

Issue: LGBTQ+

LGBTQ+ Conversion Therapy Bans

What is Conversion Therapy?

Conversion therapy (also variously called reparative or ex-gay therapy) is a practice or treatment seeking to change an individual's sexual orientation or gender identity, including eliminating sexual attractions toward individuals of the same sex.¹ It seeks to “cure the gay”. The history of conversion therapy dates back to the beginnings of psychoanalysis in the late 19th century. For much of the 20th century homosexual orientation and transgender identity were considered pathological, and the psychiatric and medical community pursued techniques and theories seeking successful conversion therapy.² Following the Stonewall Riots in 1969 and the beginning of the gay rights movement, the American Psychiatric Association in 1973 removed homosexuality from the second edition of the *Diagnostic and Statistical Manual of Mental Disorders*, declared that no reliable evidence exists that conversion therapy works and opposed conversion therapy as unethical. It was not until 1990 that the World Health Organization removed homosexuality from its International Classification of Diseases (ICD-10).³ The consensus among medical and counseling authorities today is that there is no reliable evidence that conversion therapy works; on the contrary, there is evidence that the treatment is ineffective and harmful.

Supporters of Conversion Therapy Today

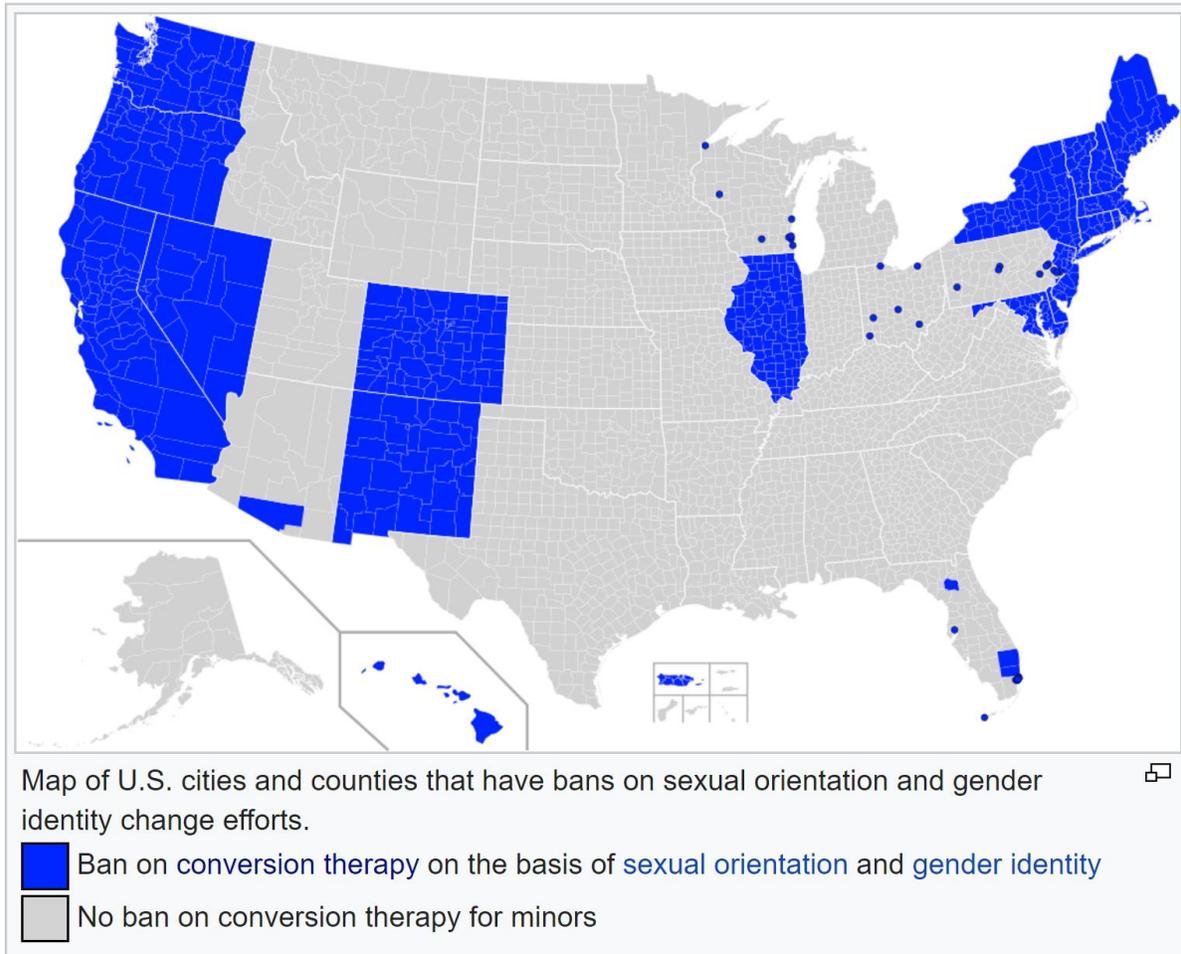
As the debate over homosexuality shifted from medicine and medical nomenclature, it moved into religious and political realms. Today, proponents of conversion therapy are generally limited to fundamentalist Christian groups, who base their support on religious rather than medical grounds, and the Republican Party, which bases its support on concepts of religious liberty⁴ (and is unwilling to break with the religious right). At its 2016 national convention, the Republican Party adopted a platform provision intended to support conversion therapy, stating “We support the right of parents to determine the proper treatment or therapy for their minor children”. This provision was one of several planks in general opposition to LGBTQ+ rights and interests, including provisions opposing same-sex marriage, opposing anti-discrimination rules based on sexual orientation, supporting the right to refuse goods or services, including medical services, based on the provider's religious views, and opposing the Obama administration's efforts to require restrooms to be available to persons based on their gender identity.⁵ Not to be outdone, the Texas Republican Party adopted a platform in 2018 that, among other similar provisions, explicitly prohibits bans on “access to sexual orientation [change] counseling for self-motivated youth or adults”; supports the rights of business to discriminate against anyone who offends their “sincerely held beliefs”; and opposes efforts to recognize transgender people's identity.⁶

Conversion Therapy Bans in the U.S. and Virginia

With the growing public acceptance of LGBTQ+ individuals and the narrowing of support for conversion therapy endorsed by religious conservatives, the idea of prohibiting conversion therapy, particularly for minors, has grown in acceptance. Starting with New Jersey and California in August 2013, and continuing with Colorado in August 2019, a total of 18 states, Puerto Rico and the District of Columbia have banned the practice of conversion therapy, with all such bans except those in New York and D.C. being limited to minors. These states are generally considered “blue” states except New

Mexico, Colorado and Nevada whose constituents are evolving. And seven of these states passed bans with a Republican governor in office. In addition, 53 counties, municipalities, and communities across the country, and one school board have passed conversion therapy bans. On August 3, 2019, Governor Roy Cooper of North Carolina signed an executive order banning the state funding of conversion therapy for minors, the first such action by a southern state.⁷

States, Counties and Cities with Conversion Therapy Bans



“Map of US Cities and Counties that have bans on sexual orientation and gender identity change efforts”⁸

Virginia has been unable to pass a legislative ban on conversion therapy. After efforts in prior years failed, two bills were introduced by Republicans in Virginia in 2019, one supported by the LGBTQ+ community and the other supported by faith-based organizations. The first bill (SB 1773) backed by the LGBTQ+ community would have directed medical regulatory boards to draft regulations defining conversion therapy for minors by licensed professionals as unprofessional conduct. The second bill (SB 1778) would have banned electroshock and aversion techniques but would have continued to permit talk and counseling as means of conversion therapy. Both bills died in committee.⁹ In a guidance document adopted on January 22, 2019, the Virginia Board of Psychology found that conversion therapy was inconsistent with the professional standard of avoiding harm to patients or clients and was generally regarded by national behavioral health and medical associations as ineffective and unsafe. The Board determined that licensed individuals practicing conversion therapy risk a finding of misconduct and disciplinary action. In its guidance document, the Board

cited the position of the Virginia Academy of Clinical Psychologists that conversion therapy should be considered a violation of standards of practice due to the potential for harm to the health of patients.¹⁰ Whether these actions by such professional regulatory boards will lead to legislation banning conversion therapy in Virginia remains to be seen.

First Amendment Challenges to Conversion Therapy Bans

As conversion therapy bans proliferated, defenders of the practice turned to arguments based on First Amendment freedom of speech to overturn the bans. Following U.S. Court of Appeals rulings in the 3rd and the 9th Circuits rejecting First Amendment challenges to state laws in New Jersey and California which ban conversion therapy for minors, a consensus began emerging among First Amendment scholars that conversion therapy bans fell within the principal that the government has greater discretion in its ability to regulate speech in the context of medical treatment. The U.S. Supreme Court declined to hear either case. However, there are now fractures in that consensus following an opinion by Justice Clarence Thomas in the 2018 *NIFLA v Becerra* case. The 5-4 decision (along partisan lines) invalidates disclosure requirements of “Crisis Pregnancy Centers” (anti-abortion family planning clinics) in California. Although this case was not focused on conversion therapy regulation, Justice Thomas included a passage in the decision that effectively mapped the groundwork for overturning laws banning conversion therapy by essentially arguing that withholding or providing misleading information is protected free speech under the First Amendment.¹¹

There is currently a case regarding a Tampa, Florida ban of conversion therapy in which the federal magistrate has found that the conversion therapy ban is unconstitutional insofar as it relates to non-coercive “talk” therapy as a First Amendment right. The federal judge assigned to the case who will ultimately decide this issue in the trial court is Judge William F. Jung, a Trump appointee.¹² Given the current trend in court rulings, conversion therapy bans based on the widespread professional view that conversion therapy is effectively medical malpractice by licensed practitioners regulated by state, county and city governments, may be invalidated in the near future. An increasingly conservative U.S. Supreme court may overturn conversion therapy bans based on First Amendment rights, while completely ignoring the government’s right to regulate medical malpractice committed upon LGBTQ+ minors.¹³ It is imperative, therefore, that legislators committed to the protection of LGBTQ+ rights recognize the real threat posed by conservative trending in this arena and step forward in state legislatures to represent the rights of all of their constituents and protect LGBTQ+ individuals from further harm.

¹ <https://www.dhp.virginia.gov/social/guidelines/140-12.pdf> Virginia Board of Psychology Guidance Document on the Practice of Conversion Therapy: 125-9, adopted March 15, 2019.

² https://en.wikipedia.org/wiki/conversion_therapy

³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4695779/#B64-behavsci-05-00565>

⁴ <https://slate.com/human-interest/2017/05/republican-governors-keep-signing-lgbtq-conversion-therapy-bans.html>

⁵ https://www.huffpost.com/entry/2016-republican-platform-full-text_n_578bce03e4b03fc3ee513eb9

⁶ <https://www.texasgop.org/platform>

⁷ https://en.wikipedia.org/wiki/list_of_U.S._jurisdictions_banning_conversion_therapy

⁸ Ibid

⁹ https://www.richmond.com/news/virginia/legislation-to-limit-sexuality-conversion-therapy-in-virginia-stalls-this/article_3419d07b-206c-5371-8c5a-ba2aa4701073.html

¹⁰ <https://www.dhp.virginia.gov/social/guidelines/140-12.pdf> Virginia Board of Psychology, Guidance Document on the Practice of Conversion Therapy: 125-9, adopted March 15, 2019.

¹¹ <https://slate.com/news-and-politics/2019/02/lgbtq-conversion-therapy-bans-clarence-thomas-supreme-court.html>

¹² Ibid

¹³ <https://www.washingtonpost.com/religion/2019/02/02/judge-says-tampa-conversion-therapy-ban-violates-first-amendment-free-speech-rights/>