

FAMILY ISSUE FACT SHEET

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SB 1325 PROFESSIONS; THERAPY

EXECUTIVE SUMMARY

Several state and local governments have passed unconstitutional counseling bans seeking to silence one form of professional speech by imposing a government-sanctioned understanding of human sexuality on licensed mental health professionals and their clients.

SB 1325 protects professional speech by prohibiting the passage of these laws that undermine an individual's or a parent's right to seek counseling for themselves or their children; or that seeks to silence therapists offering such counseling.

BACKGROUND

These so-called "Conversion Therapy" bans prohibit a behavioral health professional from providing talk therapy to an individual or a minor. In practical terms, they prohibit those struggling with unwanted same-sex attraction or gender identity issues from receiving professional counseling.

These laws not only ban access to professional counseling for a segment of the population, but they unconstitutionally censor protected professional speech. In addition, they infringe on the rights of individuals and parents to oversee the wellbeing of, and seek profession help for, themselves or their children.

Activists have ignored the fact that conversion therapy using questionable tactics hasn't been practiced in decades. Therapy for people struggling with unwanted same-sex attraction or gender identity issues receive the same type of talk-therapy used for treating anxiety, depression, or similar concerns.

WHAT DOES THIS BILL PROHIBIT?

SB 1325 protects professional speech by prohibiting governmental entities from banning or penalizing individuals who give or receive counsel consistent with conscience or religious beliefs. Simply put, it prohibits therapy bans that silence one form of professional speech by imposing a government-sanctioned understanding of human sexuality on licensed mental health professionals, and infringes on the rights of individuals and parents to seek help for themselves or their children.

A recent poll of 600 Arizona likely voters found 65%, including more than 61% of Democrats, would oppose legislation that prohibits parents' ability to seek paid counseling and therapy they believe is best for their minor child.ⁱ

COUNSELING BANS ARE LEGALLY PROBLEMATIC

The 11th Circuit Court of Appeals recently struck down “Conversion Therapy” bans in Boca Raton and Palm Beach County, ruling the bans violated the First Amendment because it was a content-based regulation on speech. The court stated, “The First Amendment has no carveout for controversial speech.”ⁱⁱ

New York City also repealed its counseling ban after David Schwartz, a psychotherapist, sued the city 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.”ⁱⁱⁱ

Schwartz cites the results of a massive study that found no evidence of a gene that causes someone to be attracted to the same sex.^{iv} The study found attraction was influenced by a complex combination of both genetic and environmental influences. This supports Schwartz’s contention 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 SUPPORT SB 1325

1. **Such counseling bans unconstitutionally censor 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. The 11th Circuit Court of Appeals struck down a counseling ban as unconstitutional. Further, 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. **Counseling bans penalize minors who disagree with the government-sanctioned understanding of human sexuality.** They *favor* people with government-sanctioned beliefs about sexual orientation and gender identity, but *penalize* those with different beliefs by denying them access to professional counseling.
3. **Counseling bans restrict the freedom of individuals 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 bans deny them that freedom.
4. **Counseling bans 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 bans violate that right by denying their children access to professional counseling that they believe is critical to their child’s wellbeing.

5. **Counseling bans 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. Counseling bans gut these statutory rights for licensed mental health professionals.

TALKING POINTS

1. **It is fundamentally wrong and unconstitutional to silence speech based on its content – banning one viewpoint, while allowing the opposing viewpoint. It’s not the government’s place to choose sides.**
2. **Parents have the fundamental right to direct the care and wellbeing of their children. Counseling bans infringe on those rights, and seek to force both parents and children to conform to government-sanctioned beliefs about human sexuality and gender.**
3. **Counseling bans unconstitutionally restrict the free speech of both professionals and clients seeking to discuss long-held and widespread beliefs about human sexuality and gender. Arizona should have no part in passing unconstitutional laws and the cost of losing a certain court challenge.**
4. **It is not the government’s place to dictate how an individual is to handle unwanted same-sex attraction or gender identity concerns. It’s up to the individual or parents to make those decisions for their children. Likewise, the government shouldn’t be telling professional counselors what they can and cannot talk about.**

CONCLUSION

SB 1325 protects the First Amendment rights of counselors by prohibiting government from banning or penalizing professional speech. Arizona should have nothing to do with unconstitutional bans on certain forms of counseling that silence one form of professional speech and infringe on conscience and religious rights.

ⁱ [Data Orbital 12/16-19, 2020 600N](#)

ⁱⁱ Robert W. Otto, Julie H. Hamilton v City of Boca Raton, FL, County of Palm Beach, FL, <https://media.ca11.uscourts.gov/opinions/pub/files/201910604.pdf>

ⁱⁱⁱ Daily News, Sept. 18, 2019. <https://www.nydailynews.com/opinion/ny-oped-why-im-fighting-new-york-citys-conversion-therapy-ban-20190918-yz3ve5mnxxdnnfjqnlrpy2vii-story.html>

^{iv} Science Magazine, August 30, 2019. <https://science.sciencemag.org/content/365/6456/eaat7693>