



ADVANCING FAITH, FAMILY AND FREEDOM

June 29, 2020

Energy and Commerce Subcommittee on Health
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Eschoo and Ranking Member Burgess:

The Subcommittee Hearing on “High Anxiety and Stress: Legislation to Improve Mental Health During Crisis” scheduled for June 30, 2020, will take up H.R. 5469, the Pursuing Equity in Mental Health Act of 2019.

We write to express grave concern and opposition to Section 303 of this bill, labeled “No Federal Funds for Conversion Therapy.” It is unnecessary, unjustified, and likely in contravention of the First Amendment protected freedom of Speech.

It is unnecessary because there is no evidence that either federal or state funds are being used anywhere in the United States to pay for what the sponsors call “conversion therapy” (which is better referred to as “sexual orientation change efforts,” or SOCE). If the bill’s sponsors have evidence that such taxpayer funding does occur, they should present that evidence explicitly. Otherwise, Section 303 is a solution in search of a problem.

However, even if such government funding could be identified, there would be no justification for Section 303. There is no reason why *voluntary* therapy for individuals who experience *unwanted* same-sex attractions or *unwanted* gender dysphoria should be singled out for more negative treatment under the law or government funding than any other therapy that seeks to achieve client-selected personal goals.

Hostility toward SOCE is driven by a number of claims—all of which are empirically false. Here are a few:

- Claim: People are born “gay” and can’t change.
 - This claim is FALSE. Four large data sets reflecting longitudinal analysis of the same individuals over time in population-based samples (three from the United States and one from New Zealand) demonstrate that significant change in each of the elements of sexual orientation (attractions, behaviors, and self-identification) is possible. Pro-LGB scholars Lisa Diamond and Clifford Rosky have said it is time to “abandon the immutability argument once and for all.” (See: <https://www.frc.org/sexualorientation>.)

- Claim: SOCE is never successful in changing someone’s sexual orientation.
 - This claim is FALSE. Thousands of people have testified to its success in helping them change. Nicholas A. Cummings, a former president of the American Psychological Association and former chief psychologist for Kaiser Permanente, wrote in *USA Today* that “of the patients I oversaw who sought to change their orientation, hundreds were successful.” (See: <https://www.frc.org/therapybans.>)
- Claim: “Conversion therapists” use “torture” such as electric shock therapy.
 - This claim is FALSE. Such practices have not been used regularly since the 1970s, and no critic has produced documented evidence of them being used anywhere in the U.S. for over three decades. SOCE therapy is virtually all “talk therapy”—just like any other psychotherapy or counseling.
- Claim: SOCE is always or almost always harmful to clients.
 - This claim is FALSE. There is no scientific evidence that SOCE is more harmful than any other type of therapy. The American Psychological Association has acknowledged that there is no “valid causal evidence” that SOCE is harmful. (See: <https://www.frc.org/therapybans.>)
- Claim: People are often coerced into undergoing conversion therapy.
 - This claim is FALSE. SOCE exists for the benefit of people with *unwanted* same-sex attractions. No SOCE therapist would treat a client who didn’t want to be there, because the client’s *motivation* to change is crucial to the therapy’s success.

As noted above and in our publications submitted with this letter, this therapy is virtually always “talk therapy” like any other psychotherapy. This means that restrictions could be unconstitutional under the First Amendment. In the *NIFLA v. Becerra* case decided in 2018, the Court dealt with a California law, supported by abortion proponents, which required pregnancy resource centers to post specific, government-prescribed notices. One network of pregnancy centers, the National Institute of Family and Life Advocates (NIFLA), sued. In a 5-4 decision, the U.S. Supreme Court struck down that law, ruling that it compelled the pregnancy centers to proclaim a message they didn’t want to speak, in violation of the First Amendment.

Like *NIFLA* in the pregnancy center context, defenders of the right to seek counseling to overcome unwanted same-sex attractions (and the right to offer such counseling) have argued that free speech also protects their activities. In challenges to laws banning SOCE, they argued that such laws in effect limit what a counselor or therapist may say to a client in the privacy of his or her office, thus infringing upon the free speech of the care-giver.

Courts in two federal circuits rejected those arguments. But one of those decisions, *Pickup v. Brown*, was cited *unfavorably* in Justice Clarence Thomas’s majority opinion in the *NIFLA* case.

He pointed out that the Court has not recognized “professional speech” as a separate category of speech, thus raising serious doubts about whether these therapy bans could survive scrutiny by the Supreme Court.

Sexual orientation change efforts have been helpful to many. At the same time, they pose no threat whatsoever to anyone who willingly embraces a gay, lesbian, or transgender identity.

We urge the removal of Section 303 from H.R. 5469. If this language is not removed before the bill comes to the floor for a vote, we will consider scoring the vote on our annual scorecard.

Sincerely,

A handwritten signature in black ink, appearing to be 'Travis Weber', written in a cursive style.

Travis Weber
Vice President for Policy and Government Affairs