

No. 24-539

In the Supreme Court of the United States

KALEY CHILES,
Petitioner,

v.

PATTY SALAZAR, in her official capacity as
Executive Director of the
Department of Regulatory Agencies, et al.,
Respondents.

*On Writ of Certiorari to the
United States Court of Appeals for the Tenth Circuit*

**BRIEF OF AMICUS CURIAE
LIBERTY COUNSEL
SUPPORTING PETITIONER**

ANITA L. STAVER
HORATIO G. MIHET
DANIEL J. SCHMID
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854

MATHEW D. STAVER
Counsel of Record
LIBERTY COUNSEL
109 Second Street NE
Washington, D.C. 20002
(202) 289-1776
court@lc.org

Counsel for Amicus

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. The So-Called “Expert Consensus” against Counseling Bans is Rooted in Ideology, Not Science.....	3
A. “Queer theory,” the motivating ideology behind counseling bans, originates from Marxist critical thought.	4
B. Major medical and mental health associations have adopted “queer theory” due to intense activist pressure.....	14
II. Colorado’s Justification for Its Counseling Ban Is Ideological and Hostile to an Objective Understanding of Sexuality.	30
A. The State’s scientific justification for restricting speech is undermined by the bias of its “experts” and their activist allies.	31
B. Recent high-quality studies conclusively undermine Colorado’s purported “expert consensus.”	32
CONCLUSION.....	37

TABLE OF AUTHORITIES

	Page
Cases	
<i>Chiles v. Salazar</i> , 116 F.4th 1178 (10th Cir. 2024).....	2, 31
<i>Chiles v. Salazar</i> , 2022 WL 17770837 (D. Colo. Dec. 19, 2022).....	31
<i>King v. Christie</i> , 575 U.S. 996 (2015)	1
<i>King v. Governor of the State of New Jersey</i> , 767 F.3d 216 (3d Cir. 2014)	1
<i>Otto v. City of Boca Raton</i> , 981 F.3d 854 (11th Cir. 2020)	1
<i>Pickup v. Brown</i> , 740 F.3d 1208 (9th Cir. 2014)	1
<i>Vazzo v. City of Tampa</i> , 2023 WL 1466603 (11th Cir. Feb. 2, 2023).....	1
Statutes	
Colo. Rev. Stat. Ann. § 12-245-224	1
Other Authorities	
“Reparative Therapy” Statement to be Refined, Psychiatric News, June 17, 1994	24
Am. Ass’n for Marriage & Family Therapy, <i>Policy on Reparative/Conversion Therapy</i> (2009)	26
Am. Psychiatric Ass’n, <i>Diagnostic and Statistical Manual of Mental Disorders</i> (1952)	16
Am. Psychiatric Ass’n, <i>Diagnostic and Statistical Manual of Mental Disorders</i> (2d ed. 1968)	16
Am. Psychiatric Ass’n, <i>Diagnostic and Statistical Manual of Mental Disorders</i> (3d ed. 1980).....	20, 22

Am. Psychiatric Ass'n, <i>Gender Dysphoria Diagnosis, Diagnostic and Statistical Manual of Mental Disorders</i> (5th ed. 2013).....	29
Am. Psychiatric Ass'n, <i>Position Statement on Psychiatric Treatment and Sexual Orientation (1998)</i>	26
Am. Psychiatric Ass'n, <i>Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies) (2000)</i>	26
Am. Psychological Ass'n, <i>Appropriate Therapeutic Responses to Sexual Orientation</i> (1997).....	25
Am. Psychological Ass'n, <i>Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation</i> (2009)	27, 28
Am. Psychological Ass'n, <i>Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts</i> (2009)	27
Am. Psychological Ass'n, <i>Resolution on Sexual Orientation Change Efforts</i> (Feb. 2021).....	30
AMA Alters Its Policy on Gays, Lesbians, Bos. Globe, Dec. 22, 1994	25
Amelia Hansford, <i>LGBTQ+ Experts Criticise Cass Review in Open Letter to Health Secretary Wes Streeting</i> , PinkNews (Oct. 18, 2024).....	34
Antonio Gramsci, <i>Selections from the Prison Notebooks of Antonio Gramsci</i> (Quintin Hoare & Geoffrey Smith eds. & trans., 1971)	5
Aurelia Armstrong, <i>Michel Foucault: Feminism</i> , Internet Encyclopedia of Philosophy	7, 8
B.S. Herrington, <i>AMA Sees Homosexuals as Under- Served Group</i> , Psychiatric News, Jan. 15, 1982	22

Benjamin Kaufman, <i>Why NARTH? The American Psychiatric Association's Destructive and Blind Pursuit of Political Correctness</i> , 14 Regent U. L. Rev. 423 (2001–2002)	24
Bob Cabaj, President's Column, Ass'n of Gay & Lesbian Psychiatrists (Feb. 1986).....	22
Brad Green, <i>Herbert Marcuse and the Reality of Sin</i> , Christ Over All (Feb. 2025)	6
Camille Beredjick, <i>DSN-V to Rename Gender Identity Disorder 'Gender Dysphoria,' Advocate</i> (July 23, 2012)	29
Carl Wittman, <i>The Gay Manifesto</i> (1971)	10
Carolyn Pela & Philip Sutton, <i>Sexual Attraction Fluidity and Well-Being in Men: A Therapeutic Outcome Study</i> , 12 J. Human Sexuality 61 (2021)	31
Charles Silverstein, <i>Some Events Leading to the Deletion of Homosexuality as Mental Disorder by the APA</i> , Gay City News (Feb. 10, 2023) 16, 17, 18	
Christopher Rosik, <i>Sexual Attraction Fluidity Exploration in Therapy (SAFE-T): Creating a Clearer Impression of Professional Therapies That Allow for Change</i> , 8 J. Human Sexuality 7 (2017)	32
Clark A. Pomerleau, <i>Field Concepts, Identities, Movements</i> , LGBTQ+ Studies: An Open Textbook	11
Clark A. Pomerleau, <i>From Homophile Movement to Gay Liberation</i> , LGBTQ+ Studies: An Open Textbook.....	9, 10
<i>Critical Theory (Frankfurt School)</i> , Stanford Encyclopedia of Philosophy (Dec. 12, 2023)	4
David Halperin, <i>Saint Foucault</i> (1995).....	13

David W. Dunlap, <i>A.M.A. Adopts New Policy on Sexuality</i> , N.Y. Times, Dec. 25, 1994.....	25
Dep't Health & Human Servs., <i>Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices</i> (May 1, 2025)	14, 35
Edith Gnanadass & Lisa Merriweather, <i>To Transgress or Not?: Critical Theory as a Framework for Change</i> , New Directions for Adult & Continuing Educ. (Dec. 12, 2024)	5
Herbert Marcuse, <i>Eros and Civilization: A Philosophical Inquiry into Freud</i> (Beacon Press 1966) (1955)	6
Hilary Cass, <i>Independent Review of Gender Identity Services for Children and Young People: Final Report</i> (2024)	33, 34
Jack Drescher, <i>Gender Identity Diagnoses: History and Controversies</i> , Gender Dysphoria & Disorders of Sex Development (May 2013)	18
Jack Drescher, <i>Out of DSM: Depathologizing Homosexuality</i> , 5 Behavioral Sci. 565 (Dec. 4, 2015)	16, 19
Jerry Wiener, <i>Choices</i> , Psychiatric News, Nov. 18, 1994.....	24
Jonathan Butcher, "Gender," <i>Marxism, and the Search for Power</i> , Heritage Foundation (Feb. 9, 2023).....	4
Joseph Nicolosi, <i>Healing Homosexuality: Case Stories of Reparative Therapy</i> (1993).....	24
Joseph Nicolosi, <i>Reparative Therapy of Male Homosexuality: A New Clinical Approach</i> (1991)	24
Joy S. Whitman et al., <i>Exploring Ethical Issues Related to Conversion or Reparative Therapy</i> , Counseling Today	25

Judith Butler, <i>Gender Trouble: Feminism and the Subversion of Identity</i> (Routledge 1999) (1990)	12
Kenneth J. Zucker, <i>The DSM Diagnostic Criteria for Gender Identity Disorder in Children</i> , Archives of Sexual Behav. (Oct. 2009).....	29
Larry Goldsmith, <i>Recent AMA Report Claims Homosexuality “Curable,”</i> Gay Community News, Jan. 23, 1982.....	21
Letter from James P. Krajeski to Robert Spitzer, Chairman, Work Grp. to Revise DSM-III (Apr. 9, 1986).....	22
Letter from Robert L. Spitzer, Chair, Work Grp. to Revise DMS-III, to Terry S. Stein et al. (Dec. 30, 1985).....	22
Lisa Leef, <i>Transgender Advocates Seek New Diagnostic Terms</i> , Associated Press (July 22, 2012).....	29
Marie-Amélie George, <i>Expressive Ends: Understanding Conversion Therapy Bans</i> , 68 Ala. L. Rev. 793 (2017)	23
Martin Duberman, <i>Gayness Becomes You</i> , The Nation (May 2, 2002).....	6
Memorandum from Bob Spitzer to Revisionists (Dec. 11, 1985)	22, 23
Michel Foucault, <i>History of Sexuality, Volume I: An Introduction</i> (Pantheon Books 1978) (1976)....	7, 8
Nat’l Comm. on Lesbian, Gay, and Bisexual Issues & Nat’l Ass’n of Social Workers, “Reparative” and “Conversion” Therapies for Lesbians and Gay Men (2000)	25
<i>Opposition Stalls AMA Report on Treating Homosexuals</i> , Psychiatric News, Aug. 7, 1981..	21
Peter Jenkins & Dwight Panozzo, “Ethical Care in Secret”: Qualitative Data from an International	

<i>Survey of Exploratory Therapists Working with Gender-Question Clients</i> , 50 J. Sex & Marital Therapy 557 (2024).....	26
Press Release, Am. Acad. of Pediatrics, <i>AAP Statement on HHS Report Treatment for Pediatric Gender Dysphoria</i> (May 1, 2025)	36
Press Release, Am. Acad. of Pediatrics, <i>Leading Physician Groups Oppose Infringements on Medical Care, Patient-Physician Relationship</i> (May 1, 2025)	36
Press Release, Am. Psychiatric Ass'n (Dec. 15, 1973).....	20
Richard Horton, <i>Offline: We Must Engage in a War of Position</i> , 401 Lancet 1483 (2023).....	19
Ronald Bayer, <i>Homosexuality and American Psychiatry: The Politics of Diagnosis</i> (Princeton Univ. Press 1981)	19
Sophie Noyé & Gianfranco Rebucini, <i>Queer as Materialism</i> , Oxford Research Encyclopedia of Politics (Jan. 22, 2021)	11
<i>The American Psychiatric Association Removes Homosexuality from Its List of Mental Illnesses</i> , History.com (Jan. 25, 2025)	18
Thekla Morgenroth & Michelle Ryan, <i>Gender Trouble in Psychology: How Can Butler's Work Inform Experimental Social Psychologists' Conceptualization of Gender?</i> , 9 Frontiers in Psychology (July 2018)	12
William H. Young, <i>Modern vs. Western Thought: Cultural Marxism and Gender Feminism</i> , Nat'l Assoc. of Scholars (July 19, 2017)	7
World Prof.'l Ass'n for Transgender Health, <i>WPATH and USPATH Comment on the Cass Review</i> (May 17, 2024).....	34

INTEREST OF AMICUS CURIAE¹

Liberty Counsel is a nonprofit public interest legal organization that advances religious freedom, and the sanctity of human life, and family. As part of its mission, Liberty Counsel filed the first legal challenges to several state and local laws that prohibit counselors from helping minor clients who chose to overcome unwanted same-sex attractions, behaviors, or gender confusion. See, *e.g.*, *Otto v. City of Boca Raton*, 981 F.3d 854 (11th Cir. 2020) (striking down ordinances that banned talk therapy to help clients overcome unwanted same-sex attractions, behaviors, and gender confusion); *Vazzo v. City of Tampa*, No. 19-14387, 2023 WL 1466603 (11th Cir. Feb. 2, 2023) (same); *King v. Governor of the State of New Jersey*, 767 F.3d 216 (3d Cir. 2014), *cert denied sub nom.*, *King v. Christie*, 575 U.S. 996 (2015) (upholding a state law that banned talk therapy); *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014), *cert denied*, 573 U.S. 945 (2014) (same). Having litigated against these laws that restrict speech based solely on viewpoint, Liberty Counsel has a vital interest in ensuring that the First Amendment rights of licensed counselors are protected against viewpoint and content-based restrictions on speech such as Colo. Rev. Stat. Ann. § 12-245-224(1)(t)(V).

SUMMARY OF ARGUMENT

As Judge Hartz recognized in his dissent, this case presents an important question for this Court's

¹ No counsel for any party authored this brief in whole or in part, and no person other than Amicus or its counsel made a monetary contribution intended to fund this brief's preparation or submission.

consideration: “whether a court should treat as ‘science’ the pronouncements of prestigious persons or organizations that are not supported by sound evidence.” *Chiles v. Salazar*, 116 F.4th 1178, 1226 (10th Cir. 2024) (Hartz, J., dissenting). The answer is no. Colorado’s ban on exploratory talk therapy for minors—under the inaccurate and misleading guise of prohibiting “conversion therapy”—a term explicitly designed to denigrate the routine practice of the professionals who provide talk therapy on this issue—rests not on settled science but on a compulsory consensus manufactured by politicized major medical and mental health associations (MMHAs). Within this viewpoint-discriminatory regime, activists masquerading as “experts” pressure lawmakers to silence the very speech that could most benefit vulnerable youth with gender confusion or unwanted same-sex attractions.

Colorado’s defense leans heavily on the purported authority of MMHAs, but the “expert” proclamations of these associations were not founded on objective evidence but were forged in the crucible of cultural Marxism and queer theory. What began as a scholarly movement to deconstruct categories of male and female has metastasized into an ideological agenda branding any deviation from the “affirmation” model as dangerous and unethical.

The chilling effect on talk therapy extends well beyond Colorado’s borders. Counselors who merely wish to explore the roots of a client’s unwanted same-sex attractions or gender-related distress—whether trauma, comorbidities, or social pressures—now face professional ruin for declining to affirm a single, ideologically preferred narrative. The

Department of Health and Human Services (HHS) and the United Kingdom’s Cass Review have both documented the need to prioritize exploratory before resorting to irreversible medical procedures. But instead of heeding these calls for more qualitative comparative data, MMHAs have doubled down, insisting that only affirmation is safe and that talk therapy must be silenced. But, affirmation only extends one way for these ideologues and is nonsensically inconsistent. MMHAs claim it is harmful to a minor to counsel them to *change* their unwanted sexual preferences or behaviors, but demand those same counselors affirm a minor seeking to *change* their gender. That is not medicine. It is dogma.

The First Amendment prohibits States from dictating which therapeutic approaches may be spoken. Colorado’s law restricts speech solely based on viewpoint. Such laws in the realm of counseling are unprecedented and go directly against the fundamental essence of counseling, namely that the client has the right of self-determination to choose the counseling objective. Counselors are like a GPS. The client chooses the direction of the counseling goal, and the counselor helps chart the course to the intended destination. Colorado’s law violates the First Amendment.

ARGUMENT

I. The So-Called “Expert Consensus” against Counseling Bans is Rooted in Ideology, Not Science.

The recent “expert consensus” about sexual orientation and gender ideology did not emerge in a vacuum and is not founded upon science. Its central

claims—that sex and gender are fluid, socially constructed, and subject to constant reinterpretation—are not the result of evidence-backed consensus or empirical discovery. Instead, these assertions originate in a distinct ideological movement shaped by Marxist thought and poststructuralist philosophy called “queer theory.”

A. “Queer theory,” the motivating ideology behind counseling bans, originates from Marxist critical thought.

1. To understand how “gender identity” and “sexual orientation” have been redefined in medicine and psychology by queer theory, we must begin with its intellectual architects. Queer theory’s intellectual framework can be traced to the Marxist concept called “critical theory,” which emerged from the Frankfurt School in the 1930s. Marxist scholars such as Max Horkheimer, Theodor Adorno, and Herbert Marcuse sought to expand Marx’s critique beyond economics to deconstruct Western institutions such as the traditional family, Christian sexual ethics, and natural law. See generally Jonathan Butcher, “*Gender, Marxism, and the Search for Power*,” Heritage Foundation (Feb. 9, 2023).² These scholars integrated philosophy and social science to analyze how power and oppression operate in everyday life “with the practical aim of furthering emancipation.” *Critical Theory (Frankfurt School)*, Stanford Encyclopedia of Philosophy (Dec. 12, 2023).³

² Available at <https://www.heritage.org/progressivism/com.mentary/gender-marxism-and-the-search-power>,

³ Available at <https://plato.stanford.edu/entries/critical-theory>.

This form of Marxist critique directly inspired “strands of critical theory,” including “feminist theory” and “queer theory.” *Critical Theory*, *supra* note 3. All these strands share same goal: emancipating various oppressed groups “from structures of domination and modes of thinking (patriarchy, white supremacy, neocolonialism and Eurocentrism).” *Id.* By the late 20th century, critical theorists across Marxism, feminism, and queer studies were united by a desire for a theory to dismantle structures of power by critiquing what keeps these structures in place. See generally Edith Gnanadass & Lisa Merriweather, *To Transgress or Not?: Critical Theory as a Framework for Change*, New Directions for Adult & Continuing Educ. (Dec. 12, 2024).⁴

Antonio Gramsci’s work further sets the stage for modern gender ideology. Gramsci’s concept of “cultural hegemony”—the idea that a dominant group maintains power by securing the consent of the oppressed through cultural norms rather than through power—has been highly influential in gender and sexuality studies. See Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci* (Quintin Hoare & Geoffrey Smith eds. & trans., 1971). Gramsci’s work provided a vocabulary to critique Christian sexual ethics while inspiring later scholars to see gender itself as part of a patriarchal superstructure that maintains oppressive social hierarchies.

Herbert Marcuse helped bridge Marxism with theories of sexuality. In *Eros and Civilization*, Marcuse famously argued that Western capitalist society

⁴ Available at <https://doi.org/10.1002/ace.20544>.

represses sexuality, and unorthodox sexual activity “express[es] rebellion against the subjugation of sexuality under the order of procreation, and against the institutions which guarantee that order.” Herbert Marcuse, *Eros and Civilization: A Philosophical Inquiry into Freud* 49 (Beacon Press 1966) (1955). As one commentator observed, “the various sexual practices that ‘exclude’ or ‘prevent’ procreation are a way of resisting, stopping, halting ‘paternal domination,’ or what in more recent decades would simply be called ‘the patriarchy.’” Brad Green, *Herbert Marcuse and the Reality of Sin*, Christ Over All (Feb. 2025) (quoting Marcuse, *Eros and Civilization* at 49).⁵ And “certainly the key institutions in mind here must be the traditional family as well as traditional religious organizations (including the church).” *Id.*

Some scholars hail Marcuse as a prophet who predicted that, by rebelling against procreative sexual norms, homosexuals could become a “cutting-edge social critique of vast importance.” Martin Duberman, *Gayness Becomes You*, The Nation (May 2, 2002).⁶ Indeed, this idea is part of a broader movement known as “cultural Marxism,” which “sees domination as repression of *eros* and the need for release of radical, socially transformative, sexual subjectivism.” William H. Young, *Modern vs. Western*

⁵ Available at <https://christoverall.com/article/concise/herbert-marcuse-and-the-reality-of-sin>.

⁶ Available at <https://www.thenation.com/article/archive/gayness-becomes-you/>.

Thought: Cultural Marxism and Gender Feminism, Nat'l Assoc. of Scholars (July 19, 2017).⁷

Any discussion of queer theory's foundations must highlight Michel Foucault, the French philosopher-historian who advanced the concept that gender and sexuality are social constructs. In *Discipline and Punish* and *The History of Sexuality*, Foucault argued that sex and reproductive differences are not biological but in fact products of specific historical forces, especially negative, repressive forces. See generally Aurelia Armstrong, *Michel Foucault: Feminism*, Internet Encyclopedia of Philosophy.⁸ As one scholar explained, "Foucault's focus on discursive power thoroughly lent itself to the growth of 'identity politics' and the 'new social movements'—groups whose oppression *** clearly perpetuates itself through many non-economic structures, such as language, family, media and civil institutions[.]" Simon Thorpe, *In Defence of Foucault: The Incessancy of Resistance*, Critical Legal Thinking (Feb. 7, 2012).⁹ In other words, Foucault showed that power in society does not just oppress from above; it actively creates identities and categories of people as a means of control.

A pivotal example is Foucault's analysis of sexuality in *The History of Sexuality*. See Michel Foucault,

⁷ Available at https://www.nas.org/blogs/article/modern_vs._western_thought_cultural_marxism_and_gender_feminism.

⁸ Available at <https://iep.utm.edu/foucfem/> (last visited May 19, 2025).

⁹ Available at <https://criticallegalthinking.com/2012/02/07/in-defence-of-foucault-the-incessancy-of-resistance>.

History of Sexuality, Volume I: An Introduction 42–44 (Pantheon Books 1978) (1976).¹⁰ Foucault famously challenged the notion that sexual orientation is biological. In support, he documented how medical and legal discourses in the late 19th century invented the category of “the homosexual” as a distinct type of person. Before this period, Foucault writes, sodomy was merely seen as a forbidden act, but “the psychological, psychiatric, medical category of homosexuality” now characterized it as “one of the forms of sexuality when it was transposed from the practice of sodomy to a kind of interior androgyny, a hermaphroditism of the soul.” *Id.* at 43. This striking passage illustrates Foucault’s core argument: By labeling and defining “homosexuals” (and an array of other “perversions”), nineteenth-century authorities made sexuality a target of scrutiny and control, a process Foucault calls the “deployment” of sexuality. *Id.* at 68. “Thus, Foucault suggests that in modern society the behavior of individuals and groups is increasingly pervasively controlled through standards of normality which are disseminated by a range of assessing, diagnostic, prognostic and normative knowledges such as criminology, medicine, psychology and psychiatry.” Armstrong, *supra* note 8. This perspective became a cornerstone of feminism and queer theory because it provided an intellectual justification to treat categories like “man,” “woman,” “gay,” or “straight” not as fixed binaries but as fluid labels created by oppressive structures of power.

¹⁰ Available at <https://suplaney.wordpress.com/wp-content/uploads/2010/09/foucault-the-history-of-sexuality-volume-1.pdf> (last visited May 19, 2025).

2. While the ideological foundations of the modern “expert consensus” on gender and sexual orientation lie in the Frankfurt School and poststructuralist thinkers like Foucault, it was in the mid-twentieth century that these abstract ideas manifested in the real world. In the aftermath of World War II, Christian values still governed American public life. Soon, however, anti-Christian communist sympathizers coalesced into a movement that sought not only to reframe sexual identity as a political category but to redefine human nature itself.

The story begins with the Mattachine Society. Founded in Los Angeles in 1951 by Harry Hay and fellow former Communist Party members, and drawing upon Marxist theory, the Society posited that homosexuals were a repressed social class akin to the proletariat, alienated by the post-war capitalist society and Christian culture. See Clark A. Pomerleau, *From Homophile Movement to Gay Liberation*, *LGBTQ+ Studies: An Open Textbook*.¹¹ Drawing upon Gramsci, the Society viewed heterosexuality as a hegemonic norm that had imprisoned homosexuals within a dominant ideology—the Christian patriarchy. See *id.*

By the 1960s, groups like the Mattachine Society coalesced into a national network. Inspired by the broader civil rights movement, they lobbied, picketed, and published, the effect of which slowly shaped the public consciousness into accepting the homosexual cause as a civil-rights movement. See

¹¹ Available at <https://courses.lumenlearning.com/suny-lgbtq-studies/chapter/from-homophile-movement-to-gay-liberation/> (last visited May 20, 2025).

Pomerleau, *supra* note 11. As it matured, the movement softened its public face to gain respectability by appealing to sympathetic psychologists and clergy. See *id.* But the ideological engine remained: the push to delegitimize longstanding Christian teachings on sexuality under the guise of civil rights.

This same ideological current animated the Gay Liberation Front (GLF) following the Stonewall Riots in 1969. Triggered by a police raid on a Mafia-run bar, the riots were hailed as a political awakening for homosexuals. See Pomerleau, *supra* note 11. But what followed was more than a call for equal rights; it was a revolution in social mores. GLF leaders explicitly opposed capitalism and embraced the “liberationist” ethos of Marxist critical theorists. See *id.* In his “Gay Manifesto,” Carl Wittman condemned “Amerika” as an exploitative and repressive society in which “Straight (also white, English, male, capitalist) thinking” is imposed on homosexuals, women, and racial minorities. Carl Wittman, *The Gay Manifesto* 4 (1971).¹² To counter that system, Wittman proclaimed that homosexuals must reject monogamy, traditional family structures, and male-female complementarity. See *id.*

The gay-liberation movement soon infiltrated academia. By the mid-1970s, scholars like Jonathan Ned Katz and Joan Nestle were institutionalizing “Gay and Lesbian Studies” as a formal discipline. See generally Clark A. Pomerleau, *Field Concepts, Identities, Movements*, LGBTQ+ Studies: An Open

¹² Available at https://www.againstequality.org/files/refugees_from_amerika_a_gay_manifesto_1969.pdf (last visited May 20, 2025).

Textbook.¹³ Their goal? To re-narrate American history through the lens of sexuality by upending the traditional categories of male and female and challenging Biblical anthropology. Cf. *id.* (“LGBTQ historians first *compensated* for heterosexism and cissexism by finding LGBTQ people to reinsert into historical narratives, then determined how LGBTQ people *contributed* to history. As they analyzed primary sources, they slowly *revised* historical narratives through testing generalizations and periodization against evidence by and about LGBTQ people.”). At each stage, the movement was marked by intentional rejection of Christian sexual ethics and a desire to replace them with a secular—and revolutionary—framework.

By the 1980s and 1990s, the fusion of Marxist critique, radical subjectivism, and sexual politics had become an institutionalized force. See generally Sophie Noyé & Gianfranco Rebutini, *Queer as Materialism*, Oxford Research Encyclopedia of Politics (Jan. 22, 2021) (discussing the “recompositions” of “Marxist, queer, and feminist” that “took place in activist and academic arenas”). That, in turn, paved the way for queer theory, which would go even further: absurdly denying that “man” or “woman” were even rooted in objective and biological reality.

3. Emerging in the late twentieth century as a fusion of critical theory, feminist thought, and post-modern philosophy, queer theory seeks to deconstruct and ultimately dismantle the historical

¹³ Available at <https://courses.lumenlearning.com/suny-lgbtq-studies/chapter/field-concepts-identities-movements/> (last visited May 20, 2025).

understanding of human sexuality. The term “queer theory” was first coined in the early 1990s, but the ideas that animate it had long circulated in academic circles. In her seminal work, *Gender Trouble*, renowned feminist Judith Butler argued that gender is “performative,” “manufactured through a sustained set of acts, posited through the gendered stylization of the body.” See Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, xv (Routledge 1999) (1990).¹⁴ See also generally Thekla Morgenroth & Michelle Ryan, *Gender Trouble in Psychology: How Can Butler’s Work Inform Experimental Social Psychologists’ Conceptualization of Gender?*, 9 *Frontiers in Psychology* 1 (July 2018) (discussing Butler’s argument “that gender, rather than being an essential quality following from biological sex, or an inherent identity, is an act which grows out of, reinforces, and is reinforced by, societal norms and creates the illusion of binary sex”).

Writing in the Foucauldian tradition, Butler argued that “language itself produce[s] the fiction construction of ‘sex’ that supports these various regimes of power,” *Gender Trouble* at xxx, and that “the prior taboo against homosexuality” was a “prohibition[] that produce[s] identity along the culturally intelligible grids of an idealized and compulsory heterosexuality,” *id.* at 172. Butler’s claim boils down to this: Being a “man” or a “woman” is not rooted in biology or objective reality; it is an elaborate charade, reinforced by society to uphold heterosexual norms.

¹⁴ Available at https://selforganizedseminar.wordpress.com/wp-content/uploads/2011/07/butler-gender_trouble.pdf (last visited May 19, 2025).

What Christian civilization has long understood as sex—a biological reality, fixed and knowable—is, in her view, simply a tool used by the powerful to keep the oppressed in line.

This rejection of biological sex as an objective truth is not a tangential aspect of queer theory. *It is the core.*

Unlike gay identity, which, though deliberately proclaimed in an act of affirmation, is nonetheless rooted in the positive fact of homosexual object-choice, queer identity need not be grounded in any positive truth or in any stable reality. As the very word implies, ‘queer’ does not name some natural kind or refer to some determinate object; it acquires its meaning from its oppositional relation to the norm. Queer is by definition *whatever* is at odds with the normal, the legitimate, the dominant. *There is nothing in particular to which it necessarily refers.* It is an identity without an essence.

David Halperin, *Saint Foucault* 62 (1995).¹⁵ In other words, queer theory positions itself against the normalizing tendencies of mainstream discourses on gender and sexuality, and its chief ambition is to disrupt the binary thinking that undergirds them. The effects of this radical subjectivism have descended from the ivory tower to astoundingly shape public discourse, policy debates, and eventually professional medical standards, and has been deployed as

¹⁵ Available at <https://archive.org/embed/saintfoucaulttow0000halp> (last visited May 20, 2025).

a blunt instrument of suppression for dissenting viewpoints.

B. Major medical and mental health associations have adopted “queer theory” due to intense activist pressure.

The intellectual foundation of “queer theory” may have been laid by Marxist and poststructuralist theorists, but its influence in medicine and psychology came about through homosexual-rights groups. Through decades of organized lobbying, political agitation, and internal pressure campaigns, activists systematically redefined the professional consensus on sexuality and gender. As a consequence, major medical and mental health associations (MMHAs) gradually embraced the tenets of queer theory: that sex and gender are social constructs and that sexual identity is inherently subjective. What followed was an ideological trojan horse, in which activists pressured these associations to accept esoteric theories as settled science while silencing dissent through professional “consensus.”

1. In America’s disjointed healthcare landscape, MMHAs wield outsized influence. They serve as gatekeepers of professional orthodoxy, namely by issuing treatment guidelines, shaping public policy, disseminating peer-reviewed research, and representing the collective voice of their fields. See generally Dep’t Health & Human Servs., *Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices* 201–208 (May 1, 2025) (HHS

Report).¹⁶ Through journals, conferences, and policy statements, MMHAs educate practitioners and cultivate a unified culture within their respective professions. See *id.* Most associations restrict full membership to those actively practicing in clinical or mental-health fields, and they typically enforce ethical codes that carry sanctions for violations. See *id.*

MMHAs derive much of their credibility from the perception that they uphold rigorous scientific standards. See HHS Report, *supra* note 16, at 201. *They don't.* “MMHAs can inadvertently become echo chambers where dissent is suppressed, confirmation biases go unchecked, and professional deference is exploited.” *Id.* Because “support for a particular viewpoint is concentrated within a small, motivated subgroup, while opposing views are diffuse, less attentive, and less organized,” the public “may inaccurately perceive the wider membership of individual MMHAs as uniformly aligned with the professed position of their professional association.” *Id.* In other words, narrow perspectives in MMHAs often dominate not because they are based in sound evidence but because their proponents are loud and organized. Any opposition is swiftly suppressed and censored to maintain the illusion of consensus.

2. Within this backdrop, the historical evidence of ideological creep in MMHAs as to human sexuality is easy to trace. In the late 1960s and early 1970s, homosexual-rights activists waged an intense campaign to challenge the classification of homosexuality as a mental disorder. When the American

¹⁶ Available at <https://opa.hhs.gov/sites/default/files/2025-05/gender-dysphoria-report.pdf>.

Psychiatric Association first published its *Diagnostic and Statistical Manual* (DSM-I) in 1952, it classified “homosexuality” as a “sociopathic personality disturbance.” Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* (1952). And In the 1968 DSM-II, homosexuality was reclassified as a “sexual deviation.” Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* (2d ed. 1968).

Homosexual activists “forcefully rejected the pathological model as a major contributor to the stigma associated with homosexuality.” Jack Drescher, *Out of DSM: Depathologizing Homosexuality*, 5 Behavioral Sci. 565, 570 (Dec. 4, 2015).¹⁷ That being so, protesters from the Gay Activists Alliance and other newly formed groups staged aggressive disruptions at APA meetings and conventions, targeting psychiatrists who advocated treatment for unwanted same-sex attraction. See generally Charles Silverstein, *Some Events Leading to the Deletion of Homosexuality as Mental Disorder by the APA*, Gay City News (Feb. 10, 2023).¹⁸

One of the pivotal events occurred at the 1972 convention of the Association for the Advancement of Behavior Therapy (AABT), held at the Hilton Hotel in New York. Activists from the Gay Activists Alliance organized a planned disruption of a lecture by a psychiatrist about the use of aversion therapy on homosexual patients. Silverstein, *supra* note 18.

¹⁷ Available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC4695779/pdf/behavsci-05-00565.pdf>.

¹⁸ Available at <https://gaycitynews.com/some-events-deletion-homosexuality-mental-disorder-apa>.

With cooperation from sympathetic AABT officials, the activists seized the podium after a brief presentation and “chastised the professional audience for their attempts to convert homosexuals into heterosexuals instead of helping gay people to come out.” *Id.*

The activists succeeded in capturing the attention of Robert Spitzer, a psychiatrist and member of the American Psychiatric Association’s (APA) Nomenclature Committee, which oversaw revisions to the DSM. The AABT encounter prompted Spitzer to invite the activists to present their case to the APA’s committee. See Silverstein, *supra* note 18. The activists formed an ad hoc working group, produced a report (selectively citing psychological studies), and presented their arguments at a February 1973 meeting. They contended that the classification of homosexuality as a mental disorder rested on moral rather than scientific grounds and accused the psychiatric profession of perpetuating discrimination. See *id.*

Although some committee members remained skeptical (particularly those from psychoanalytic schools of thought), the activists’ appeal to social justice, paired with the fear of further public confrontation, led the committee to recommend removing homosexuality from the DSM. See *id.* Consequently, on December 15, 1973, the APA’s Board of Trustees reversed its century-old position and removed homosexuality from the DSM, declaring that homosexuality was neither a mental illness nor a sickness. See generally *The American Psychiatric Association*

Removes Homosexuality from Its List of Mental Illnesses, History.com (Jan. 25, 2025).¹⁹

The APA Board's decision, however, did not end the controversy. Opponents led by Dr. Charles Socarides forced a referendum of the APA's full membership. See Silverstein, *supra* note 18. "Gay activists knew that a referendum of the APA membership might overturn the nomenclature change." *Id.* That being so, they mounted an aggressive campaign and financed outreach supporting the change (without disclosing the source of funding). See *id.* Ultimately, fifty-eight percent of voting APA members upheld the Board's decision. See *id.*

The result was a watershed moment in American psychiatry. "Those who accepted scientific authority on such matters gradually came to accept the APA's position, and a new cultural perspective emerged," which "led to a historically unprecedented social acceptance of gay men and women" and "has culminated in the contemporary social and policy debates about gay civil rights and marriage equality." Jack Drescher, *Gender Identity Diagnoses: History and Controversies*, Gender Dysphoria & Disorders of Sex Development (May 2013).²⁰ As one historian later documented, the decision was shaped as much by political activism and cultural pressure as by scientific evidence. See generally Ronald Bayer,

¹⁹ Available at <https://www.history.com/this-day-in-history/december-15/the-american-psychiatric-association-removes-homosexuality-from-its-list-of-mental-illnesses>.

²⁰ Available at https://www.researchgate.net/publication/265591982_Gender_Identity_Diagnoses_History_and_Controversies.

Homosexuality and American Psychiatry: The Politics of Diagnosis (Princeton Univ. Press 1981).²¹

The vote marked a turning point for MMHAs: From that moment forward, medical and mental-health associations would institutionalize the ideologies advanced by activist coalitions rather than rely solely on objective clinical data. Cf. Bayer, *supra* note 21, at 3 (“The entire process . . . *seemed to violate the most basic expectations about how questions of science should be resolved.*” (emphasis added)). Those with “[r]igid gender beliefs” were suddenly accused of belonging to “fundamentalist, religious communities where any information or alternative explanations that might challenge implicit and explicit assumptions are unwelcome.” Drescher, *Out of DSM*, *supra* note 20, at 567. In other words, those who accepted the new “science” were enlightened, and those who did not were backwards and ignorant.

Underpinning these shifts is an unmistakable ideological current. Leaders in health care increasingly frame their positions on sexuality and gender in terms of social justice, not empirical data. A striking illustration is when *The Lancet*—the world’s most prestigious medical journal—published an editorial in 2023 openly invoking Antonio Gramsci’s theory of cultural hegemony to analyze the modern “culture wars.” See Richard Horton, *Offline: We Must Engage in a War of Position*, 401 *Lancet* 1483 (2023).²² The author cited Gramsci’s concept of a “war of position”

²¹ Available at <https://archive.org/details/homosexualityame00bayerich/mode/2up>.

²² Available at <https://www.thelancet.com/action/showPdf?pii=S0140-6736%2823%2900900-5>.

as a call to action for those “who wish to advance a more hopeful, compassionate, and liberal vision of the future” to fight back against “populists” on issues related to “race, sex, and gender.” *Id.* The explicit invocation of Gramsci’s framework by the world’s leading medical journal illustrates the extent to which cultural hegemony has permeated scientific discourse. It also reveals *how* the “consensus” in science, medicine, and policy are shaped by efforts to steer the public consciousness in a particular ideological direction rather than by objective inquiry.

3. Even after the 1973 APA vote to remove homosexuality from the DSM, the classification of same-sex attraction as a pathology did not immediately disappear from clinical practice. Nor did the APA rescind its recognition of talk therapy as an acceptable intervention for those distressed by their same-sex attractions. Instead, the APA added a new diagnostic category, “sexual orientation disturbance,” for individuals seeking to eliminate or reduce unwanted same-sex attractions. See Press Release, Am. Psychiatric Ass’n (Dec. 15, 1973).²³ Four years later, the APA Task Force on Nomenclature renamed the category “Ego-Dystonic Homosexuality,” applicable to those with “a desire to acquire or increase heterosexual arousal, so that heterosexual relationships can be initiated or maintained[.]” Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* 281 (3d ed. 1980). Although the APA noted the ongoing debate over the effectiveness of such

²³ On file with Carl A. Kroch Library, Cornell University, National Gay and Lesbian Task Force Records, Collection No. 7301, Box 164, Folder 39.

interventions, its recognition of this diagnosis implicitly authorized psychiatrists to pursue therapeutic strategies aimed at reducing or eliminating a client's unwanted same-sex attractions.

During the 1980s, talk therapy remained within the medical mainstream, and many professionals continued to encourage it for patients experiencing same-sex attraction. Notably, Judd Marmor, one of the psychiatrists who had championed the 1973 declassification of homosexuality, still maintained that "reorientation" efforts were appropriate for the "small minority of gay people who want that." Lawrence Mass, *Dr. Judd Marmor on "Homosexual Behavior,"* Advocate, Apr. 17, 1980, at 22.

Indeed, the American Medical Association (AMA) issued a report in 1981 emphasizing that same-sex attraction was changeable. See Larry Goldsmith, *Recent AMA Report Claims Homosexuality "Curable,"* Gay Community News, Jan. 23, 1982.²⁴ The AMA rejected what it described as the "myth" promoted by homosexual advocacy groups that sexual orientation was immutable. The report cited studies purporting to show that so-called "conversion" efforts had a 30–70% success rate and encouraged physicians to ask their homosexual patients whether they were "content" with their orientation. See *id.*; see also *Opposition Stalls AMA Report on Treating Homosexuals,* Psychiatric News, Aug. 7, 1981, at 32. The report advised doctors to refer patients who expressed dissatisfaction with their sexual orientation to psychiatrists for treatment. See

²⁴ On file with the National Gay and Lesbian Task Force Records, Box 164, Folder 40.

B.S. Herrington, *AMA Sees Homosexuals as Under-Served Group*, *Psychiatric News*, Jan. 15, 1982, at 9, 20.

Six years later, the APA took its first formal step to repudiate so-called talk therapy by removing the Ego-Dystonic Homosexuality diagnosis from DSM-III-R. See Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 279–96 (3d ed., rev. 1987). That change was not initially expected. The APA's Advisory Committee originally recommended retaining the category, assuming it was still clinically appropriate. The Board of Trustees voted accordingly. See Letter from Robert L. Spitzer, Chair, Work Grp. to Revise DMS-III, to Terry S. Stein et al. (Dec. 30, 1985).²⁵

But their decision triggered backlash from members of the APA's Committee on Gay, Lesbian, and Bisexual Issues (GLB Committee), who insisted on an opportunity to argue for the diagnosis's removal. See, e.g., Letter from James P. Krajeski to Robert Spitzer, Chairman, Work Grp. to Revise DSM-III (Apr. 9, 1986);²⁶ Memorandum from Bob Spitzer to Revisionists (Dec. 11, 1985);²⁷ Bob Cabaj, President's Column, Ass'n of Gay & Lesbian Psychiatrists (Feb. 1986).²⁸ Dr. Robert Spitzer, chair of the DSM-

²⁵ On file with DSM-III & DSM-III-R Collection, Box 4, Folder labeled Ego-Dystonic Homosexuality.

²⁶ On file with DSM-III & DSM-III-R Collection, Box 4, Folder labeled Ego-Dystonic Homosexuality.

²⁷ On file with DSM-III & DSM-III-R Collection, Box labeled Administration, Folder labeled Gen. Corr. 1986.

²⁸ On file with the Charles E. Young Research Library, UCLA, Judd Marmor Papers, Collection No. 1795, Box 54, Folder 3.

III-R revision process, dismissed these objections at first, stating that the issue was not scientific but “a value judgment” as to whether it was “helpful to have a specific category that legitimizes treatment efforts directed at homosexuals (usually bisexual) who wish to develop a heterosexual arousal program.” Memorandum from Bob Spitzer, *supra* note 27. In Spitzer’s view, an Ego-Dystonic Homosexuality diagnosis only applied to a subset of homosexuals seeking to reduce or eliminate their unwanted sexual attractions. See *id.*

Nevertheless, vociferous pressure from the GLB Committee forced the Board to reverse course; and six months later, the APA officially removed Ego-Dystonic Homosexuality from the DSM. Not only that, as a result, the word “homosexuality” was removed from the DSM. See Marie-Amélie George, *Expressive Ends: Understanding Conversion Therapy Bans*, 68 Ala. L. Rev. 793, 804 (2017). This reversal marked a decisive shift in the APA’s posture, signaling its political views that homosexuality was a normal variation in human sexuality and efforts to reorient unwanted sexual attractions would no longer be endorsed as part of standard psychiatric care.

Still, significant resistance remained. Disturbed by the APA’s retreat from supporting individuals distressed by their same-sex attractions, mental health professionals began to organize. In 1992, Charles Socarides, along with Joseph Nicolosi and Benjamin Kaufman, founded the National Association for Research and Therapy of Homosexuality (NARTH). See Benjamin Kaufman, *Why NARTH? The American Psychiatric Association’s Destructive and Blind Pursuit of Political Correctness*, 14 Regent

U. L. Rev. 423, 424 (2001–2002). NARTH served as a platform for clinicians and researchers who believed that the APA capitulated to gay-rights activists without a sound basis in evidence. See generally Joseph Nicolosi, *Healing Homosexuality: Case Stories of Reparative Therapy* 214 (1993); Joseph Nicolosi, *Reparative Therapy of Male Homosexuality: A New Clinical Approach* 9–12 (1991). Believing that unwanted same-sex attractions could, and sometimes should, be reoriented, NARTH promoted a psychoanalytic framework known as “reparative therapy,” which held that homosexuality was the result of arrested psychosexual development. See Kaufman, 14 Regent U. L. Rev. at 426.

During the 1990s and early 2000s, medical and psychological associations, which were becoming increasingly politicized by left-leaning advocates, began issuing statements explicitly condemning reparative therapy. Initially, these statements were measured, emphasizing patient autonomy while noting the absence of rigorous evidence supporting reorientation interventions. For example, in 1993, the APA rejected a proposed resolution declaring reparative therapy “improper and unethical,” labeling such a characterization “extreme and unjustified.” See Jerry Wiener, *Choices*, Psychiatric News, Nov. 18, 1994, at 3; *“Reparative Therapy” Statement to be Refined*, Psychiatric News, June 17, 1994, at 6, 24. But the tide began to turn.

In 1994, the American Medical Association (AMA) was the first to change course. Although it had endorsed reorientation therapy since 1981, the AMA attributed the psychological distress of individuals with unwanted same-sex attractions primarily to

social stigma rather than orientation. See *AMA Alters Its Policy on Gays, Lesbians*, Bos. Globe, Dec. 22, 1994; David W. Dunlap, *A.M.A. Adopts New Policy on Sexuality*, N.Y. Times, Dec. 25, 1994, at 11.

Other MMHAs followed suit. Pressured by its pro-homosexual members, outraged by NARTH's increasing influence, the American Psychological Association issued a statement in 1997 declaring that "the ethics, efficacy, benefits, and potential for harm" of such therapies were "under extensive debate." Am. Psychological Ass'n, *Appropriate Therapeutic Responses to Sexual Orientation* (1997). In 1999, the American Counseling Association denounced "the promotion of reparative therapy as a cure for individuals who are homosexual." Joy S. Whitman et al., *Exploring Ethical Issues Related to Conversion or Reparative Therapy*, Counseling Today.²⁹ In 2000, the National Association of Social Workers' National Committee on Lesbian, Gay, and Bisexual Issues declared that reorientation therapies "cannot and will not change sexual orientation." Nat'l Comm. on Lesbian, Gay, and Bisexual Issues & Nat'l Ass'n of Social Workers, *"Reparative" and "Conversion" Therapies for Lesbians and Gay Men* (2000). The American Association for Marriage and Family Therapy adopted a policy in 2009 declaring that there was "no basis" for so-called "conversion

²⁹ Available at <https://ctarchive.counseling.org/2006/05/exploring-ethical-issues-related-to-conversion-or-reparative-therapy/> (last visited May 30, 2025).

therapy.” Am. Ass’n for Marriage & Family Therapy, *Policy on Reparative/Conversion Therapy* (2009).³⁰

The tide ultimately turned with the APA. In 1998, it adopted a formal policy opposing any psychiatric treatment aimed at changing sexual orientation. See Am. Psychiatric Ass’n, *Position Statement on Psychiatric Treatment and Sexual Orientation* (1998). The APA was more forceful in 2000, issuing a statement urging ethical practitioners to refrain from reorientation efforts given a purported absence of scientific research supporting such interventions. See Am. Psychiatric Ass’n, *Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies)* (2000).³¹

In 2007, the American Psychological Association established the Task Force on Appropriate Therapeutic Responses to Sexual Orientation to review and evaluate the scientific literature on reorientation therapy. Led by pro-LGBT advocates, and without distinguishing between long-renounced “aversion” treatments with simple exploratory talk therapy,³² the Task Force found that none of the

³⁰ Available at https://www.aamft.org/AAMFT/About_AAMFT/Position_Statements.aspx#anchor2

³¹ Available at https://library.louisville.edu/ld.php?content_id=40820571.

³² It is critical to distinguish between the politically-motivated “conversion therapy” — which is falsely associated with long-renounced aversive procedures and “shock treatments” — and exploratory talk therapy for clients experiencing unwanted same-sex attractions or gender-related distress. Conflating these distinct practices is both misleading and harmful. See Peter Jenkins & Dwight Panozzo, *Ethical Care in Secret:*

published studies met its methodological standards on efficacy or safety. Am. Psychological Ass’n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* 1–2 (2009) (Task Force Report).³³

In its report issued two years later, the Task Force concluded that sexual orientation change efforts (SOCE) is “unlikely to be successful and involve[s] some risk of harm” and urged the organization to issue a new resolution opposing it. Task Force Report, *supra* note 33, at v, 7. As a result, the American Psychological Association adopted a formal statement that identified the practice as ineffectual and called on mental health professionals to stop misrepresenting SOCE as a viable means of helping clients with unwanted same-sex attractions. Am. Psychological Ass’n, *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts* (2009).

By 2009, every MMHA denounced therapeutic interventions to help individuals with unwanted

Qualitative Data from an International Survey of Exploratory Therapists Working with Gender-Questioning Clients, 50 J. Sex & Marital Therapy 557, 559 (2024). Activist groups weaponized the term “conversion therapy” as a catch-all phrase to smear and silence any therapeutic interventions not automatically affirming same-sex attraction or gender identity, regardless of the client’s unique circumstances and desires. But exploratory therapy—rooted in self-determination—seeks not to impose an identity but to help children understand their distress before making irreversible decisions. After all, “[t]herapy, by definition, is based on a voluntary rather than a coercive professional relationship and requires fully informed client consent.” *Id.*

³³ Available at <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>.

same-sex attractions or behaviors. Remarkably, of the fifty-five peer-reviewed studies the Task Force relied on, forty-seven were from 1960 to 1981, while only eight were from 1999 to 2004. See APA Task Force Report, *supra* note 33, at 7, Appendix B. That means that 85% of the studies were based during a time when SOCE included long-denounced aversive methods such as electric shocks, chemically induced nausea, and other punitive techniques. Yet by the early 1980s, even reparative therapists loudly denounced such techniques.

In the aftermath of the Task Force Report, organizations such as NARTH now operated on the margins, while medical institutions publicly advocated against therapeutic efforts to help individuals with unwanted same-sex attractions. The result was a profound realignment in MMHAs, where ideological campaigns and sustained lobbying by subgroups can change the “medical consensus” with outdated “evidence” or no evidence at all.

4. The transgender movement followed a similar trajectory. As recently as the 1990s, gender identity disorders were included in major diagnostic manuals. In 1980, the American Psychiatric Association (APA) introduced two new diagnostic categories in the third edition of its Diagnostic and Statistical Manual of Mental Disorders (DSM-III): “Transsexualism” for adolescents and adults, and “Gender Identity Disorder of Childhood” for prepubescent children. See Kenneth J. Zucker, *The DSM Diagnostic Criteria for Gender Identity Disorder in Children*,

Archives of Sexual Behav. (Oct. 2009).³⁴ The criteria were formulated by “a panel of experts” but, curiously, “were not subject to any formal field trials for the purpose of establishing diagnostic reliability or validity.” *Id.*

Over time, transgender activists, drawing explicitly from earlier gay-liberation strategies, pressed for the declassification of these conditions as mental illnesses. See Lisa Leef, *Transgender Advocates Seek New Diagnostic Terms*, Associated Press (July 22, 2012).³⁵ The APA responded in 2013 by removing “Gender Identity Disorder” from DSM-5 and replacing it with the more value-neutral “Gender Dysphoria.” See Am. Psychiatric Ass’n, *Gender Dysphoria Diagnosis, Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013). Transgender advocacy groups declared this change a victory after decades of lobbying. See Camille Beredjick, *DSN-V to Rename Gender Identity Disorder ‘Gender Dysphoria,’ Advocate* (July 23, 2012).³⁶

In August 2021, the American Psychological Association (APA) adopted a sweeping resolution condemning “sexual orientation” and “gender identity” change efforts, characterizing them as inherently harmful and scientifically unsupported. See Am.

³⁴ Available at https://www.researchgate.net/publication/38023058_The_DSM_Diagnostic_Criteria_for_Gender_Identity_Disorder_in_Children.

³⁵ Available at <https://www.mprnews.org/story/2012/07/22/transgender-advocates-seek-new-diagnostic-terms> (last visited May 23, 2025).

³⁶ Available at <https://www.psychiatry.org/psychiatrists/diversity/education/transgender-and-gender-nonconforming-patients/gender-dysphoria-diagnosis> (last visited May 23, 2025).

Psychological Ass’n, *Resolution on Sexual Orientation Change Efforts* (Feb. 2021).³⁷ Lumping in “aversive conditioning” and “exorcism” with “psychotherapeutic treatment,” the resolution declared that no evidence-based therapeutic intervention exists that can reliably help a person with unwanted same-sex attraction or gender confusion, and warned of potential psychological harm. See *id.* at 1. The resolution not only reaffirmed earlier policy positions but expanded them, urging lawmakers to ban talk therapy for minors and calling on mental health professionals to avoid any intervention premised on the assumption that heterosexuality is preferable. See *id.* at 9. Notably, the APA failed to engage seriously with dissenting perspectives—including those grounded in religious identity—thereby disregarding a core principle of patient-centered care: respect for a client’s values and goals.

II. Colorado’s Justification for Its Counseling Ban Is Ideological and Hostile to an Objective Understanding of Sexuality.

The Tenth Circuit agreed with the district court’s finding that “the record ‘amply shows that the [MCTL] comports with the prevailing medical consensus regarding conversion therapy and sexual orientation change efforts,’” and that “Colorado considered the body of medical evidence regarding conversion therapy and sexual orientation change efforts—and their harms * * * and made the decision to protect minors from ineffective and harmful therapeutic modalities.” *Chiles v. Salazar*, 116 F.4th 1178, 1226

³⁷ Available at <https://www.apa.org/about/policy/resolution-sexual-orientation-change-efforts.pdf>.

(10th Cir. 2024) (quoting *Chiles v. Salazar*, 2022 WL 17770837, at *9 & n.10 (D. Colo. Dec. 19, 2022)). But the district court’s conclusions are not drawn from dispassionate review of evidence but from an “expert consensus” rooted in queer theory and fueled by sexual-identity politics.

A. The State’s scientific justification for restricting speech is undermined by the bias of its “experts” and their activist allies.

In support of its viewpoint discriminatory prohibition, Colorado relied on the “expert” testimony of Judith Glassgold, a licensed psychologist who specializes in LGBT issues. See Decl. of Judith Glassgold, D. Ct. Doc. 45-1 (Nov. 3, 2022) (Glassgold Decl.). But Glassgold’s declaration reads more like a pro-“affirmation” manifesto than an objective assessment of the science behind talk therapy for children with unwanted sexual attractions or gender confusion. For example, Glassgold references empirical studies, but her selection and framing of the evidence reveal a determined pattern: bolster the prevailing ideological narrative, exclude dissenting voices, and present the result as settled science. She emphasizes studies that describe harm from so-called “conversion” methods while brushing aside or disregarding research that reports beneficial outcomes for *talk therapy*. Compare Glassgold Decl. at 13 (“Systematic reviews and decades of empirical evidence have not found evidence of the effectiveness of CT change efforts[.]”), with Carolyn Pela & Philip Sutton, *Sexual Attraction Fluidity and Well-Being in Men: A Therapeutic Outcome Study*, 12 J. Human Sexuality 61–86 (2021) (showing through a “rigorous research

design” that “persons with unwanted same-sex attraction may reasonably expect to benefit from—and not to be harmed by—their participation in [therapy]”).

In one telling example, Glassgold rejects all positive SOCE findings as “anecdotal” or methodologically flawed, Glassgold Decl. at 13, but she does not apply the same level of skepticism to the anecdotal studies she embraces. That is not objectivity—it is selective validation. “While it is reasonable to conclude that more research is needed to better comprehend the extent of therapy-assisted sexual attraction fluidity, denying the potential for such a therapeutic process would seem to be much more a matter of ideological compulsion than it is one of theoretical or scientific implausibility.” Christopher Rosik, *Sexual Attraction Fluidity Exploration in Therapy (SAFE-T): Creating a Clearer Impression of Professional Therapies That Allow for Change*, 8 J. Human Sexuality 7 (2017).³⁸

B. Recent high-quality studies conclusively undermine Colorado’s purported “expert consensus.”

Colorado defends its speech restriction by invoking the supposed consensus of MMHAs. But that politically-driven consensus (lacking any evidentiary foundation) is rapidly unraveling. In the last few years, a growing body of rigorous evidence and clinical observation has cast serious doubt on the safety, efficacy, and ethical foundations for puberty blockers

³⁸ Available at https://www.journalofhumansexuality.com/_files/ugd/ec16e9_a799c779cc3e4e0780e31adc18658076.pdf.

(PBs), cross-sex hormones (CSHs), and surgical intervention for gender-distressed youth. These findings come not from fringe voices, but from well-respected clinicians, researchers, and national health authorities across the developed world.

1. The Cass Review. The most comprehensive of these emerging studies is the Cass Review, commissioned by NHS England and released in April 2024. Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People: Final Report* (2024) (the Cass Review).³⁹ The report fundamentally challenges the foundational assumptions behind pediatric gender medicine (PGM) by calling for a decisive departure from the “gender clinic” model of care in favor of psychotherapy.

Conducted over four years under the leadership of Dr. Hilary Cass, a respected pediatrician and former president of the Royal College of Paediatrics and Child Health, the Cass Review brought together expert analysis from the University of York and the National Institute for Health and Care Excellence (NICE). Recognizing the “increasingly toxic, ideological and polariz[ed] public debate” over gender identity, Cass Review, *supra* note 39, at 20, its conclusions were stark: the evidence supporting PBs, CSHs, and surgical intervention for gender-distressed youth lacked long-term outcome data and were often exaggerated or misrepresented, see *id.* at 13.

³⁹ Available at https://webarchive.nationalarchives.gov.uk/ukgwa/20250310144409mp_/https://cass.independent-review.uk/wp-content/uploads/2024/04/CassReview_Final.pdf.

A key recommendation of the Cass Review was to abandon the ideologically “transition” model in favor of talk therapy as a first-line intervention. See Cass Review, *supra* note 39, at 31. This shift reflects a growing international trend: guidelines from Finland and Sweden “recommend that psychotherapy—not hormones or surgeries—should be the standard of care for youth with GD, and that any use of hormones should be limited to nationally overseen research or exceptional circumstances.” *Id.* at 142. The reality is that gender-dysphoric youth frequently suffer from other complex psychological conditions—anxiety, depression, self-harm, and neurodevelopmental disorders such as autism—that often predate their gender dysphoria. See *id.* at 90–94. That being so, the report noted that most common rationale for “transition” procedures—that such interventions reduce suicidality—has no sound evidentiary basis. See *id.* at 33, 66.

LGBT advocacy groups swiftly attacked the Cass Review, accusing it of “degrading” “trans healthcare.” See Amelia Hansford, *LGBTQ+ Experts Criticise Cass Review in Open Letter to Health Secretary Wes Streeting*, PinkNews (Oct. 18, 2024);⁴⁰ see also World Prof.’l Ass’n for Transgender Health, *WPATH and USPATH Comment on the Cass Review* (May 17, 2024) (accusing the Cass Review of “depriv[ing] young trans and gender diverse people of the high-quality care they deserve and caus[ing] immense distress and harm to both young patients

⁴⁰ Available at <https://www.thepinknews.com/2024/10/18/open-letter-transactual-cass-review>.

and their families”).⁴¹ Such reactions only reinforce the central concern presented in this case: ideological agendas too often override objective evidence and patient autonomy.

2. The HHS Report. Colorado’s justification for its therapy ban further rings hollow under the recent report issued by the U.S. Department of Health and Human Services. See HHS Report, *supra* note 16. In its 2024 report, *Weighing the Benefits and Risks: A Review of the Evidence on Pediatric Gender Medicine*, HHS directly contradicts Colorado’s categorical prohibition of talk therapy for gender-dysphoric youth. The report noted that “the evidence supporting hormonal and surgical interventions is of low or very low certainty,” *id.* at 219, and that “[n]o independent association between gender dysphoria and suicidality has been found, and there is no evidence that pediatric medical transition reduces the incidence of suicide.” *Id.* at 16.

Relevant here, the report also noted that, “[r]egarding the potential harms of psychotherapy for adolescents with [gender dysphoria], a systematic review of the evidence found no evidence of negative or adverse effects in any of the studies examined.” HHS Report, *supra* note 16, at 219. That being so, HHS recommended “psychotherapy” as “a noninvasive alternative to endocrine and surgical interventions for the treatment of pediatric gender dysphoria.” *Id.* at 16. This is no small repudiation. It undercuts Colorado’s statutory regime, which not

⁴¹ Available at <https://wpath.org/wp-content/uploads/2024/11/17.05.24-Response-Cass-Review-FINAL-with-ed-note.pdf>

only permits but mandates one ideological approach—affirmation and medical transition—while prohibiting the very therapy HHS now recommends as a viable alternative to irreversible medical procedures.

As with the Cass Review, the MMHAs swiftly denounced the HHS Report, declaring that it “misrepresents the *current medical consensus* and fails to reflect the realities of pediatric care.” Press Release, Am. Acad. of Pediatrics, *AAP Statement on HHS Report Treatment for Pediatric Gender Dysphoria* (May 1, 2025) (emphasis added).⁴² That same day, the American Academy of Pediatrics, joined by the American Psychiatric Association and other MMHAs, issued a joint statement condemning “infringements on medical care” and declaring that medical standards of care should be “free from political interference.” Press Release, Am. Acad. of Pediatrics, *Leading Physician Groups Oppose Infringements on Medical Care, Patient-Physician Relationship* (May 1, 2025).⁴³

What is clear: MMHAs’ claimed monopoly over the “expert consensus” is unscientific, unsupported by evidence, and aimed at suppressing viewpoints. The government is prohibited from adopting such ersatz consensus as its rationale for unconstitutional restrictions on speech. Counselors are like a GPS. The client chooses the counseling goal and the counselor

⁴² Available at <https://www.aap.org/en/news-room/news-releases/aap/2025/aap-statement-on-hhs-report-treatment-for-pediatric-gender-dysphoria>.

⁴³ Available at <https://www.aap.org/en/news-room/news-releases/aap/2025/leading-physician-groups-oppose-infringements-on-medical-care-patient-physician-relationship>.

helps the client navigate the traffic to achieve the client's objective. Like GPS, the client, not the counselor, is in control of the intended destination. But Colorado's law frustrates the client by always misdirecting the client 180 degrees from the client's objective. Colorado's law not only violates the First Amendment because it is viewpoint-based, but it is also harmful to a person's mental health and well-being. This Court should liberate counselors and clients and strike down Colorado's dangerous law.

CONCLUSION

The decision below should be reversed.

Respectfully submitted.

ANITA L. STAVER
HORATIO G. MIHET
DANIEL J. SCHMID
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854

MATHEW D. STAVER
Counsel of Record
LIBERTY COUNSEL
109 Second Street NE
Washington, D.C. 20002
(202) 289-1776
court@lc.org

Counsel for Amicus

June 2025