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APA concerned about far-reaching consequences from Supreme Court decision regarding therapy as ‘free speech’

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The Court’s decision will have consequences for the regulation of licensed mental health practice, well beyond “conversion therapy”

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WASHINGTON — APA is deeply concerned by the U.S. Supreme Court ruling that Colorado’s law banning “conversion therapy” on minors may violate mental health professionals’ First Amendment right to freedom of speech.

In directing the Tenth Circuit to reconsider the case under a stricter constitutional standard, the Court’s decision leaves open the question of whether states can still enact laws that protect patients from harmful therapeutic practices delivered through talk therapy. This is likely to have far-reaching implications for consumer safety and professional regulation.

“We are disappointed that the Court has left a core legal question of the case unresolved: whether states can regulate what licensed mental health professionals say to their patients in a clinical session,” said APA CEO Arthur C. Evans Jr., PhD. “The answer will determine not only the fate of ‘conversion therapy’ bans, but the broader authority of state licensing boards to enforce best practices—often enacted for the safety and protection of consumers—in any profession that uses speech to deliver therapeutic interventions.”

APA filed an [amicus brief in the case \(/about/offices/ogc/amicus/chiles\)](#), *Chiles v. Salazar, et al.*, presenting the Court with the scientific evidence that sexual orientation and gender identity change efforts are ineffective and associated with long-lasting psychological damages. The brief argues that “conversion therapy” is unethical and ineffective, and therefore not a legitimate therapeutic practice.

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APA’s brief was joined by the American Psychiatric Association and 12 other major associations representing mental health professionals and advocates for the health and human rights of LGBTQ+ individuals.

In Justice Ketanji Brown Jackson’s dissent from the court’s decision, she cited several references from the brief to the ways “conversion therapy” has harmed patients↗ (/about/policy/resolution-sexual-orientation-change-efforts.pdf), especially minors, who are even more sensitive to shame and stigma than adults. Jackson shares APA’s concern that the Court’s decision “opens a dangerous can of worms...[threatening] to impair States’ ability to regulate the provision of medical care in any respect” and “risks grave harm to Americans’ health and well-being.”

While APA is encouraged that traditional malpractice claims for patients who have been harmed by talk therapy remain unaffected by the Court’s ruling, this risks leaving patients without meaningful preventive legal protection, shifting recourse to after the harm has already occurred.

“APA is unsettled that the Court would treat restrictions against ineffective and harmful treatments as a violation of a counselor’s speech rather than regulation of professional conduct,” Evans added. “Our ethical standards are unchanged. Psychologists should continue to provide evidence-based care and avoid practices known to cause harm.”

Contact

Katherine Novak

Telephone: (202) 336-5675

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