

Testimony of Bruce Hausknecht, Esq.,

Re: House Bill 19-1129 Conversion Therapy Ban

Members of the Public Health Care & Human Services Committee:

My name is Bruce Hausknecht. I am an attorney and am currently employed as a legal analyst for Focus on the Family, specializing in constitutional issues involving the 1<sup>st</sup> and 14<sup>th</sup> Amendments. I've been a member of the Colorado bar since 1980. I would like to address the free speech problems created by this bill.

In my opinion, this bill violates the First Amendment rights of all of the licensees targeted by its prohibitions. As a preliminary point, I will concede that some state bans on sexual orientation change efforts have been upheld in two federal appellate courts in California and New Jersey against First Amendment challenges.

But those decisions came before the U.S. Supreme Court's June, 2018 decision in the case of *NIFLA v. Becerra*, 585 U.S. \_\_\_\_ (2018), (slip opinion beginning at p. 7), which rejected the notion, cited in the lower federal courts in the two cases discussed above, that limitations on "talk therapy" could be justified as a permissible regulation of "professional speech." The NIFLA Court declared: "But this Court has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.'"

What does that mean for this bill?

To the extent that HB 1129's ban on talk therapy by licensees is based on some notion that the state is permitted to regulate professional speech more strictly than non-professional speech, the distinction fails miserably. The *NIFLA* decision should put this Committee on notice that it cannot save this speech restriction by attempting to pigeonhole it under a "professional speech" exception to usual free speech principles.

An ongoing federal lawsuit over Tampa, Florida's conversion therapy ban is more instructive of how the federal courts are likely to treat the Colorado bill, if passed. A federal magistrate reviewing the case has recommended that Tampa's

ordinance be enjoined because it cannot be justified based on a “professional speech” argument, and constitutes an unconstitutional, content-based limitation on speech, viewpoint discrimination, is overly broad and unconstitutionally vague, and constitutes a prior restraint on speech. (Case 8:17-cv-02896-WFJ-AAS, Document 149, Filed 1/30/19, accessed at <http://lc.org/013019TampaPIOrder.pdf>)

The magistrate in the Tampa case correctly, in my opinion, recognized that the City is justified in prohibiting coercive, aversive therapy such as electroshock therapy. Thus, he limited the scope of his recommended injunction to any attempted enforcement against “non-coercive, non-aversive SOCE counseling – which consists entirely of speech, or ‘talk therapy’ – to minors.”

HB 1129 overreaches when it bans talk therapy – protected by the First Amendment - and as such, will not survive judicial scrutiny after *NIFLA*.

I would recommend abandoning the bill entirely.

As the Supreme Court said in the *NIFLA* case: “The best test of truth is the power of the thought to get itself accepted in the competition of the market, and the people lose when the government is the one deciding which ideas should prevail.”

Thank you for your time,

A handwritten signature in black ink, appearing to read "Bruce Hausknecht", with a long horizontal line extending to the right.

Bruce Hausknecht, Esq.

Focus on the Family

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Colorado Legislature  
House Public Health Care and Human Services Committee  
Testimony *Against* House Bill 19-1129 “Concerning Prohibiting A Mental  
Health Care Provider From Engaging In Conversion Therapy With A Patient  
Under Eighteen Years Of Age.”

Jeff Johnston  
Culture and Policy Analyst  
Public Policy Department  
Focus on the Family  
13 February 2019

Good morning Mister Chairman and Members of the Committee.

My name is Jeff Johnston. I testify on behalf of thousands of men and women who have left homosexuality – including myself – and those who have walked out of gender confusion. I also represent my wife and three sons. I love my wife; we’ve been married 25 years. My sons would not exist if I had not walked away from homosexuality. Supportive, encouraging help from licensed counselors played an important part in my leaving homosexuality. **I oppose denying that help to others who want it.**

I work as a Culture and Policy Analyst at Focus on the Family, so I represent tens of thousands of our Colorado constituents, and millions more across America. **We oppose House Bill 19-1129 for many reasons.** Here are just four of them.

**1. This legislation is a discriminatory, unconstitutional attack on religious freedom and people of faith.**

Some Christians believe and want to follow what Jesus taught: God created us male and female; and marriage is the union of a husband and wife. This bill denies help to minors who believe what Jesus taught but who have unwanted same-sex attractions or gender dysphoria that conflict with their faith.

Religiously-motivated clients should be able to work with licensed professionals to help them live according to their faith. Every mental health group acknowledges the importance of respecting a client’s spirituality.

**Please vote against this attack on religious freedom.**

**2. This bill is a flagrant assault on client autonomy and self-determination.**

Medical and mental health groups acknowledge the client’s right to determine the course of treatment. This legislation takes that right away from minors. Under this legislation, a thirteen-year-old boy who wanted help to stop viewing gay

pornography would not be able to work with a licensed professional to help him change his behaviors. It is not compassionate to deny that child the freedom to pursue his counseling goals.

**Please vote against this grievous assault on client autonomy and self-determination.**

### **3. This bill usurps parental rights.**

Colorado law states that parents “have a fundamental right and responsibility to make decisions concerning the care, custody and control of their children. The law has long presumed that parents act in the best interest of their children.” (C.R.S. 13-22-107 (2016))

Under this bill, parents with a gender-confused five-year old girl could not work with a licensed mental health professional to help the child work toward congruence with her female bodily reality.

**Please vote against this breach of parental rights.**

### **4. This bill unconstitutionally restricts therapists’ free speech.**

Therapy that is coercive or abusive or controlling is already unethical and against the law. Clients who feel damaged by a counselor – such as some of those testifying today – have the right to report a counselor who engages in unethical practice.

Informed therapists know what research and science show about homosexuality and transgenderism:

- Human sexuality is fluid.
- Homosexuality is not innate or unchangeable.
- People cannot change into the opposite sex.
- Gender Dysphoria can be resolved without resorting to hormones and surgery.

This legislation restricts counselors who know this and who help clients achieve their therapeutic goals, such as resolving gender confusion or dealing with unwanted same-sex thoughts, feelings, actions or identity according to their faith.

**Please vote against this unconstitutional attack on free speech.**

**I urge you to vote against this therapy ban and support religious freedom, client rights, parental rights and free speech. Thank you. I’d be happy to take any questions.**