

FAMILY ISSUES FACT SHEET

No. 2021-15 (January 2021)

SB 1426/HB 2487 CONVERSION THERAPY; PROHIBITION, MINORS: SEXUAL ORIENTATION

EXECUTIVE SUMMARY

SB 1426 and HB 2487 are unconstitutional counseling bans seeking to silence one form of professional speech by imposing a government-sanctioned understanding of human sexuality on licensed health care professionals. They prohibit professional counseling of one viewpoint while protecting the opposing viewpoint within the same profession.

While the two bills differ in some respects, both state that it is “unprofessional conduct” for health care professionals to provide “conversion therapy” to a minor, regardless of the willingness of the minor. In practical terms, they prohibit minors struggling with unwanted same-sex attraction or gender identity issues from receiving licensed professional counseling unless the counseling promotes the government’s position.

These bills not only ban access to mental health professional counseling for a segment of the population, but they unconstitutionally censor protected professional speech.

WHAT DO THE BILLS PROHIBIT?

SB 1426 and HB 2487 prohibit licensed health care professionals from engaging in so-called “conversion therapy.” The bills broadly define “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 bills allow for treatment that assists, supports, and encourages gender transition and same-sex attraction.

HB 2487 expressly prohibits exceptions for religious beliefs, effectively infringing upon the religious rights of both professional and client.

SB 1426 exempts clergy or religious counselors only if they are acting substantially in a pastoral or religious capacity, not as a health care professional. Also exempt are parents and grandparents who are health care workers, but only if they are acting substantially in a parental role. These are weak exceptions considering they limit what counseling a minor can seek and a counselor may offer. These exceptions do nothing to remedy the infringement on First Amendment rights.

Both bills ignore the fact that today’s so-called “conversion therapy” is the same type of talk-therapy one would seek to work through depression or anxiety.

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

THESE BILLS 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 carve out for controversial speech."ⁱⁱ

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."ⁱⁱⁱ

Schwartz cites the results of a massive study that found no 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 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 1426 AND HB 2487

1. **They 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 similar counseling ban as unconstitutional. When faced with a lawsuit for a similar counseling ban in a separate 2019 case, the City of New York decided to repeal its law rather than lose in court.
2. **They penalize minors who disagree with the government-sanctioned understanding of human sexuality.** These bills *favor* minors with government-sanctioned beliefs about sexual orientation and gender identity, but *penalize* minors with different beliefs by denying them access to professional counseling.
3. **They restrict the freedom of minors to determine their therapeutic goals.** Everyone, including minors, should be free to find licensed profession therapy and support to help them achieve their desired therapeutic goals. These bills deny them that freedom.

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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 violate that right by denying their children access to licensed 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.

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 is 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 a minor is to handle unwanted same-sex attraction or gender identity concerns. Nor is it up to the government to choose whom a client can talk to. It is up to the parents to make those decisions for their children. Likewise, the government should not be telling professional counselors what they can and cannot talk about.**

CONCLUSION

SB 1426 and HB 2487 are unconstitutional counseling bans seeking to silence one form of professional speech by imposing a government-sanctioned understanding of human sexuality on licensed health professionals. These bills not only censor constitutionally protected professional speech, they remove the rights of therapists and their clients to determine their therapeutic goals. Moreover, they infringe on the rights of parents to decide what is best for their child's wellbeing.

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-yz3ve5mxxzdnfjqnlrpy2vii-story.html>

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