

## FAMILY ISSUE FACT SHEET

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NO. 2020-15 (JANUARY 2020)

### **COUNSELING BAN: SB 1545, CONVERSION THERAPY; PROHIBITION, MINORS**

#### **EXECUTIVE SUMMARY**

SB 1545 is an unconstitutional counseling ban seeking to silence one form of professional speech by imposing a government-sanctioned understanding of human sexuality on licensed mental health professionals.

Under this bill, it is “unprofessional conduct” for a psychiatrist, homeopathic physician, psychologist, or behavioral health professional to provide “conversion therapy” to a minor, regardless of the willingness of the minor or the minor’s parents. In practical terms, they prohibit minors struggling with unwanted same-sex attraction or gender identity issues from receiving professional counseling.

This bill not only bans access to professional counseling for a segment of the population, but it unconstitutionally censors protected professional speech.

#### **WHAT DOES THIS BILL PROHIBIT?**

SB 1545 prohibits licensed health care professionals from engaging in so-called “conversion therapy.” The bill broadly defines “conversion therapy” as “*any* practice or treatment that seeks to change the sexual orientation or gender identity of a patient or client, including mental health therapy that seeks to change, eliminate or reduce behaviors, expressions, attractions or feelings related to the patient’s or client’s sexual orientation or gender identity.

However, the bill allows for treatment that assists, supports, and encourages gender transition and same-sex attraction.

The bill only provides a very weak exception for a clergy member, religious counselor, parent, or grandparent acting in those respective relational categories and not in the capacity of a health care professional.

In sum, this bill allows licensed mental health professionals to help minors with government-sanctioned therapeutic goals, but disallows them from helping minors with different therapeutic goals.

A recent poll of 600 Arizona likely voters found 73.2% would oppose legislation that prohibits parents’ ability to seek paid counseling and therapy they believe is best for their minor child?

#### **This Bill is Legally Problematic**

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Lawsuits are being filed challenging the counseling bans. New York recently repealed its counseling ban after David Schwartz, a psychotherapist, sued the state for unconstitutionally censoring his speech.

Schwartz wrote in the Daily News, “They have no right to intimidate my friends and colleagues into silence or force them to offer professional advice that only affirms same-sex behavior and identity. And politicians have no right to interfere with the therapy goals my patients have asked me to help them achieve.”<sup>1</sup>

Schwartz cites the results of a massive study that found no gene that causes someone to be attracted to the same sex.<sup>2</sup> The study found attraction was influenced by a complex combination of both genetic and environmental influences. This supports Schwartz’s opinion that same-sex attraction could possibly be treated with psychotherapy. In the end, his lawsuit was based on protecting his right to discuss the possibility with his patients.

## TOP 5 REASONS TO OPPOSE SB 1545

1. **It unconstitutionally censors protected professional speech** by telling licensed mental health professionals what type of counseling they can and cannot provide. Three recent U.S. Supreme Court decisions, *Masterpiece*, *Janus*, and *NIFLA*, clearly establish that professional speech is constitutionally protected and that it includes a person’s understanding of human sexuality. When faced with a lawsuit for a similar counseling ban in 2019, the City of New York decided to repeal its law rather than lose in court.
2. **It penalizes minors who disagree with the government-sanctioned understanding of human sexuality.** This bill *favors* minors with government-sanctioned beliefs about sexual orientation and gender identity, but *penalizes* minors with different beliefs by denying them access to professional counseling.
3. **It restricts the freedom of minors to determine their therapeutic goals.** Everyone, including minors, should be free to find therapy and support to help them achieve their desired therapeutic goals. These bills deny them that freedom.
4. **They deny fundamental parental rights.** Under ([A.R.S. § 1-602](#)), parents have a fundamental right to direct and oversee the health care of their children. These bills

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<sup>1</sup> Daily News, Sept. 18, 2019. <https://www.nydailynews.com/opinion/ny-oped-why-im-fighting-new-york-citys-conversion-therapy-ban-20190918-yz3ve5mnxzdnnfijqnlrpy2vii-story.html>

<sup>2</sup> Science Magazine, August 30, 2019. <https://science.sciencemag.org/content/365/6456/eaat7693>

violate that right by denying their children access to professional counseling they believe is critical to their child's wellbeing.

5. **They contradict Arizona's Free Exercise of Religion Act** ([A.R.S. § 41-1493.04](#)) which protects the right of licensed professionals to express sincerely held religious beliefs in a professional context, provide faith-based services, and make business decisions like client selection decisions. This bill guts these statutory rights for licensed mental health professionals.

## CONCLUSION

SB 1545 is an unconstitutional counseling ban seeking to silence one form of professional speech by imposing a government-sanctioned understanding of human sexuality on licensed mental health professionals. These bills not only censor constitutionally protected professional speech, but they remove the rights of therapists and their clients to determine their therapeutic goals.