion Efforts and Suicidality Among US LGBTQ Youths and Young Adults, 2018*, 110 AM. J. PUB. HEALTH 1221, 1224 (2020) (documenting that young people who underwent SOGICE "experienced dramatically higher levels of suicidality than their LGBTQ peers not exposed to such experiences"); Nguyen K. Tran, Elle Lett, Barbara Cassese, Carl G. Streed Jr., David J. Kinitz, Shalonda Ingram, Karalin Sprague, Zubin Dastur, Micah E. Lubensky, Annesa Flentje, Juno Obedin-Maliver, & Mitchell R. Lunn, *Conversion Practice Recall and Mental Health Symptoms in Sexual and Gender Minority Adults in the USA: A Cross-Sectional Study*, 11 LANCET PSYCHIATRY 879, 879 (2024) (recall of past exposure to conversion practices was associated with several mental health symptoms); John R. Blosnich, Emmett R. Henderson, Robert W. S. Coulter, Jeremy T. Goldbach, & Ilan H. Meyer, *Sexual Orientation Change Efforts, Adverse Childhood Experiences, and Suicide Ideation and Attempt Among Sexual Minority Adults, United States, 2016-2018*, 110 AM. J. PUB. HEALTH 1024 (2020) (adjusting for other variables, study shows that sexual minorities exposed to conversion practices "had nearly twice the odds of lifetime suicidal ideation . . . compared with sexual minorities who did not experience [such practices]"); Jack L. Turban, Noor Beckwith, Sari L. Reisner, & Alex S. Keuroghlian, *Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults*, 77 JAMA PSYCHIATRY 68, 73 (2020) ("[E]xposure to GICE was significantly associated with multiple adverse outcomes, including severe psychological distress . . . and lifetime suicide attempts . . . ."); Katie Heiden-Rootes, Christi R. McGeorge, Joanne Salas, & Samantha Levine, *The Effects of Gender Identity Change Efforts on Black, Latinx, and White Transgender and Gender Nonbinary Adults: Implications for Ethical Clinical Practice*, 48 J. MARITAL FAM. THERAPY 927, 936 (2022) ("[T]he study demonstrated exposure to nonreligious and religious GICE were associated with increased odds of suicidal ideation and attempts across racial groups"); Travis Salway, Olivier Ferlatte, Dionne Gesink, & Nathan J. Lachowsky, *Prevalence of Exposure to Sexual Orientation Change Efforts and Associated Sociodemographic Characteristics and Psychosocial Health Outcomes Among Canadian Sexual Minority Men*, 65 CAN. J. PSYCHIATRY 502, 502 (2020) (noting subjection to conversion practices is "associated with substantial psychosocial morbidity among sexual minority men in Canada"); Ana María del Río-González, Maria Cecilia Zea, Jennifer Flórez-Donado, Prince Torres-Salazar, Daniela Abello-Luque, Eileen Andrea García-Montaño, Paola Andrea García-Roncallo, & Ilan H. Meyer, *Sexual Orientation and Gender Identity Change Efforts and Suicide Morbidity Among Sexual and Gender Minority Adults in Colombia*, 8 LGBT HEALTH 463 (2021) (concluding exposure to conversion practices further exacerbated already high suicide risk among sexual and gender minorities in Colombia); *see also* Anna Forsythe, Casey Pick, Gabriel Tremblay, Shreena Malaviya, Amy Green, & Karen Sandman, *Humanistic and Economic Burden of Conversion Therapy Among LGBTQ Youths in the United States*, 176 JAMA PEDIATRICS 493, 497–98 (2022) (noting that in addition to psychological harms, subjection to conversion practices also inflicts economic harm on queer youth); Glenn Smith, Annie Bartlett, & Michael King, *Treatments of Homosexuality in Britain Since the 1950s—An Oral History: The Experience of Patients*, 328 BRIT. MED. J. 427, 429 (2004) (concluding prior recipients of conversion therapy showed "negative consequences of defining same sex attraction as a mental illness and designing treatments to eradicate it"); Michael Schroeder & Ariel Shidlo, *Ethical Issues in Sexual Orientation Conversion Therapies: An Empirical Study of Consumers*, 131 J. GAY LESBIAN

sexual orientation conversion practices, "[T]he APA affirms that scientific evidence and clinical experience indicate that SOCE [Sexual Orientation Change Efforts] put individuals at significant risk of harm,"[35] the same conclusion they reached with respect to gender identity conversion efforts.[36]

For these reasons, nearly every major medical, psychiatric, and psychological association opposes the use of conversion practices aimed at altering someone's gender identity or sexual orientation, including the AMA,[37] the APA,[38] the American Academy of Child & Adolescent Psy-

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PSYCHOTHERAPY 131, 158, 160–61 (2001) (suggesting significant ethical concerns with the practice of conversion therapy, including failure to discuss harms of conversion therapy); Travis Campbell & Yana van der Meulen Rodgers, *Conversion Therapy, Suicidality, and Running Away: An Analysis of Transgender Youth in the U.S.*, 89 J. HEALTH ECON. 1, 1 (2023) (outlining empirical analysis of transgender youth subjected to conversion practices indicate substantial increase in likelihood of suicide attempt); Hyemin Lee, Don Operario, Arjee J. Restar, Sungsub Choo, Ranyeong Kim, Yun-Jung Eom, Horim Yi, & Seung-Sup Kim, *Gender Identity Change Efforts Are Associated with Depression, Panic Disorder, and Suicide Attempts in South Korean Transgender Adults*, 8 TRANSGENDER HEALTH 273, 276–77 (2023) (findings suggest Korean participants exposed to GICE were more likely to be diagnosed or treated for depression); Jaimie F. Veale, Kyle K. H. Tan, & Jack L. Byrne*, Gender Identity Change Efforts Faced by Trans and Nonbinary People in New Zealand: Associations with Demographics, Family Rejection, Internalized Transphobia, and Mental Health*, 9 PSYCH. OF SEXUAL ORIENTATATION & GENDER DIVERSITY 478, 478 (2022*)* (finding meaningful association between GICE exposure and psychological distress and suicide); SANDY E. JAMES, JODY L. HERMAN, SUSAN RANKIN, MARA KEISLING, LISA MOTTET, & MA'AYAN ANAFI, NAT'L CTR. FOR TRANSGENDER EQUAL., THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 110 (2016), https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf (reporting that transgender people who were forced to undergo professional attempts to prevent them from being transgender were more likely to experience serious psychological distress compared to those that did not); Kate Bradshaw, John P. Dehlin, Katherine A. Crowell, Renee V. Galliher, & William S. Bradshaw, *Sexual Orientation Change Efforts Through Psychotherapy for LGBQ Individuals Affiliated With the Church of Jesus Christ of Latter-day Saints*, 41 J. SEX & MARITAL THER. 391, 391 (2014) (documenting evidence of harm among recipients of psychotherapy for sexual orientation, in addition to lack of evidence of efficacy); Madison Higbee, Eric R. Wright, & Ryan M. Roemerman, *Conversion Therapy in the Southern United States: Prevalence and Experiences of the Survivors*, 69 J. HOMOSEXUALITY 612, 612 (2022) (documenting significant association of SOCE with negative mental health outcomes); Caitlin Ryan, Russell B. Toomey, Rafael M. Diaz, & Stephen T. Russell, *Parent-Initiated Sexual Orientation Change Efforts with LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment*, 67 J. HOMOSEXUALITY 159 (2020) (concluding that being sent to therapists or religious leaders during adolescence was associated with negative mental health outcomes including increased suicidality); *see also* Glassgold, *supra* note 19, at 19, 44 (concluding, after comprehensive literature review, that "[a]ll current research findings support the discontinuation of SOCE by clients, families, and practitioners because of risks of harm, including increased risk of depression, anxiety, suicidal ideation, and attempts. For children and adolescents, SOCE provided by professionals also has elevated risks of harm for this vulnerable population, such as increasing depression and suicidality").

35. *APA SOCE Resolution 2021*, *supra* note 32, at 8.

36. *APA GICE Resolution 2021*, *supra* note 25, at 3 ("Be it therefore resolved that consistent with the APA definition of evidence-based practice (APA, 2005), the APA affirms that scientific evidence and clinical experience indicate that GICE put individuals at significant risk of harm.").

37. AMA *Issue Brief*, *supra* note 22.

38. *APA SOCE Resolution 2021*, *supra* note 32, at 8 ("Be it further resolved that the APA opposes SOCE because such efforts put individuals at significant risk of harm and encourages individuals, families, health professionals, and organizations to avoid SOCE . . . ."); *APA GICE Resolution 2021*, *supra* note 25, at 3 ("Be it further resolved that the APA opposes GICE because such efforts put individuals at significant risk of harm and encourages individuals, families, health professionals, and organizations to avoid GICE . . . .").

chiatry,[39] American Academy of Family Physicians,[40] the American Academy of Pediatrics,[41] the American College of Physicians,[42] among many others. Indeed, in 2023, twenty-eight major American medical and psychological associations, representing more than 1.3 million healthcare providers, came together to issue the "United States Joint Statement Against Conversion Efforts," which among other things, seeks to "end the use of practices that attempt to change sexual orientation or gender identity" because "[r]esearch and experience shared by scholars, clinicians, and patients have shown conversion efforts have not changed sexual orientation or gender identity/expression (SOGIE) and are harmful."[43] Similarly, the United Nations' Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity concluded in their report to the U.N. Human Rights Council that conversion therapy practices should be banned globally because of their negative impacts on victims, reasoning that they often amount to human rights violations.[44] And the harms extend to conversion practices that involve "just" oral communication towards the recipient because

39. *AACAP Statement Responding to Efforts to ban Evidence-Based Care for Transgender and Gender Diverse Youth*, AM. ACAD. OF CHILD AND ADOLESCENT PSYCHIATRY (Nov. 8, 2019), https://www.aacap.org/AACAP/Latest_News/AACAP_Statement_Responding_to_Efforts-to_ban_Evidence-Based_Care_for_Transgender_and_Gender_Diverse.aspx.

40. *Reparative or Conversion Therapy*, AM. ACAD. OF FAM. PHYSICIANS (Jan. 2022), https://www.aafp.org/about/policies/all/reparative-therapy.html.

41. Jason Rafferty, *Policy Statement: Ensuring Comprehensive Care and Support for Transgender and Gender Diverse Children and Adolescents*, AM. ACAD. OF PEDIATRICS (Aug. 2023), https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for; Comm. on Adolescence, Am. Acad. of Pediatrics, *Homosexuality and Adolescence*, 92 PEDIATRICS 631, 633 (1993) ("Therapy directed specifically at changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation.").

42. Josh Serchen, David R. Hilden, & Micah W. Beachy, *Lesbian, Gay, Bisexual, Transgender, Queer, and Other Sexual and Gender Minority Health Disparities: A Position Paper From the American College of Physicians*, 177 ANNALS OF INTERNAL MED. (2024), https://www.acpjournals.org/doi/10.7326/M24-0636.

43. *United States Joint Statement Against Conversion Efforts*, U.S. JOINT STATEMENT (Aug. 23, 2023), https://usjs.org/usjs-final-version/. Signatory associations include the following: American Academy of Child and Adolescent Psychiatry; American Academy of Family Physicians; American Academy of Nursing; American Academy of Pediatrics; American Academy of Physician Associates; American Association for Marriage and Family Therapy; American Association for Marriage and Family Therapy's Queer and Trans Advocacy Network; American Association for Psychoanalysis in Clinical Social Work; American Association of Sexuality Educators, Counselors and Therapists; American College of Physicians; American Counseling Association; American Medical Association; American Medical Student Association; American Psychiatric Association; American Psychoanalytic Association; American Psychological Association; Association for Behavioral and Cognitive Therapies; Association of Black Psychologists; Association of Lesbian, Gay, Bisexual, Transgender Addiction Professionals and their Allies; Association of LGBTQ Psychiatrists; Association of Psychology Training Clinics; Clinical Social Work Association; GLMA: Health Professionals Advancing LBGTQ Equality; LBGT PA (Physician Associates) Caucus; National Association of Social Workers; National Latinx Psychological Association; Society of Sexual, Affectional, Intersex, and Gender Expansive Identities; and United States Professional Association for Transgender Health.

44. Human Rights Council, *Practices of So-Called "Conversion Therapy": Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity*, ¶¶ 52–62, 64, 71, 73–76, U.N. Doc. A/HRC/44/53 (May 1, 2020), https://docs.un.org/en/A/HRC/44/53.

they communicate invalidity and degradation toward the LGBTQ individual, while reducing their individual autonomy.[45]

As the District Court summarized when denying Chiles's claim, "Colorado considered the body of medical evidence regarding conversion therapy and sexual orientation change efforts—and their harms—when passing the Minor Therapy Conversion Law and made the reasonable and rational decision to protect minors from ineffective and harmful therapeutic modalities."[46]

Perhaps for those reasons, those challenging bans on conversion practices, such as the litigants and their amici in *Chiles*, don't focus on the harm to, or liberty of, the patient but instead claim that it is the provider's expressive rights that are at issue. But when it comes to regulating medicine and the ethical practice of medicine, the liberty and welfare of the patients, not the provider, ought to precedence.[47] And as the Tenth Circuit correctly reasoned in its opinion in *Chiles*, regulations of conversion therapy do not trigger strict scrutiny under the First Amendment because they are targeted at conduct (the provision of therapy) that incidentally burdens communication.[48] Though the Supreme Court ultimately disagreed, as I and others explained in our amicus brief in defense of Colorado's ban on conversion therapy,

> The First Amendment does not require that regulations of professional conduct meet heightened scrutiny whenever the regulated conduct involves written or verbal communication. To the contrary, the Court has repeatedly held that reasonable regulations of professionals' verbal or written utterances were not subject to First Amendment heightened scrutiny where those communications were tied to their professional work.[49]

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45. Trispiotis, *supra* note 22, at 29, 33 ("All forms of 'conversion therapy' share one *autonomy-diminishing* goal: to restrict a host of profoundly important interests in relation to sexuality and gender identity. Out of many possible examples, I will mention two here. The first is the individual interest to develop one's sexual attraction into sexual activity. Some forms of 'conversion therapy' are designed to suppress same-sex attraction; others to suppress the option to develop same-sex sexual attraction to same-sex sexual activity. Both forms aim to suppress fundamental choices that are central to personal autonomy.").

46. Chiles v. Salazar, No. 1:22-cv-02287, 2022 WL 17770837, at *9, *14 (D. Colo. Dec. 19, 2022).

47. *See, e.g.*, Lois S. Sulmasy & Thomas A. Bledsoe, *American College of Physicians Ethics Manual: 7th Edition*, 170 ANNALS OF INTERNAL MED. S1, S3 (2019) (foregrounding providers' duties to act in best interest of patient, do no harm to patients, and foster the patient's free, uncoerced choices and underscoring that the "physician's primary commitment must always be to the patient's welfare and best interests").

48. Chiles v. Salazar, 116 F.4th 1178, 1205, 1212 (10th Cir. 2024) ("The subject of these regulations is the professional care that mental health providers give their patients. That is, undoubtedly, professional conduct.").

49. Brief of Amici Curiae Constitutional Law and First Amendment Scholars in Support of Respondents at 5, Chiles v. Salazar, 116 F.4th 1178 (10th Cir. 2024) (No. 24-539).

II. GENDER-AFFIRMING CARE IS SCIENTIFICALLY SUPPORTED AND REDUCES HARM

A. Gender-Affirming Care is Supported by Science (that is, queer and trans people are real)

In contrast to conversion practices, when clinically indicated and desired by individuals, gender-affirming care is supported by science because it is grounded in recognition that gender identities are incredibly diverse and that transgender and intersex people are real.[50] In contrast to conversion practices, which pathologize LGBTQ individuals as somehow in need of a cure or correction,[51] gender-affirming care recognizes that for certain trans people, medical interventions can help alleviate the distress caused by the dissonance between aspects of their sexed bodies and their identities—a societally induced phenomenon known as gender dysphoria.[52] As explained by the American Academy of Pediatrics (AAP),

> [T]ransgender identities and diverse gender expressions do not constitute a mental disorder; variations in gender identity and expression are normal aspects of human diversity, and binary definitions of gender do not always reflect emerging gender identities; gender identity evolves as an interplay of biology, development, socialization, and culture; and if a mental health issue exists, it most often stems from stigma and negative experiences rather than being intrinsic to the child.[53]

Importantly, as laid bare by the AAP policy statement, treatments to help alleviate gender dysphoria do not inherently treat the individual as something in need of a cure but instead recognize the beautiful diversity within our biological and social worlds and that medical interventions can help people be the version of themselves only they can know and understand.[54]

States that have banned gender-affirming care have largely ignored or downplayed this science, as has the Supreme Court. For instance, in *Skrmetti*, the Court explained that, in its view, "Tennessee concluded that

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50. *See e.g.*, Expert Declaration of Deanna Adkins, M.D. at ¶¶ 21, 22, Carcaño v. McCrory, No. 1:16-cv-00236-TDS-JEP, 2016 WL 4256691 (M.D.N.C. May 16, 2016) (expert declaration of the founder and director of the Duke Gender Care clinic in opposition to North Carolina's HB-2 explaining that "evidence strongly suggests that gender identity is innate or fixed at a young age and that gender identity has a strong biological basis"); ANNE FAUSTO-STERLING, SEXING THE BODY 4 (2000) ("Our bodies are too complex to provide clear-cut answers about sexual difference. The more we look for a simple physical basis for 'sex,' the more it becomes clear that 'sex' is not a pure physical category. What bodily signals and functions we define as male or female come already entangled in our ideas about gender."); *see also* JOAN ROUGHGARDEN, EVOLUTION'S RAINBOW: DIVERSITY, GENDER, AND SEXUALITY IN NATURE AND PEOPLE 23 (2013).

51. *See supra* Part I.

52. Rafferty, *supra* note 41.

53. *Id.*

54. *See id.*

there is an ongoing debate among medical experts regarding the risks and benefits associated with administering puberty blockers and hormones to treat gender dysphoria" and that Tennessee's "ban on such treatments responds directly to that uncertainty."[55]

B. Gender-Affirming Care Is Liberty Enhancing (that is, it reduces harm)

Relatedly, numerous scientific studies confirm that providing gender-affirming care can greatly improve the quality of life for transgender and gender-nonconforming individuals and improve mental health outcomes in part by alleviating the negative symptoms associated with gender dysphoria.[56] This can be true not only for adults but also for youth.[57]

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55. United States v. Skrmetti, 145 S. Ct. 1816, 1836 (2025).

56. Anthony N. Almazan & Alex S. Keuroghlian, *Association Between Gender-Affirming Surgeries and Mental Health Outcomes*, 156 JAMA SURGERY 611, 611 (2021) (demonstrating an association between gender-affirming surgery and improved mental health outcomes); Zoë Aldridge, Shireen Patel, Boliang Guo, Elena Nixon, Walter Pierre Bouman, Gemma L. Witcomb, & Jon Arcelus, *Long-Term Effect of Gender-Affirming Hormone Treatment on Depression and Anxiety Symptoms in Transgender People: A Prospective Cohort Study*, 9 ANDROLOGY 1808, 1809 (2021) (highlighting mental health benefits of gender affirming hormone treatment in transgender people); Tiffiny A. Ainsworth & Jeffrey H. Spiegel, *Quality of Life of Individuals With and Without Facial Feminization Surgery or Gender Reassignment Surgery*, 19 QUALITY LIFE RSCH. 1019, 1021 (2010) (concluding facial feminization surgery associated with improved mental health among transgender women); Mateus Morais Aires, Daniela de Vasconcelos, & Bruno Teixeira de Moraes, *Chondrolaryngoplasty in Transgender Women: Prospective Analysis of Voice and Aesthetic Satisfaction,* 22 INT'L J. TRANSGENDER HEALTH 394, 397 (2020) (tracheal shaving associated improved aesthetic satisfaction among trans women); T.M. Balakrishnan, Sandeep Nagarajan, & J. Jaganmohan, *Retrospective Study of Prosthetic Augmentation Mammoplasty in Transwomen,* 53 INDIAN J. PLASTIC SURGERY 42, 47 (2020) (breast augmentation surgery associated with gender harmony among transgender women); Mehrdad E. Ardebili, Leila Janani, Zaher Khazaei, Yousef Moradi, & Hamid R. Baradaran, *Quality of Life in People With Transsexuality After Surgery: A Systematic Review and Meta-Analysis*, 18 HEALTH & QUALITY LIFE OUTCOMES 264 (2020) (weighted average of quality of life was better post-surgery in transgender individuals); Ebba K. Lindqvist, Hannes Sigurjonsson, Caroline Möllermark, Johan Rinder, Filip Farnebo, & T. Kalle Lundgren, *Quality of Life Improves Early After Gender Reassignment Surgery in Transgender Women*, 40 EUR. J. PLASTIC SURGERY 223, 224–25 (2017) (suggesting that trans women who underwent gender reassignment surgery experienced early improvement in general well-being but that, in line with comparison population, quality of life decreases slightly over long term); Anna Nobili, Cris Glazebrook & Jon Arcelus, *Quality of Life of Treatment-Seeking Transgender Adults: A Systematic Review and Meta-Analysis*, 19 REV. ENDOCRINE & METABOLIC DISORDERS 199, 200 (2018) (suggesting that quality of life improves once transgender people initiate hormonal therapy, while urging further study); Ashli A. Owen-Smith, Joseph Gerth, R. Craig Sineath, Joshua Barzilay, Tracy A. Becerra-Culqui, Darios Getahun, Shawn Giammattei, Enid Hunkeler, Timothy L. Lash, Andrea Millman, Rebecca Nash, Virginia P. Quinn, Brandi Robinson, Douglas Roblin, Travis Sanchez, Michael J. Silverberg, Vin Tangpricha, Cadence Valentine, Savannah Winter, Cory Woodyatt, Yongjia Song, & Michael Goodman, *Association Between Gender Confirmation Treatments and Perceived Gender Congruence, Body Image Satisfaction, and Mental Health in a Cohort of Transgender Individuals*, 15 J. SEXUAL MED. 591, 591–92 (2018) (concluding gender confirmation treatments were associated with decreased depression and anxiety and increased body image satisfaction); Katrien Wierckx, Eva Van Caenegem, Thomas Schreiner, Ira Haraldsen, Alessandra Fisher, Kaatje Toye, Jean Marc Kaufman, & Guy T'Sjoen, *Cross-Sex Hormone Therapy in Trans Persons Is Safe and Effective at Short-Time Follow-Up: Results from the European Network for the Investigation of Gender Incongruence*, 11 J. SEXUAL MED. 1999, 2008 (2014) (hormone therapy for transgender people was effective with low risk of severe side effects over the short term); *see also* Kellan E. Baker, Lisa M. Wilson, Ritu Sharma, Vadim Dukhanin, Kristen McArthur, & Karen A. Robinson, *Hormone Therapy, Mental Health, and Quality of Life Among Transgender People: A Systematic Review*, 5 J. ENDOCRINE

SOC'Y 1, 2 (2021) (documenting that hormone therapy was associated with increased quality of life and decreased depression and anxiety among transgender people); Christienne Javier, Charlie R. Crimston, & Fiona Kate Barlow, *Surgical Satisfaction and Quality of Life Outcomes Reported by Transgender Men and Women at Least One Year Post Gender-Affirming Surgery: A Systematic Literature Review*, 23 INT'L J. TRANSGENDER HEALTH 255, 256 (2022) (suggesting positive quality of life outcomes post-surgery, while noting desirability for further follow-up study); *cf.* Marlon E. Buncamper, Mujde Ozer, Wouter Van der Sluis, & Jan Maerten Smit, *Surgical Outcome After Penile Inversion Vaginoplasty: A Retrospective Study of 475 Transgender Women*, 138 PLASTIC & RECONSTRUCTIVE SURGERY 999, 1004–05, 1007 (2016) (documenting successful vaginal construction in majority of patients and generally minor postoperative complications).

57. Diana M. Tordoff, Jonathon W. Wanta, Arin Collin, Cesalie Stepney, David J. Inwards-Breland, & Kym Ahrens, *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, 5 JAMA NETWORK OPEN 1, 10 (2022) (concluding gender-affirming medical interventions, such as provision of puberty blockers and gender-affirming hormones, were associated with lower rates of depression and suicidal ideation among transgender youth); Anna L. Olsavsky, Connor Grannis, Josh Bricker, Gayathri Chelvakumar, Justin A. Indyk, Scott F. Leibowitz, Whitney I. Mattson, Eric E. Nelson, Charis J. Stanek, & Leena Nahata, *Associations Among Gender-Affirming Hormonal Interventions, Social Support, and Transgender Adolescents' Mental Health*, 72 J. ADOLESCENT HEALTH 860, 866–67 (2023) (showing provision of gender-affirming hormonal interventions associated with fewer symptoms of anxiety among transgender adolescents in this study); Annelou L.C. de Vries, Jenifer K McGuire, Thomas D. Steensma, Eva C.F. Wagenaar, Theo A.H. Doreleijers, & Peggy Cohen-Kettenis, *Young Adult Psychological Outcome After Puberty Suppression and Gender Reassignment*, 134 PEDIATRICS 696, 701–03 (2014) (documenting significant improvement in well-being after gender-affirming hormonal treatment and surgical interventions); Julia C. Sorbara, Lyne N. Chiniara, Shelby Thompson, & Mark R. Palmert, *Mental Health and Timing of Gender-Affirming Care*, 146 PEDIATRICS 1, 1 (2020) (suggesting that "late pubertal stage and older age are associated with worse mental health among [gender incongruent] youth presenting to [gender-affirming medical care], suggesting that this group may be particularly vulnerable and in need of appropriate care"); Annelou L.C. de Vries, Thomas D. Steensma, Theo A.H. Doreleijers, & Peggy T. Cohen-Kettenis, *Puberty Suppression in Adolescents With Gender Identity Disorder: A Prospective Follow-Up Study*, 8 J. SEXUAL MED. 2276, 2281–82 (2011) (documenting improved behavioral and emotional outcomes in adolescents that received puberty suppression medicine as adolescents); Amy E. Green, Jonah P. DeChants, Myeshia N. Price, & Carrie K. Davis, *Association of Gender-Affirming Hormone Therapy with Depression, Thoughts of Suicide, and Attempted Suicide Among Transgender and Nonbinary Youth*, 70 J. ADOLESCENT HEALTH 643, 647 (2022) (accessing gender-affirming hormones was associated with lower rates of depression and suicidal ideation among trans and nonbinary youth); Anna I.R. van der Miesen, Thomas D. Steensma, Annelou L.C. de Vries, Henny Bos, & Arne Popma, *Psychological Functioning in Transgender Adolescents Before and After Gender-Affirmative Care Compared with Cisgender General Population Peers*, 66 J. ADOLESCENT HEALTH 699, 703 (2020) (explaining that while trans adolescents had poorer mental health prior to puberty suppression treatment that after treatment their mental health compared favorably to cisgender peers); Christal Achille, Tenille Taggart, Nicholas R. Eaton, Jennifer Osipoff, Kimberly Tafuri, Andrew Lane, & Thomas A. Wilson, *Longitudinal Impact of Gender-Affirming Endocrine Intervention on the Mental Health and Well-Being of Transgender Youths: Preliminary Results*, 8 INT'L J. PEDIATRIC ENDOCRINOLOGY 1, 3–4 (2020) (puberty suppression and/or hormone therapy was associated with decreased depression and suicidal ideation and increased quality of life in transgender youth); Diane Chen, Johnny Berona, Yee-Ming Chan, Diane Ehrensaft, Robert Garofalo, Marco A. Hidalgo, Stephen M. Rosenthal, Amy C. Tishelman, & Johanna Olson-Kennedy, *Psychosocial Functioning in Transgender Youth after 2 Years of Hormones*, 388 NEW ENG. J. MED. 240, 245 (2023) (following a two-year study of trans and nonbinary youth showing improved psychosocial functioning after initiation of gender-affirming hormones); Diego López de Lara, Olga Pérez Rodríguez, Isabel Cuellar Flores, José Luis Pedreira Masa, Lucía Campos-Muñoz, Martín Cuesta Hernández, & José Tomás Ramos Amador, *Psychosocial Assessment in Transgender Adolescents*, 93 ANALES DE PEDIATRÍA 41, 42, 46 (English ed. 2020) (finding after one year of hormone therapy, transgender youth showed similar rates of anxiety and emotional distress compared to cisgender population of same age); Jack L. Turban, Dana King, Julia Kobe, Sari L. Reisner, & Alex S. Keuroghlian, *Access to Gender-Affirming Hormones During Adolescence and Mental Health Outcomes Among Transgender Adults*, 17 J. PLOS ONE 1, 1–2, 9–12 (2022) (accessing gender-affirming hormones during adolescence and adulthood was associated with improved mental health outcomes compared to those desiring but without access to such treatment); Jack L. Turban, Dana King, Jeremi M. Carswell, & Alex S. Keuroghlian, *Pubertal Suppres-*

Gender-affirming care can involve a range of practices including counseling, the provision of hormones, puberty blockers, and surgical interventions (with surgery generally not indicated for minors).[58] While gender-affirming care has been falsely depicted by those ideologically opposed to it as a form of mutilation,[59] such care is, when clinically indicated, subject to robust informed consent regimes that help patients understand the benefits and risks—risks that are inherent with many medical interventions.[60]

In contrast to conversion practices, which are not grounded in science and cause harm,[61] gender-affirming health care has been approved

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sion for Transgender Youth and Risk of Suicidal Ideation, 145 PEDIATRICS 1, 1, 7 (2020) (documenting significant inverse relationship between provision of puberty suppressing medicine during adolescence and lifetime suicidality among transgender adults who desired the treatment); Luke R. Allen, Laurel B. Watson, Anna M. Egan, & Christine N. Moser, *Well-Being and Suicidality Among Transgender Youth After Gender-Affirming Hormones*, 7 CLINICAL PRAC. PEDIATRIC PSYCH. 302, 309 (2019) (suggesting that gender-affirming hormones are associated with decreased suicidality and quality of life improvements among transgender youth); Rosalia Costa, Micahel Dunsford, Elin Skagerberg, Victoria Holt, Polly Carmichael, & Marco Colizzi, *Psychological Support, Puberty Suppression, and Psychosocial Functioning in Adolescents with Gender Dysphoria*, 12 J. SEXUAL MED. 2206, 2212–13 (2015) (finding psychological support and puberty suppression were both associated with improved psychosocial functioning among adolescents with gender dysphoria); *cf.* Annemieke S. Staphorsius, Baudewijntje P.C. Kreukels, Peggy T. Cohen-Kettenis, Dick J. Veltman, Sarah M. Burke, Sebastian E.E. Schagen, Femke M. Wouters, Henriëtte A. Delemarre-van de Waal, & Julie Bakker, *Puberty Suppression and Executive Functioning: An fMRI-Study in Adolescents with Gender Dysphoria*, 56 PSCYHONEUROENDOCRINOLOLGY 190, 190–91, 195–97 (2015) (suggesting puberty suppression had no detrimental effects on transgender youth's executive functioning); Polly Carmichael, Gary Butler, Una Masic, Tim J. Cole, Bianca L. De Stavola, Sarah Davidson, Elin M. Skageberg, Sophie Khadr, & Russell M. Viner, *Short-Term Outcomes of Pubertal Suppression in a Selected Cohort of 12 to 15 Year Old Young People with Persistent Gender Dysphoria in the UK*, 16 J. PLOS ONE 1, 1–2, 21 (2021) (documenting overall positive changes for patients receiving puberty suppression); Riittakerttu Kaltiala, Elias Heino, Marja Työläjärvi, & Laura Suomalainen, *Adolescent Development and Psychosocial Functioning After Starting Cross-Sex Hormones for Gender Dysphoria*, 74 NORDIC J. PSYCHIATRY 213, 218 (2020) (noting that while hormone treatment may alleviate depression, it is not a panacea and mental health comorbidities must also be addressed).

58. Patrick Boyle, *What is Gender-Affirming Care? Your Questions Answered*, AAMCNEWS (Apr. 22, 2022), https://www.aamc.org/news/what-gender-affirming-care-your-questions-answered ("The interventions fall along a continuum as well, from counseling to changes in social expression to medications (such as hormone therapy). For children in particular, the timing of the interventions is based on several factors, including cognitive and physical development as well as parental consent. Surgery, including to reduce a person's Adam's Apple, or to align their chest or genitalia with their gender identity, is rarely provided to people under 18."); Simona Martin, Elizabeth S. Sandberg, & Daniel E. Shumer, *Criminalization of Gender-Affirming Care—Interfering with Essential Treatment for Transgender Children and Adolescents*, 385 NEW ENG. J. MED. 579, 579–80 (2021) ("Gender dysphoria can be treated with both nonmedical and medical interventions. The former may include therapy, coming out to loved ones, or using a chosen name or pronouns and dressing or grooming in a way that matches one's gender identity (making a social transition); the latter may include hormonal or (when age appropriate) surgical treatments to bring the person's physical characteristics more closely in line with their gender identity or to prevent developmental changes that don't align with this identity.").

59. *E.g.*, Exec. Order No. 14187, 90 Fed. Reg. 8771 (Jan. 28, 2025) (perpetuating this depiction by naming the executive order: Protecting Children From Chemical and Surgical Mutilation).

60. E. Coleman, A.E. Radix, W. P. Bouman, et al., *Standards of Care for the Health of Transgender and Gender Diverse People*, 23 INT'L J. TRANSGENDER HEALTH S1, S11 (2022) (recommending that "access to transition-related health care should be based on providing adequate information and obtaining informed consent from the individual").

61. *See supra* Part I.

by major medical associations because of its ameliorative effects for transgender people for whom it is medically indicated.[62] As the World Professional Association for Transgender Health has concluded, "Gender-affirming interventions are based on decades of clinical experience and research; therefore, they are not considered experimental, cosmetic, or for the mere convenience of a patient. They are safe and effective at reducing gender incongruence and gender dysphoria."[63]

To be sure, certain types of gender-affirming care for minors, particularly surgical interventions, have their detractors, even among some members of the medical community. For instance, in 2024, the so-called Cass Review, a review commissioned by the National Health Services in England, expressed the need for caution with regard to the provision of transition related care for minors[64] (though it did *not* recommend a ban on such care).[65] In 2025, the Trump Administration's Department of Health and Human Services issued a report purporting to discredit the provision of gender-affirming care for minors.[66] And in February 2026, the American Society of Plastic Surgeons issued a position statement recommending that surgeons delay gender-related breast/chest, geneital, and facial surgery until the patient is at least 19 years old.[67]

But these critiques must be understood against the politicized backdrop of transgender peoples' identity, with their lives cynically demon-

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62. *See, e.g.*, Brief of *Amici Curiae* American Academy of Pediatrics and Additional National and State Medical and Mental Health Organziations in Support of Petitioner and Respondents in Support of Peitioner at 4, United States v. Skrmetti, 605 U.S 495 (2025) (No. 23-477) (brief opposing restriction on gender-affirming care for transgender youth filed by the American Academy of Pediatrics, the Academic Pediatric Association, the American Academy of Child & Adolescent Psychiatry, the Association of American Medical Colleges, the American Academy of Family Physicians, the American Academy of Nursing, the American Association of Physicians for Human Rights, Inc. d/b/a GLMA: Health Professionals Advancing LGBTQ+ Equality, the American College of Obstetricians and Gynecologists, the American College of Osteopathic Pediatricians, the American College of Physicians, the American Medical Association, the American Pediatric Society, the American Psychiatric Association, the Association of Medical School Pediatric Department Chairs, Inc., the Endocrine Society, the National Association of Pediatric Nurse Practitioners, the Pediatric Endocrine Society, the Tennessee Chapter of the American Academy of Pediatrics, the Societies for Pediatric Urology, the Society for Adolescent Health and Medicine, the Society for Pediatric Research, the Society of Pediatric Nurses, and the World Professional Association for Transgender Health).

63. Coleman, Radix, Bouman, et al., *supra* note 60, at S18.

64. THE CASS REVIEW, FINAL REPORT: INDEPENDENT REVIEW OF GENDER IDENTITY SERVICES FOR CHILDREN AND YOUNG PEOPLE (April 2024), https://webarchive.nationalarchives.gov.uk/ukgwa/20250310143933/https://cass.independent-review.uk/home/publications/final-report/.

65. Meredithe McNamara, et al., *An Evidence-Based Critique of "The Cass Review" on Gender-affirming Care for Adolescent Gender Dysphoria*, https://law.yale.edu/sites/default/files/documents/integrity-project_cass-response.pdf

66. DEP'T HEALTH & HUMAN SERVICES, TREATMENT FOR PEDIATRIC GENDER DYSPHORIA: REVIEW OF EVIDENCE AND BEST PRACTICES (Nov. 19, 2025), https://opa.hhs.gov/sites/default/files/2025-11/gender-dysphoria-report.pdf.

67. Am. Soc'y Plastic Surgeons, Position Statement on Gender Surgery for Children and Adolescents (Feb. 3, 2026), https://www.plasticsurgery.org/for-medical-professionals/health-policy/position-statements.

ized and used for political purposes.[68] And, perhaps more importantly, these critiques must also be read against the broader medical and ethical context governing the provisions of healthcare.[69] That is, of course, there are risks involved with certain types of gender-affirming medical care, as there is for most medical interventions.[70] And there are unknowns in science and medicine. As but one example that hopefully puts the degree of politization of trans lives in harsher relief, cosmetic heightening (limb-lengthening) involves several surgical risks and complications, yet is not banned in any U.S. jurisdiction.[71] But acknowledgment of risk and unknowns does not foreclose the possibility of benefit, or that those risks and benefits can be managed and balanced by adherence to standards of care, informed consent, and medical ethics.[72] And that is precisely what jurisdictions allowing for gender-affirming care embrace—the provision of care under carefully developed standards and only when medically indicated with significant chance of benefit, whereas bans on gender-affirming care use the specter of risk to stymie individual freedom and the pursuit of liberating medical interventions. Permitting gender-affirming care is not, as President Trump has implied, "Transgender for Everybody,"[73] but it creates space for the provision of that care when appropriate.

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68. Scott Skinner-Thompson, *Transgender Disenfranchisement*, 102 WASH. U. L. REV. 1997, 2007 (2025) (explaining how transgender lives are being used as a political cudgel, with transgender people often excluded and disenfranchised from democratic discussion of their identities).

69. Michael R. Ulrich, *Politicians as Clinicians: Skrmetti and Supreme Court-Sanctioned Intrustion on the Practice of Medicine*, 334 JAMA 855, 856 (Sept. 9, 2025) ("States do regulate the practice of medicine, but ignoring existing safeguards when evaluating these bans is illogical. Complete prohibition for particular treatments, despite existing malpractice laws, state licensure regulations, and medical ethics, implies that clinicians cannot be trusted within existing oversight mechanisms.") Jack L. Turban, Katherine L. Kraschel, & I. Glenn Cohen, *Legislation to Criminalize Gender-Affirming Medical Care for Transgender Youth*, 325 JAMA 2251, 2251 (2021) ("Medical professionals, using their training and autonomy and working with patients and families, are best positioned to determine when gender-affirming medical or surgical care is warranted.")

70. *Cf.* Joanna Wuest, *Evidence and Expertise in Trans Health Law*, 105 B.U. L. REV. 1295, 1298 (2025 ("[B]y targeting gender-affirming care's evidence base and insisting that its practices are rife with dangerous uncertainties, [transgender rights opponents have done their] best to target that specific form of care rather than consider what the *best available* evidence suggests is appropriate for gender-dysphoric and trans-identified youth, a position frequently espoused by trans medicine's defenders.").

71. Robert S. Dean, Tanner J. Haffen, Vivek Nair, Kevin X. Farley, E. Graham Englert, Niket Todi, James Feng, & Paul Fortin, *In the United States, cosmetic stature lengthening is ethically acceptable*, J. ORTHOP. SURG. RES. 20, 1004 (2025).

72. *See, e.g.*, Katherine L. Kraschel, Alexander Chen, Jack L. Turban, & I. Gleen Cohen, *Legislation restricting gender-affirming care for transgender youth: Politics eclipse healthcare*, CELL REPORTS MEDICINE 3, 100719 (Aug. 16, 2022) (explaining that evidence-based clinical guidelines "set out the criteria for who is competent to provide gender-affirming care as well as the comprehensive process that should be followed prior to initiating care").

73. Erin Reed, *Trump Promises Harsher Ice Crackdowns, Blaming "Transgender For Everybody,"* ERIN IN THE MORNING (June 16, 2025), https://www.erininthemorning.com/p/trump-promises-harsher-ice-crackdowns.

CONCLUSION: IMPLICATIONS FOR LAW & POLICY

As courts and society continue to evaluate the wisdom and legality of restrictions on conversion practices, understanding the ways in which conversion efforts harm individuals while having no established efficacy will be important to determining whether laws restricting such conversion efforts can survive constitutional scrutiny.[74] A more robust understanding of the lack of scientific backing for conversion practices and the harm caused to LGBTQ individuals helps clarify the nature of the states' interests behind their treatment bans. Likewise, as policy debates and judicial review of bans on gender-affirming care continue, both with respect to minors and adults (which the Supreme Court has not addressed), appreciating the harm-reducing benefits and scientifically grounded nature of gender-affirming care will help society and courts recognize why restrictions on such care are both inadvisable and, in my view, unconstitutional. And while science and medicine make mistakes (the classification of homosexuality as a disorder being a prime example) and claims ought to be tested via the scientific method, when, as in the case of bans on conversion therapy, scientific evidence and consensus bolster lawmakers' conclusions about safety and efficacy, science's role as an important pillar of our constitutional democracy needs to be defended. As outlined in detail, in this case, science supports bans on conversion therapy while undermining bans on gender-affirming care.

74. In her response piece, Haley Dutch acknowledges that conversion therapy is "based on dubious social science, with few credible studies," but believes the same is true for gender-affirming care (where we diverge). Haley Dutch, *False Equivalency: Shots are Speech and Speech is Conduct?*, 103 DENV. L. REV. 317, 322 (2026). But she concludes that banning conversion therapy is nevertheless unconstitutional because it restricts licensed therapists' First Amendment expression. Though the Supreme Court has disagreed in its opinion in *Chiles*, I've explained elsewhere why Colorado's conversion therapy ban is not targeted at speech, but instead at therapist's conduct, and therefore not subject to strict scrutiny. *See* Brief of *Amici Curiae* Constitutional Law and First Amendment Scholars in Support of Respondents at 1–4, Chiles v. Salazar, 145 S. Ct 1328 (2025) (No. 24-539); Brief of *Amicus Curiae* Constitutional Law & First Amendment Scholars in Support of Defendants-Appellees at 6–9, Chiles v. Salazar, 116 F.4th 1178 (10th Cir. 2024) (Nos. 22-1445, 23-1002). But Dutch's acknowledgment that conversion therapy is not grounded in science is significant because it justifies the state's regulation of that therapy under any standard of scrutiny. If it's true that conversion therapy is of dubious efficacy, then as in *Skrmetti*, the state is within its power to ban it and on remand lower courts should conclude that Colorado's ban on conversion therapy for minors survives strict scrutiny.