

Nos. 22-1445 & 23-1002

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

KALEY CHILES,
Plaintiff-Appellant/Cross-Appellee,

v.

PATTY SALAZAR, in her official capacity as Executive Director of the Department
of Regulatory Agencies, *et al.*,
Defendants-Appellees/Cross-Appellants.

On Appeal from the United States District Court
for the District of Colorado

**BRIEF OF AMICI CURIAE THE TREVOR PROJECT, INC., AMERICAN FOUNDATION
FOR SUICIDE PREVENTION,
AND AMERICAN ASSOCIATION OF SUICIDOLOGY,
IN SUPPORT OF DEFENDANTS-APPELLEES/CROSS-APPELLANTS**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, The Trevor Project, Inc. certifies that it is a non-profit crisis services, advocacy and research organization that has no publicly held corporate parents, affiliates, and/or subsidiaries.

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae American Foundation for Suicide Prevention certifies that it is a non-profit health, research, education, and advocacy organization that has no publicly held corporate parents, affiliates, and/or subsidiaries.

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae American Association of Suicidology certifies that it is a non-profit health, research, education, and advocacy organization that has no publicly held corporate parents, affiliates, and/or subsidiaries.

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**IDENTITY AND INTEREST OF AMICI CURIAE AND SOURCE OF THEIR AUTHORITY
TO FILE THIS BRIEF**

The Trevor Project, Inc. (“The Trevor Project”), the American Foundation for Suicide Prevention (“AFSP”), and The American Association of Suicidology (“AAS”), respectfully submit this brief to summarize the overwhelming evidence linking conversion therapy to a significantly heightened risk of suicidality and other serious harms.

The Trevor Project is the nation’s leading lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ”) youth crisis intervention and suicide prevention organization. The Trevor Project offers the only nationwide accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. These services are used by thousands of youth each month. Through analyzing and evaluating data obtained from these services and national surveys, The Trevor Project produces innovative research that brings new knowledge, with clinical implications, to issues affecting LGBTQ youth.

AFSP is dedicated to saving lives and bringing hope to those affected by suicide. In carrying out its mission, AFSP funds scientific research, educates the public about mental health and suicide prevention, advocates for public policies in mental health and suicide prevention, and supports survivors of suicide loss and

those affected by suicide. To that end, AFSP funds research to better understand the experiences and suicide risk of LGBTQ people and supports public policies at the federal and state levels that improve mental health and reduce suicide risk for LGBTQ populations. AFSP is dedicated to improving access to evidence-based LGBTQ-affirming physical and mental health care that in turn reduces stigma, harm and suicide risk.

AAS is a nationally recognized organization comprised of public health and mental health professionals, researchers, suicide prevention and crisis intervention centers, survivors of suicide loss, attempt survivors, and others, that promotes the prevention of suicide through research, public awareness programs, education, and training. In addition to advancing suicidology as a science—developing and disseminating scholarly research on suicidology and suicide behaviors—AAS promotes public education and training for professionals and volunteers on suicide prevention and intervention. AAS is also an accrediting body for crisis services providers.

Amici have a special interest in this litigation as well as familiarity and knowledge of the significant harms that LGBTQ youth endure as a result of conversion therapy. *Amici* are deeply concerned a preliminary injunction in this case will place LGBTQ minors at an increased and substantial risk of suicidality. The

Trevor Project works firsthand with LGBTQ youth who have endured these harmful practices—and understands the devastating impacts that these treatments inflict, including an increased risk of suicide. Due to the increased and substantial risks of suicidality, *Amici* advocate to end the practice of conversion therapy against minors through public policy. For these reasons, The Trevor Project, AFSP, and AAS have a substantial interest in supporting the enforcement of laws prohibiting the practice of conversion therapy against minors.¹

Amici have obtained consent to file this brief from both parties and therefore may file it pursuant to Federal Rule of Appellate Procedure 29(a)(2).

¹ No party or party's counsel authored this brief in whole or in part or contributed money intended to fund preparing or submitting this brief. No person other than *amici*, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief. *See* Fed. R. App. P. 29(a)(4)(E).

INTRODUCTION

Substantial evidence shows LGBTQ youth subjected to conversion therapy are at risk of great harm, including a significantly increased risk of depression, anxiety and suicidality, which has resulted in an overwhelming medical consensus that minor patients must not be subjected to conversion therapy under the imprimatur of the mental health profession. Every mainstream medical and mental health organization has uniformly rejected the practice as harmful and ineffective. Conversion therapy providers exploit and exacerbate the fears of concerned parents while simultaneously deceiving them about the likelihood that their purported remedies will lead to the results they promise. Patients experience shame, anger, and depression and some engage in self-harm and even suicide.²

In view of this well-established medical consensus, the Colorado legislature, like the legislatures of 21 other states plus the District of Columbia, enacted the bipartisan Minor Conversion Therapy Law prohibiting the practice.³ Its authority to regulate unsafe medical treatments and protect minor children from medical treatments that put them at an increased risk of suicidality and other serious harms

² See *infra* p. [18–19].

³ Colo. Rev. Stat. §§ 12-245-202(3.5), 12-224(1)(t)(V), 12-240-104(5.5)(a), 12-240-121(1)(ee) (2022).

is well settled.⁴ Ms. Chiles’ arguments not only contravene decades of binding case law, her position that scientific evidence supports her claims, Br. of Appellant/Cross-Appellee at 11–12, is contrary to every major medical and mental health organization’s rejection of conversion therapy as unsafe, unsound, and ineffective.⁵ That medical consensus rests on extensive evidence-based and rigorous, peer-reviewed studies. The relief Ms. Chiles seeks would place minors in Colorado at risk of well-documented, serious and potentially life-threatening harms. As one survivor of conversion therapy explained to The Trevor Project, conversion therapy “didn’t change anything about me. The only thing it did was make me ashamed of who I was and what I wanted.”⁶

Amici urge this Court to affirm the district court’s decision and recognize the state’s authority—indeed, responsibility—to protect children from being subjected to this dangerous abuse by state-licensed mental health professionals.

⁴ See, e.g., *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) (“NIFLA”); *Tingley v. Ferguson*, 47 F.4th 1055 (9th Cir. 2022); *Evergreen Ass’n v. City of New York*, 740 F.3d 233 (2d Cir. 2014); *Sammon v. N.J. Bd. of Med. Examiners*, 66 F.3d 639 (3d Cir. 1995).

⁵ *Tingley.*, 47 F.4th at 1078 (“Every major medical and mental health organization’ has uniformly rejected aversive and non-aversive conversion therapy as unsafe and inefficacious.”).

⁶ See *infra* p. [18].

ARGUMENT

I. Colorado’s Statute Redresses Significant Harms to the Health and Safety of Minors.

The statute challenged by Ms. Chiles, Colorado’s Minor Conversion Therapy Law, prohibits the practice of conversion therapy—a practice by which professional therapists seek to impose a predetermined outcome regarding a person’s sexual orientation or gender identity under color of a Colorado-issued license to practice—for minors.⁷ The balance of equities weighs heavily in favor of the Colorado statute as it seeks to protect minors from the severe harms of conversion therapy, which can be a matter of life and death. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 26, 32 (2008).

An ever-growing body of rigorous, peer-reviewed studies spanning decades uniformly shows that conversion therapy is closely correlated with an elevated risk of suicide in minors, as well as other serious harms. The Trevor Project’s own data

⁷ See Colo. Rev. Stat. § 12-240-104(5.5)(a) (defining conversion therapy as “any practice or treatment . . . that attempts or purports to change an individual’s sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex); *id.* § 12-245-202(3.5)(a) (same); see also *id.* § 12-245-224(1)(t)(V) (prohibiting conversion therapy for minors); *id.* § 12-240-121(1)(ee) (designating the practice of conversion therapy for minors as unprofessional conduct).

echoes the overwhelming medical consensus that licensed mental health providers should not subject minor patients to conversion therapy under any circumstance. AFSP likewise “stands with the research, clinical expertise, and expert consensus of every major professional health organization in opposing the practice of conversion therapy” and “urges states to . . . protect LGBTQ youth by banning the discredited practice.”⁸ The baseline scientific principle that a treatment “is unsafe if its potential for inflicting death or physical injury is not offset by the possibility of therapeutic benefit,” *United States v. Rutherford*, 442 U.S. 544, 556 (1979), deems conversion therapy unsafe. Indeed, this is why the Colorado legislature enacted this statute,⁹ and why every leading medical and mental health organization over the past 20 years has warned that conversion therapy is unsafe and should not be performed on minors.

⁸ AFSP, *LGBTQ Individuals & populations*, <https://afsp.org/conversion-therapy-bans>.

⁹ Governor Polis explained, upon signing the bill, that it “will help so many people in Colorado to make sure that no one can be forced to attend a torturous conversion therapy pseudoscience practice.” Bente Birkeland, *Colorado’s Statewide Conversion Therapy Ban Is Now In Effect*, Colo. Pub. Radio (May 31, 2019) (quoting Gov. Polis), <https://bit.ly/3KLwLgT>.

A. The Trevor Project’s Data Confirms That Conversion Therapy Causes Significant Harm to LGBTQ Youth.

The Trevor Project is uniquely positioned to understand the significant dangers of conversion therapy. It has communicated with many individuals specifically about their experiences undergoing conversion therapy or their credible fear of being subjected to it. In the last year alone, youth from 49 states or territories, and more than 500 different cities and towns, raised the issue of conversion therapy in over 1,200 conversations with The Trevor Project.¹⁰

In May 2023, The Trevor Project released the results of a nationwide cross-sectional survey of over 28,000 LGBTQ individuals between the ages of 13 and 24 with representation from all 50 states and the District of Columbia.¹¹ The survey demonstrates that exposure to conversion therapy is a significant risk factor for suicidality. Five percent of LGBTQ youth reported having undergone conversion

¹⁰This information is derived from anonymized data that The Trevor Project has collected, compiled, and reviewed on its telephone, text, and chat platforms pertaining to conversion therapy in 2022. In order to protect the privacy of the youth using its services, The Trevor Project does not make this data publicly available.

¹¹ The Trevor Project, *2023 U.S. National Survey on the Mental Health of LGBTQ Young People* 3 (May 2023), https://www.thetrevorproject.org/survey-2023/assets/static/05_TREVOR05_2023survey.pdf [Hereinafter “2023 National Survey”].

therapy and ten percent reported being threatened with conversion therapy.¹² Among those subjected to or threatened with conversion therapy, 28% reported a suicide attempt in the past year.¹³ These individuals reported attempting suicide in the past 12 months at more than twice the rate of their LGBTQ peers who did not report undergoing or being threatened with conversion therapy (28% and 28% vs. 11%).¹⁴

Other key findings from The Trevor Project's report are:

- 41% of LGBTQ youth seriously considered attempting suicide in the past year, with about half of transgender and nonbinary youth having seriously considered suicide in the past year.¹⁵ 14% of LGBTQ youth attempted suicide within the past year.¹⁶
- 67% of LGBTQ youth reported experiencing symptoms of anxiety, and 54% of LGBTQ youth reported experiencing symptoms of depression.¹⁷ Symptoms of both were higher among transgender and nonbinary youth.¹⁸
- LGBTQ youth reported negative experiences at school, including being harassed because people thought they were LGBTQ (53%), not being

¹² *Id.* at 18.

¹³ *Id.* at 20.

¹⁴ *Id.*

¹⁵ *Id.* at 5.

¹⁶ *Id.*

¹⁷ *Id.* at 8.

¹⁸ *Id.* at 9.

allowed to dress in the way that fit their gender identity or expression (32%), and being disciplined for fighting back against bullies (25%).¹⁹

- 60% of LGBTQ youth reported that they have felt discriminated against due to their sexual orientation or gender identity, and 24% reported having been physically threatened or harmed due to their sexual orientation or gender identity.²⁰

The 2023 Survey's findings reinforce research conducted by The Trevor Project in prior years. In May 2022, The Trevor Project released results of a nationwide cross-sectional survey of nearly 34,000 LGBTQ individuals between the ages of 13 and 24.²¹ Six percent of LGBTQ youth reported having undergone conversion therapy and eleven percent reported being threatened with conversion therapy.²² Among those subjected to conversion therapy, 28% reported a suicide attempt in the past year.²³ Likewise, among those threatened with conversion therapy, 27% reported a suicide attempt in the past year.²⁴ These individuals reported attempting suicide in the past 12 months at nearly twice the rate of their

¹⁹ *Id.* at 14.

²⁰ *Id.* at 15–16.

²¹The Trevor Project, *National Survey on LGBTQ Youth Mental Health 3* (May 2022), https://www.thetrevorproject.org/survey-2022/assets/static/trevor01_2022survey_final.pdf.

²²*Id.* at 19.

²³*Id.*

²⁴*Id.*

LGBTQ peers who did not report undergoing or being threatened with conversion therapy (28% and 27% vs. 11%).

In June 2019, The Trevor Project released the results of another nationwide cross-sectional survey with over 34,000 LGBTQ individuals between the ages of 13 and 24.²⁵ Forty-two percent of LGBTQ youth who underwent conversion therapy reported a suicide attempt in the past year.²⁶ These individuals reported attempting suicide in the past 12 months more than twice the rate of their LGBTQ peers who did not report undergoing conversion therapy (42% vs. 17%). The highest rate of attempted suicide (57%) was found among transgender and nonbinary individuals who reported being subjected to conversion therapy.²⁷ Colorado-specific data from state officials paints a similarly dire picture: among high school students, 51.5% of transgender students, 44.1% of bisexual students, and 35.3% of gay or lesbian students displayed suicidality in 2019.²⁸

²⁵ The Trevor Project, *National Survey on LGBTQ Youth Mental Health 1* (June 2019), <https://www.thetrevorproject.org/wp-content/uploads/2019/06/The-Trevor-Project-National-Survey-Results-2019.pdf>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Colo. Dep't of Pub. Health & Envir., *Healthy Kids Colorado Survey Dashboard* (2019), <https://cdphe.colorado.gov/center-for-health-and-environmental-data/survey-research/healthy-kids-colorado-survey-data> (For step 1, select the

The Trevor Project likewise documented the harmful impacts of conversion therapy in a 2020 peer-reviewed article, reporting that LGBTQ youth who underwent conversion therapy were “more than twice as likely to report having attempted suicide” and more than three times as likely to report multiple suicide attempts in the past year compared to those who did not.²⁹

Access to supportive mental health professionals is a key concern for LGBTQ youth experiencing these issues. Eighty-one percent of LGBTQ youth indicated that they wanted mental health care.³⁰ Despite this, only 44% of those who wanted care were able to receive it.³¹ Many barriers prevent LGBTQ youth from accessing critical mental health services they need; among them are the fear of being outed by a mental health professional and the fear of their identity being misunderstood.³² Mental health professionals are a crucial resource for LGBTQ youth, but only when they provide supportive care in alignment with the rigorous standards set forth by major medical and mental health organizations.

year 2019. For step 2, select “Mental Health.” For step 3 select “Percentage of students who seriously considered attempting suicide during the past year.”).

²⁹ Amy E. Green et al., *Self-Reported Conversion Efforts and Suicidality Among US LGBTQ Youths and Young Adults, 2018*, 110 Am. J. Pub. Health 1221 (2020).

³⁰ 2023 National Survey, *supra* note [11], at 11.

³¹ *Id.*

³² *Id.* at 12.

The Trevor Project also maintains data regarding the people who use its crisis and suicide prevention services. Many LGBTQ youth who contact The Trevor Project in moments of crisis describe concerns or fears associated with conversion therapy.³³ Supervisors for The Trevor Project’s crisis services report that conversion therapy-related issues come up regularly, with LGBTQ youth raising it as a topic in over 1,200 conversations in 2022 alone. Youth who raised conversion therapy as a topic in 2022 were more than twice as likely to report suicidal ideation compared to other youth. And transgender and nonbinary youth were twice as likely to mention conversion therapy compared to other youth. Across The Trevor Project’s platforms, terms like “conversion therapy,” “reparative therapy,” and “ex-gay” appear hundreds of times.

While each LGBTQ youth might have a unique way of describing their experience with conversion therapy, the experiences are uniformly difficult. For many, conversion therapy is a source of deep anxiety. Some LGBTQ individuals contact The Trevor Project afraid because their families are threatening to send

³³ The information in this paragraph and the rest of this section is derived from anonymized data that The Trevor Project has collected, compiled, and reviewed on its telephone, text, and chat platforms pertaining to youth expressing concerns regarding access to restrooms and other facilities in school. In order to protect the privacy of the youth using its services, The Trevor Project does not make this data publicly available.

them to conversion therapy. Others are frightened that if they come out their family will force them into conversion therapy. Some youth report that this fear is reinforced by derogatory remarks regularly made by family members—for instance, that being LGBTQ “is a choice” or “demonic,” or that conversion therapy is necessary to “fix” them. Still other youth contact The Trevor Project because they are in conversion therapy, it is harming rather than helping them, and their feelings of isolation and failure contribute to suicidal thoughts and behaviors.

The harm caused by conversion therapy is not limited to the child subjected to it. LGBTQ youth regularly reach out to The Trevor Project because they worry for and want to help friends and loved ones who are being subjected to conversion therapy. LGBTQ youth have also contacted The Trevor Project in distress because a loved one has committed suicide during or after being subjected to conversion therapy. The Trevor Project has collected stories of conversion therapy survivors and allies over the years for purposes of creating educational resources and materials.³⁴ These stories illustrate the deep pain and trauma that conversion therapy can cause:

³⁴The information in this paragraph is derived from information that The Trevor Project has collected from volunteers and members of the public for educational purposes.

- “[F]or six months, I sat in a room with a therapist where the goal was to help me see . . . what the problem was with who I was attracted to and what I wanted in life . . . that was really scarring and very difficult I think conversion therapy is dangerous because it takes something inherent in who a person is and tells them no, actually, that’s wrong and it needs to be fixed I went through conversion therapy myself and I can say it didn’t change anything about me. The only thing it did was make me ashamed of who I was and what I wanted.”
- “I was in conversion therapy for five years of my early childhood, between the ages of 5–10. And I didn’t know that was conversion therapy. I didn’t have that language at the time It wasn’t until I was about 14–15 when I realized that I was a survivor of conversion therapy . . . [a]nd so I think it’s been a process for me to meet myself where I’m at and to give myself a lot of grace as I heal, as I move through depression, and rage, and doubt, and denial, and so much confusion. I’m still healing from that and so much more And I don’t ever know if there will be a moment that it just suddenly miraculously, poof, disappears, but it’s a daily struggle.”
- “[S]o we even developed a fund from our church to send people to conversion therapy, hoping they’ll change. And through the course of time, I realized that people weren’t changing And in fact, [] we’re not only seeing people not change, but people are actually getting worse. We saw like noticeable increase[s] [in] people’s depression and suicidal ideation and people [] doing self-harm I remember one conversation I had with a friend who confided to me that she was lesbian. . . . And she, like, pointed to a man that was sitting close by and she said [], imagine if I told you to look at that man and somehow figure out how to be attracted to him And I remember, like when she [] kind of illustrate[d] for me how impossible the situation was and made me realize, well, we’re asking people to do something that is beyond people’s capabilities of who they are.”³⁵

³⁵ The Trevor Project, *Learn With Love: Episode 1*, Youtube (Jan. 31, 2023), <https://www.youtube.com/watch?v=Yf8uH-GOQzc>.

The legal availability of conversion therapy exists as a coercive force in the lives of too many LGBTQ minors. Some who have contacted The Trevor Project have explained that, after coming out to their parents as LGBTQ, their unaccepting family members threatened to cut off contact and support unless they agreed to attend conversion therapy. Others have been estranged from family, with the restoration of relationships conditioned on consent to conversion therapy. This rejection caused these individuals considerable distress, and they felt like conversion therapy might be their “only” alternative.

B. Social Science Overwhelmingly Confirms the Significant Harm of Conversion Therapy on LGBTQ Youth.

Despite Ms. Chiles’ assertion that “science” supports her desire to practice conversion therapy, Br. of Appellant/Cross-Appellee at 7, decades of peer-reviewed, retrospective, case-control studies confirms the clear consensus that conversion therapy inflicts devastating harms upon LGBTQ people, especially LGBTQ youth.³⁶ Conversion therapy harms LGBTQ youth “by invoking feelings of rejection, guilt, confusion, and shame, which in turn can contribute to decreased

³⁶ See Amy Przeworski et al., *A Systematic Review of the Efficacy, Harmful Effects, and Ethical Issues Related to Sexual Orientation Change Efforts*, 28 *Clinical Psychology: Science and Practice* 81, 81 (2021), <https://psycnet.apa.org/fulltext/2021-45656-010.pdf>.

self-esteem, substance abuse, social withdrawal, depression, and anxiety.”³⁷ For that reason, “[n]o available research supports the claim that” conversion therapy efforts “are beneficial to children, adolescents, or families.”³⁸

The substantial body of rigorous, peer-reviewed research on the detrimental impacts of conversion therapy on LGBTQ youth is consistent with The Trevor Project’s data, discussed above.³⁹ A 2020 study found that exposure to conversion therapy **doubled** the odds of lifetime suicidal ideation, increased the odds of planning to attempt suicide by 75%, and increased the odds of a suicide attempt by 88% compared with those who had not undergone conversion therapy.⁴⁰ A

³⁷ AFSP, *Policy Priority: LGBTQ Individuals & Communities 2* (2023) <https://www.datocms-assets.com/12810/1677790627-lgbtq-individuals-populations-issue-brief-1-20-2023.pdf>.

³⁸ Substance Abuse & Mental Health Servs. Admin., *Moving Beyond Change Efforts: Evidence and Action to Support and Affirm LGBTQI+ Youth 9* (2023) <https://store.samhsa.gov/sites/default/files/pep22-03-12-001.pdf>.

³⁹ See, e.g., AAS, *Suicidal Behavior Among Lesbian, Gay, Bisexual, and Transgender Youth Fact Sheet* (2019), <https://suicidology.org/wp-content/uploads/2019/07/Updated-LGBT-Fact-Sheet.pdf> (“[Y]outh who have undergone conversion therapy [are] more than twice as likely to attempt suicide as those who did not.”).

⁴⁰ John R. Blosnich et al., *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, 1027 (2020), https://dworakpeck.usc.edu/sites/default/files/2020-10/Blosnich%20Henderson%20Coulter_0.pdf.

November 2018 study found that the rates of attempted suicide by LGBTQ young adults whose parents tried to change their sexual orientation during adolescence were **more than double** (48%) the rate of LGBTQ young adults who reported no conversion therapy experience (22%).⁴¹ The study also found that these rates were nearly **triple** for LGBTQ youth who reported both home-based efforts to change their sexual orientation by parents and intervention efforts by therapists and religious leaders (63%).⁴² More recent data shows the same increased risk: “Around 28% of U.S. LGBTQ youth who had experienced conversion therapy had attempted suicide within the previous 12 months as of 2021, compared to 11% of LGBTQ youth who had not experienced conversion therapy.”⁴³

Ms. Chiles tries to controvert the well-established body of research linking conversion therapy to increased risk of suicidality—to say nothing of the Colorado

⁴¹ Caitlin Ryan et al., *Parent-Initiated Sexual Orientation Change Efforts with LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment*, J. Homosexuality 10 (Nov. 2018), <https://www.utah.gov/pmn/files/513643.pdf>.

⁴² *Id.*

⁴³ Statista Rsch. Dep’t, *U.S. LGBTQ Youth Who Experienced Conversion Therapy and Attempted Suicide 2021*, Statista (May 10, 2022), <https://www.statista.com/statistics/1053024/lgbtq-youth-in-us-attempted-suicide-conversion-therapy-experience/>.

legislature’s findings—based on a single article by D. Paul Sullins.⁴⁴ Sullins purports to find that conversion therapy is not associated with suicidality once the analysis controls for people who express suicidality before they undergo conversion therapy.⁴⁵ But his research relies on cherry-picked data and outright misrepresentations. Contravening well-established medical consensus, Sullins relied on mismatched data to “control” for suicidality predating conversion therapy,⁴⁶ misrepresented the average length of conversion therapy efforts,⁴⁷ and artificially constrained his analysis to reduce the number of suicide attempts in the

⁴⁴ Br. of Appellant/Cross-Appellee 7, 12, 42, 43 (citing D. Paul Sullins, *Sexual Orientation Change Efforts Do Not Increase Suicide: Correcting a False Research Narrative*, 51 Archives of Sexual Behavior 3377 (Sept. 2022)).

⁴⁵ Sullins, *supra* note [47], at 3368–87.

⁴⁶ Ilan H. Meyer & John R. Blosnich, *Commentary: Absence of Behavioral Harm Following Non-Efficacious Sexual Orientation Change Efforts: A Retrospective Study of United States Sexual Minority Adults, 2016–2018*, 13 Frontiers in Psych. 997513, at 2 (2022) (showing that Sullins relied on data about a person’s last exposure to conversion therapy and assumed that any suicidality before that date predated any previous exposure to conversion therapy); John R. Blosnich et al., *Correcting a False Research Narrative: A Commentary on Sullins*, 52 Archives of Sexual Behavior 885, 885–87, (2023) (same).

⁴⁷ Meyer & Blosnich, *supra* note [44], at 2 (contradicting Sullins’ claim that conversion therapy usually lasts less than a year with evidence that the mean duration is 4.7 years and that 73% of people who reported attempting suicide before their last exposure to conversion therapy did so “within the period of a typical [conversion therapy] exposure”).

data set.⁴⁸ In short, his “analyses are predicated on a fabricated classification of temporal order” and are thus “invalid.”⁴⁹ The Court owes deference to legislative findings of fact because legislatures are “far better equipped than the judiciary to amass and evaluate the vast amounts of data bearing upon legislative questions.”⁵⁰ Ms. Chiles cannot overcome that deference with research with serious methodological issues, which fail to raise questions about the validity of the body of data on which the Colorado legislature relied.

Efforts to change the sexual orientation of LGBTQ people have also been shown to increase the prevalence of depression in LGBTQ people. A 2018 study showed that rates of depression were more than double (33%) for LGBTQ young adults whose parents tried to change their sexual orientation compared with those who reported no change efforts (16%), and more than triple (52%) for LGBTQ young adults who reported both home-based efforts to change their sexual orientation by

⁴⁸ *Id.* (explaining that Sullins looked for suicide attempts only in the year preceding interviews when the average interviewee had their last exposure to conversion therapy eighteen years earlier and when most reported suicidality occurred while individuals were in conversion therapy).

⁴⁹ Blosnich et al., *supra* note [49], at 887.

⁵⁰ *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195 (1997) (quotation marks and citation omitted).

parents and intervention efforts by therapists and religious leaders.⁵¹ These youth are also more likely to experience lower socioeconomic status as young adults.⁵²

The Centers for Disease Control and Prevention (“CDC”) confirmed in a June 2018 study that high school students who self-identify as lesbian, gay, or bisexual (“LGB”) experience a greater incidence of emotional distress than those who self-identify as heterosexual.⁵³ Researchers determined that these individuals are more than twice as likely to feel sad and hopeless; more than three times as likely to have seriously considered suicide or to have made a suicide plan; four times more likely to have attempted suicide; and more than four times as likely to have been injured in a suicide attempt.⁵⁴ The CDC also released a report focused on transgender high school students, with similar disparities in suicidality found among transgender compared to cisgender students as between LGB and straight students.⁵⁵

⁵¹ Ryan et al., *supra* note [41], at 10.

⁵² *Id.*

⁵³ Laura Kann et al., *Youth Risk Behavior Surveillance — United States, 2017*, 67 Ctrs. for Disease Control & Prevention Morbidity & Mortality Wkly. Rep. 23–28 (June 15, 2018), <https://www.cdc.gov/mmwr/volumes/67/ss/pdfs/ss6708a1-H.pdf>.

⁵⁴ *Id.*; see also Eliana Dockterman, *Transgender Teen’s Death Sparks Outcry From Advocates*, Time (Dec. 31, 2014), <http://time.com/3651037/leelah-alcorn-transgender/>.

⁵⁵ Michelle M. Johns et al., *Violence Victimization, Substance Use, and Suicide Risk Among Sexual Minority High School Students — United States, 2015–2017*, 67

LGBTQ youth experience a greater incidence of emotional distress not because of their sexual orientation, gender identity, or any other aspect of who they are, but because of persistent discrimination by those around them.⁵⁶ Support and acceptance can benefit LGBTQ youth significantly. Indeed, studies have shown that when LGBTQ students receive support through nondiscriminatory policies, like the statute here, they report lower levels of depressive symptoms, higher self-esteem, and greater educational achievement.⁵⁷

Morbidity and Mortality Wkly. Rep. 1211–15 (Nov. 2, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6743a4.htm>.

⁵⁶ Joanna Almeida et al., *Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation*, 38 *J. Youth & Adolescence* 1001, 1002 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3707280/pdf/nihms261853.pdf>.

⁵⁷ See Joseph G. Kosciw et al., GLSEN, *The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* 45, 49 (2016), <https://www.glsen.org/sites/default/files/2020-01/GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report.pdf>; see also Caitlin Ryan et al., *Family Acceptance in Adolescence and the Health of LGBT Young Adults*, 23 *J. Child & Adolescent Psychiatric Nursing* 205, 210 (2010), <https://pubmed.ncbi.nlm.nih.gov/21073595/>.

Ms. Chiles points to research showing that sexuality is not immutable.⁵⁸ But that does not support Ms. Chiles' argument. That some people experience changes to their sexuality overtime does not mean that they can will themselves to change nor does it suggest that *conversion therapy* is effective. Indeed, the very source Ms. Chiles cites explains that conversion therapy is “not only ineffective in changing sexual orientation but [is] psychologically damaging, often resulting in elevated rates of depression, anxiety, and suicidality.”⁵⁹ Ms. Chiles also asserts that children who question their gender identity often end up identifying with their sex assigned at birth.⁶⁰ Again, that argument is a non sequitur. That individuals undertake their own unique journeys to understand their gender identity says nothing about the efficacy or safety of conversion therapy.

The Colorado statute is therefore vital to protect LGBTQ youth and simply accept them as they are.

⁵⁸ Br. of Appellant/Cross-Appellee 6 (citing Lisa M. Diamond & Clifford J. Rosky, *Scrutinizing Immutability: Research on Sexual Orientation & U.S. Legal Advocacy for Sexual Minorities*, 53 J. of Sex Research 1, 2 (2016)).

⁵⁹ Diamond & Rosky, *supra* note [61], at 8.

⁶⁰ Br. of Appellant/Cross-Appellee 6 (citing Christina Buttons, *Finland's Leading Gender Dysphoria Expert Says 4 Out of 5 Children Grow Out of Gender Confusion*, Daily Wire (Feb. 6, 2023)).

C. Every Major Medical and Mental Health Organization Has Rejected Conversion Therapy as Scientifically Unsound, Harmful to the Recipient, and Ineffective at Changing Sexual Orientation or Gender Identity.

Every major medical and mental health organization has uniformly rejected conversion therapy as unsafe for minors and devoid of any scientific merit. The American Medical Association, the American Psychiatric Association, the American Academy of Pediatrics, the American Counseling Association, the American Psychological Association, the American School Counselor Association, the National Association of Social Workers, the American Academy of Nursing, the United States Department of Health and Human Services, and the World Health Organization have all denounced conversion therapy and declared that the practice cannot “cure” someone of their sexual orientation, gender identity, or gender expression.⁶¹ Indeed, there is nothing to “cure.”

⁶¹ See, e.g., Am. Psychol. Ass’n, *Just the Facts About Sexual Orientation and Youth* 6–9 (2008), <http://www.apa.org/pi/lgbt/resources/just-the-facts.pdf>; Am. Med. Ass’n, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations* H-160.991 § 1(c), <https://policysearch.ama-assn.org/policyfinder/detail/H-160.991?uri=%2FAMADoc%2FHOD.xml-0-805.xml>; World Health Org., “Cures” For An Illness That Does Not Exist: Purported Therapies Aimed At Changing Sexual Orientation Lack Medical Justification And Are Ethically Unacceptable 1 (May 17, 2012), http://www.paho.org/hq/?option=com_docman&task=doc_view&gid=17703&Itemid=270&lang=en; Am. Acad. of Nursing, *American Academy of Nursing Position Statement on Reparative Therapy*, 63 *Nursing Outlook* 368, 368–69 (May 2015),

The Substance Abuse and Mental Health Services Administration recently explained that conversion therapy is a “dangerous, discredited, and ineffective” practice linked to “significant harms such as increased risk of suicidality and suicide attempts, as well as other negative outcomes including severe psychological distress and depression.”⁶² The report notes that numerous professional associations (domestic and international alike) have taken action to end conversion therapy.⁶³

AFSP likewise supports “efforts to ban conversion therapy” because it “subject[s] clients to serious risks, [is] ineffective, and [is] scientifically invalid.”⁶⁴ The U.S. Surgeon General has warned that “[c]onversion therapy is not sound

[https://www.nursingoutlook.org/article/S0029-6554\(15\)00125-6/pdf](https://www.nursingoutlook.org/article/S0029-6554(15)00125-6/pdf); 87 Fed. Reg. 37189 (June 15, 2022).

⁶² Substance Abuse and Mental Health Services Administration, *supra* note [41], at 8.

⁶³ *Id.* at 30.

⁶⁴ AFSP, *supra* note 37, at 3, 5, 10; AFSP, *Recent Legislation Targeting the Rights of Trans Individuals Deepens Concerns Around the Mental Health of LGBTQ Communities: Leading Suicide Prevention Organization Strongly Opposes Bills that Can Harm the Mental Health and Wellbeing of LGBTQ People* (Apr. 26, 2023) <https://afsp.org/story/recent-legislation-targeting-the-rights-of-trans-individuals-deepens-concerns-aro>.

medical practice.”⁶⁵ And the American Academy of Child and Adolescent Psychiatry has noted that “‘conversion therapies’ should not be part of any behavioral health treatment of children and adolescents” because such practices “lack scientific credibility and clinical utility” and “are harmful.”⁶⁶

The professional consensus rejecting conversion therapy has been well established for over two decades. The American Psychological Association (“APA”) has opposed conversion therapy for decades. As early as 1998, it denounced “‘reparative’ or conversion therapy.”⁶⁷ In 2009, an APA task force found “no research demonstrating that providing [conversion therapy] to children or adolescents has an impact on adult sexual orientation” but did find significant

⁶⁵ Sunnivie Brydum, *WATCH: U.S. Surgeon General Opposes Conversion Therapy* (Apr. 10, 2015), <https://www.advocate.com/ex-gay-therapy/2015/04/10/watch-us-surgeon-general-opposes-conversion-therapy>.

⁶⁶ Am. Ass’n Child & Adolescent Psychiatry, *Fact Sheet – Conversion Therapy 3* (Sept. 2019), https://www.aacap.org/App_Themes/AACAP/docs/Advocacy/policy_resources/AACAP-conversion-therapy-issue-brief.pdf.

⁶⁷ Am. Psychiatric Ass’n, *Position Statement on Conversion Therapy and LGBTQ Patients* (Dec. 2018), <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-Conversion-Therapy.pdf>.

evidence that it “has the potential to be harmful.”⁶⁸ In 2020, the APA published a review of sexual orientation change efforts, including conversion therapy.⁶⁹ It found that “[p]articipation in [conversion therapy] is associated with numerous negative effects, including depression, suicidality, decreased self-esteem, and self-hatred as well as negative views of homosexuality, internalized homonegativity, sexual dysfunction, impaired familial and romantic relationships and decreased overall sexual attraction.”⁷⁰ In 2021, the APA published updated policy statements on sexual orientation and gender identity change efforts, condemning conversion therapy, and reaffirming that “sexual minority youth and adults who have undergone” efforts to change their sexual orientation “are significantly more likely to experience suicidality and depression than those who have not,” and that “minors who have been subjected to [this practice] have reported more suicide attempts than those who have not.”⁷¹

⁶⁸ APA, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* 4, 6 (2009), <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>.

⁶⁹ Amy Przeworski, *supra* note 36, at 81.

⁷⁰ *Id.* at 90 (citations omitted).

⁷¹ APA, *APA Resolution on Sexual Orientation Change Efforts* 5, 7 (Feb. 2021), <https://www.apa.org/about/policy/resolution-sexual-orientation-change-efforts.pdf>; *accord* APA, *APA Resolution on Gender Identity Change Efforts* 3 (Feb.

Likewise, the American Academy of Pediatrics has rejected conversion therapy since 1993, taking the position that “[t]herapy 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.”⁷² Since 1998, the American Psychiatric Association has likewise “opposed any psychiatric treatment, such as ‘reparative’ or conversion therapy.”⁷³

This consensus is echoed internationally. Despite Ms. Chiles’ reliance on cherry-picked statements by Finnish doctor Riittakerttu Kaltiala,⁷⁴ the World Health Organization’s Pan American Health Organization,⁷⁵ the European Psychiatric Association,⁷⁶ and World Medical Association have all denounced conversion

2021), <https://www.apa.org/about/policy/resolution-gender-identity-change-efforts.pdf>.

⁷² Am. Acad. Pediatrics, *Homosexuality and Adolescence*, 92 Pediatrics 631, 633 (1993); see also Jason Rafferty et al., *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 Pediatrics 4, 4, <https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for>.

⁷³ Am. Psychiatric Ass’n, *supra* note [70].

⁷⁴ Br. of Appellant/Cross-Appellee at 5. Kaltiala’s statements do not concern conversion therapy.

⁷⁵ Pan Am. Health Org., *“Cures” for an Illness that Does Not Exist*, (2012), <https://www3.paho.org/hq/dmdocuments/2012/Conversion-Therapies-EN.pdf>.

⁷⁶ European Psychiatric Ass’n, *EPA Statement on Conversion “Therapies” and LGBTQ Patients* (Jan. 2022),

therapy.⁷⁷ The Pan American Health Organization and European Psychiatric Association have not only called for a ban of conversion therapy as an “unjustifiable practice,” but have made clear that such practices should “be subject to adequate sanctions and penalties.”⁷⁸

D. Uninterrupted Enforcement of Colorado’s Law Is Crucial to Preventing this Significant Harm to LGBTQ Youth.

Colorado’s law is the state’s sole legal safeguard prohibiting health care practitioners from employing conversion therapy in a professional context. As such, the law furthers the public’s interest by directly protecting Colorado’s minors from conversion therapy—a dangerous, discredited, and ineffective practice that is linked to significant harms. A preliminary injunction would, at minimum, disrupt the enforcement of Colorado’s conversion therapy ban, immediately handing conversion therapy practitioners free reign to perpetrate life threatening harms on Colorado’s LGBTQ youth under the guise of healthcare.

Federal courts considering similar conversion therapy bans have denied

<https://www.europsy.net/app/uploads/2022/01/EPA-statement-on-ban-on-conversion-therapy.pdf>.

⁷⁷ World Med. Ass’n, *WMA Statement on Natural Variations of Human Sexuality*, (Oct. 2013), <https://www.wma.net/policies-post/wma-statement-on-natural-variations-of-human-sexuality/>.

⁷⁸Pan Am. Health Org., *supra* note [75]; European Psychiatric Ass’n, *supra* note [76].

preliminary injunctions because the practice poses grave risks to targeted youth and therefore jeopardizes the public interest. In upholding Washington state’s conversion therapy ban, the Ninth Circuit explained that “[a]s of 2015, every major medical, psychiatric, psychological, and professional mental health organization opposes the use of conversion therapy.” *Tingley*, 47 F.4th at 1064. In *Doyle v. Hogan* the court affirmed Maryland’s ban on conversion therapy pointing to the practice’s “negative effects on minors” including that “[r]eparative therapy (for minors, in particular) . . . has been proven harmful to minors,” and that “there is no scientific evidence supporting the success of these interventions[.]” 411 F. Supp. 3d 337, 346–47 (D. Md. 2019) (quotation marks omitted).⁷⁹ The balance of the equities lies in favor of continued enforcement of Colorado’s conversion therapy ban. *See Winter*, 555 U.S. at 20, 26, 32.

Colorado’s law is a critical safeguard protecting the state’s children from the significant—even life threatening—harms posed by conversion therapy. This Court should deny Ms. Chiles’ request for a preliminary injunction tailored to directly undercut the state’s capacity to ensure the health and safety of its most vulnerable residents.

⁷⁹ *Rev’d and vacated on other grounds*, 1 F.4th 249 (4th Cir. 2021).

CONCLUSION

This Court should affirm the district court's decision.

Dated: May 5, 2023

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), I certify that this brief complies with the applicable typeface, type style, and type-volume limitations. This brief was prepared using a proportionally spaced type (New Century Schoolbook, 14 point). Exclusive of the portions exempted by Federal Rule of Appellate Procedure 32(f), this brief contains [6,243] words. This certificate was prepared in reliance on the word-count function of the Microsoft Word 2016 software used to prepare this brief.

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CERTIFICATE OF SERVICE

I hereby certify that, on May 5, 2023, I electronically filed the foregoing brief with the Clerk for the United States Court of Appeals for the Tenth Circuit using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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