

National Center for Lesbian Rights Fourth Quarter Report

Summary of Case Progress

In 2018, the State of Washington passed life-saving legislation prohibiting state-licensed therapists from trying to change the sexual orientation or gender identity of a patient under 18 years old. Every leading medical and mental health organization in the country has warned that these practices do not work and put young people at risk of serious harm, including depression, substance abuse, and suicide.

In 2021, an anti-LGBTQ legal group filed a federal lawsuit challenging the new law on behalf of Brian Tingley, a therapist and advocate of conversion therapy. NCLR successfully moved to intervene in the lawsuit on behalf of Equal Rights Washington (“ERW”), the state’s largest LGBTQ civil rights organization and a primary supporter of the law during the legislative process. ERW and the State of Washington urged the court to uphold the law in light of the overwhelming consensus of medical and mental health professionals that conversion therapy poses a serious risk to the health and well-being of Washington’s youth. In August 2021, the federal district court for the Western District of Washington upheld the law and rejected Tingley’s challenge.

The district court ruled that Tingley’s claims for violation of his free speech, due process, and religious liberty rights must be dismissed. The court based its ruling on earlier decisions of the Ninth Circuit Court of Appeals upholding California’s law protecting minors from conversion therapy. Tingley appealed to the Ninth Circuit, asking the court to overrule its earlier decisions upholding conversion therapy laws.

Tingley’s initial brief was filed in December 2021. NCLR filed its brief on behalf of Equal Rights Washington on January 14, 2022, and the State of Washington filed their brief on the same day. NCLR and the Washington State parties argue that two earlier Ninth Circuit cases require the Court to uphold the Washington law. They also argue that the subsequent decision of the U.S. Supreme Court in *NIFLA v. Becerra* further demonstrates that states may protect youth from harm by regulating treatment provided by licensed professionals.

On January 21, five amicus curiae parties, including leading national mental health and civil rights organizations, filed briefs asking the Ninth Circuit to uphold the Washington law. Organizations filing briefs included the American Psychological Association; the Trevor Project; the American Civil Liberties Union of Washington; a group of constitutional scholars including Alan E. Brownstein, Erwin Chemerinsky, and Brian Soucek; and the Fred T. Korematsu Center for Law and Equality.

Oral argument was held before a three-judge panel of the Ninth Circuit on May 17, 2022. A decision is expected within the next few months.

Significant Decisions

Order Granting Defendants' Motion to Dismiss and Denying Plaintiff's Motion for a Preliminary Injunction, United States District Court for the Western District of Washington, August 30, 2021.

Progress Anticipated in the Next Six Months

It is likely that the non-prevailing party in the appeal will either seek rehearing en banc before a larger panel of the Ninth Circuit or petition the Supreme Court of the United States to review the case.

If the State of Washington prevails before the Ninth Circuit, it is likely that Tingley will seek review in the Supreme Court. Depending on the reasoning of the Ninth Circuit's decision, Tingley may point to the Eleventh Circuit's decision in *Otto v. City of Boca Raton* as a decision that conflicts with the Ninth Circuit in arguing for review by the Supreme Court.

Media Coverage

<https://www.newsweek.com/therapist-must-stop-ex-gay-conversion-therapy-after-losing-lawsuit-overturn-ban-1626088>

<https://www.reuters.com/legal/government/court-weighs-washington-ban-lgbt-conversion-therapy-minors-2022-05-17/>

<https://www.q13fox.com/news/attorney-generals-office-defends-washington-law-banning-conversion-therapy>

<https://www.king5.com/article/news/politics/court-hears-challenge-states-conversion-therapy-ban/281-9dae41ac-6686-4142-9dc9-84c339de9b9a>

<https://www.kiro7.com/news/local/washington-attorney-general-bob-ferguson-defend-state-ban-conversion-therapy/ARWOPSYBUFE71MFYGW5PFXAM/>

<https://patch.com/washington/seattle/washington-goes-court-defend-conversion-therapy-ban>

Attorney Contacts

Shannon Minter, Legal Director (sminter@nclrights.org)

Christopher Stoll, Senior Staff Attorney (cstoll@nclrights.org)