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NOTES

PROHIBITING CONVERSION THERAPY TORTURE IN INDIANA: PROFESSIONAL MISCONDUCT AND NOT FREE SPEECH

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INTRODUCTION

The distinction between freedom of speech and professional misconduct becomes abundantly clear upon comparing their definitions. The First Amendment of the United States Constitution states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free speech exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”¹ Merriam-Webster defines “freedom of speech” as “the legal right to express one’s opinions freely.”² Additionally, the Collins Dictionary defines “professional misconduct” as “a violation of the rules or boundaries set by the governing body of a profession.”³ Furthermore, the College of Physiotherapists of Ontario expounds on this definition, using examples such as abusive, disgraceful, dishonorable, and unprofessional conduct as typical of professional misconduct.⁴

The U.S. Constitution does not protect all speech as free. Consider some hypotheticals. Imagine that the president of the United States reveals top-secret national security information without any prior clearance or permissible justification for his actions. He argues that he has a free speech right under the First Amendment to do so. Is he correct?

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1. U.S. CONST. amend. I.

2. *Freedom of Speech*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/freedom%20of%20speech> [https://perma.cc/D3X5-4CPS] (last visited Oct. 6, 2023).

3. *Professional Misconduct*, COLLINS DICTIONARY, <https://www.collinsdictionary.com/us/dictionary/english/professional-misconduct> [https://perma.cc/P24E-MNHM] (last visited Oct. 6, 2023).

4. *What Does Professional Misconduct Mean to Me?*, COLL. OF PHYSIOTHERAPISTS OF ONT., <https://www.collegept.org/registrants/PTaccountabilities/professional-misconduct-what-does-it-mean-to-me#:~:text=According%20to%20the%20dictionary%20it,Abusive%20conduct> [https://perma.cc/R4H9-S84D] (last visited Oct. 6, 2023).

Similarly, imagine a second scenario in which the president, during a press conference, begins screaming obscene, offensive, racist statements attacking foreign leaders. Again, he decides to justify his actions by arguing that it is his right to free speech under the First Amendment. Is he protected?

These two hypothetical situations highlight the clear distinction between free speech and professional misconduct, in which the president's actions in both situations undoubtedly constitute professional misconduct, likely subjecting him to disciplinary action. This distinction between free speech and professional misconduct is important. An ongoing debate and split circuit decisions analyze whether conversion therapy efforts against LGBTQ+ individuals are considered free speech under the First Amendment.

Many LGBTQ+ patients risk abusive conversion therapy treatment because conflicting court decisions and lax professional rules may sanction conversion therapy on LGBTQ+ patients. The United States Court of Appeals for the Ninth and Eleventh Circuits and the United States Supreme Court have made decisions in this conversion therapy debate. Furthermore, this pressing issue has been at the forefront of discussion in Indiana.

In early 2023, Indiana passed Senate Bill 350, effectively stopping local governments from regulating any services subject to state licensure.⁵ Consequently, Indiana is the only state where state law prohibits local-level bans on conversion therapy treatment.⁶ Senator J.D. Ford, an openly gay member of Indiana's General Assembly, recalled his own exposures to conversion therapy treatment as the "most hurtful, damaging and humiliating experiences of my life."⁷

Part I of this note defines relevant terms along with a brief history of homosexuality in the American Psychiatric Association's Diagnostic and Statistical Manual (DSM). Part II of this note thoroughly analyzes the jurisdictional split regarding licensed medical professionals subjecting LGBTQ+ patients to conversion therapy treatment. Through statistical analysis of various studies and recent cases, part III of this note argues against proven harmful conversion therapy treatment on members of the LGBTQ+ community. After providing Indiana statistics regarding conversion therapy, part IV of this note proposes a statutory ban in Indiana that would prohibit conversion therapy on LGBTQ+ patients by licensed medical professionals.

5. Leslie Bonilla Muñiz, *Senate Passes Bill Inspired by Conversion Therapy Dispute*, IND. CAP. CHRON. (Mar. 1, 2023), <https://indianacapitalchronicle.com/2023/03/01/senate-passes-bill-inspired-by-conversion-therapy-dispute-plus-more/> [https://perma.cc/C5SM-RSZA].

6. *Conversion "Therapy" Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/conversion_therapy [https://perma.cc/Q67J-TEXN] (last visited Oct. 6, 2023).

7. Muñiz, *supra* note 5.

I. OVERVIEW OF RELEVANT TERMS & DSM HISTORY OF HOMOSEXUALITY

A. Relevant Terms

First, consider the following definitions essential for thoroughly understanding this note. The Washington Legislature defines “[c]onversion therapy” as a regime seeking to change an individual’s sexual orientation or gender identity.⁸ Additionally, the U.S. Code defines “Licensed health professional” as “a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.”⁹ Indiana Code defines “Health care provider” as the following:

An individual, a partnership, a limited liability company, a corporation, a professional corporation, a facility, or an institution licensed or legally authorized by this state to provide health care or professional services as a physician, psychiatric hospital, hospital, health facility, emergency ambulance service, dentist, registered or licensed practical nurse, physician assistant, certified nurse midwife, anesthesiologist assistant, optometrist, podiatrist, chiropractor, physical therapist, respiratory care practitioner, occupational therapist, psychologist, paramedic, advanced emergency medical technician, or emergency medical technician, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person’s employment.¹⁰

B. History of DSM and LGBTQ+ Community

Several psychoanalysts viewed homosexuality as a pathological disease that deviated from “normal” heterosexual development.¹¹ In response, the American Psychiatric Association (APA) published its first edition of the Diagnostic and Statistical Manual (DSM-I), in which it listed “homosexuality” as a “sociopathic personality disturbance” mental disorder.¹² In the 1968 publication of the DSM-II, the APA reclassified homosexuality as a “sexual deviation.”¹³ The second edition of the American Psychiatric Association’s second version of its

8. WASH. REV. CODE § 18.130.020(4)(a) (2018).

9. 42 U.S.C.A. § 1396r(5)(G) (2021).

10. IND. CODE § 34-18-2-14(1) (2016).

11. Jack Drescher, *Out of DSM: Depathologizing Homosexuality*, 5 BEHAV. SCI. 565, 565-575 (Dec. 4, 2015) (discussing historical scientific theories leading to the placement of “homosexuality” in DSM-I and DSM-II as well as conflicting theories that led to its removal from the DSM).

12. *Id.* at 569.

13. *Id.*

Diagnostic and Statistical Manual (DSM-II) removed “Homosexuality” as a diagnosis in 1973.¹⁴

Alfred Kinsey, in conducting reports surveying thousands of non-psychiatric patients, “found homosexuality to be more common in the general population than was generally believed.”¹⁵ His revelation contradicted various psychiatric claims that homosexuality was extremely rare.¹⁶ In the late 1950s, psychologist Evelyn Hooker’s study of thirty gay men and thirty heterosexual people disproved beliefs that “all gay men had severe psychological disturbances.”¹⁷ Results of the study concluded the group of gay men had no more signs of psychological disturbances than the heterosexual group.¹⁸

The American Psychiatric Association’s 1973 revision served as a driving force toward the end of the social stigmatization of homosexuality by organized medicine.¹⁹ Following the American Psychiatric Association, the World Health Organization removed homosexuality from the Internal Classification of Diseases in 1990.²⁰ Cultural attitudes about homosexuality also began to change.²¹ To illustrate this cultural shift regarding the normalization of homosexuality, many countries began repealing laws criminalizing homosexuality, enacting protections for LGBTQ+ community members in the workplace, and facilitating gay parents’ adoption rights.²² Most importantly, the removal of homosexuality as a diagnosis from the DSM shifted the classification of homosexuality as a disease to focus on the particular health needs of the LGBTQ+ community.²³

II. EXAMINATION OF CIRCUIT SPLIT: IS CONVERSION THERAPY PROTECTED SPEECH UNDER THE FIRST AMENDMENT?

Subsection A of this circuit split discussion of the Ninth Circuit Court of Appeals’ decision in *Pickup v. Brown*.²⁴ Subsection B discusses a subsequent case, *National Institute of Family & Life Advocates. v. Becerra*, in which the Supreme Court abrogated part of *Pickup*.²⁵ Subsection C discusses *Tingley v. Ferguson*, a recent case that enhances the Ninth Circuit’s stance regarding whether conversion therapy is free speech under the First Amendment.²⁶ Lastly,

14. *Id.* at 565.

15. *Id.* at 569.

16. *Id.*

17. *Id.* at 569-70.

18. *Id.* at 570.

19. *Id.*

20. *Id.* at 571.

21. *Id.* at 572.

22. *Id.*

23. *Id.*

24. *Pickup v. Brown*, 740 F.3d 1208, 1223 (9th Cir. 2014), *abrogated by* Nat’l Inst. of Fam. & Life Advocs. v. *Becerra*, 585 U.S. 755 (2018).

25. Nat’l Inst. Of Fam. & Life Advocs. v. *Becerra*, 585 U.S. 755 (2018).

26. *Tingley v. Ferguson*, 47 F.4th 1055, 1065 (9th Cir. 2022).

subsection D discusses a 2020 decision in *Otto v. City of Boca Raton, Fla.*, in which the Eleventh Circuit issued differing opinions regarding conversion therapy and free speech debate.²⁷

*A. Overview of The Court of Appeals for the Ninth Circuit's
Pickup v. Brown Decision*

California's Senate Bill 1172 required mental health providers who chose to engage in sexual orientation change efforts (SOCE) to either wait until patients became 18 years old or risk professional discipline.²⁸ In enacting Senate Bill 1172, the legislature intended to protect the well-being of minors, including the LGBTQ+ community, against serious harms resulting from exposure to SOCE.²⁹ Various mental health providers offering SOCE therapy, organizations advocating for SOCE therapy, and children undergoing SOCE therapy and their parents sought a declaratory judgment.³⁰ The providers argued that state law prohibiting the licensed mental health providers from providing such therapy violated providers' constitutional rights.³¹ The district court granted plaintiffs' preliminary injunction against Senate Bill 1172 in *Welch v. Brown*.³² The court denied a similar request in *Pickup*, leading to interlocutory appeals.³³

When considering the First Amendment rights of professionals, the Ninth Circuit viewed the issue as a continuum.³⁴ The court explained, "[a]t one end of the continuum, where a professional is engaged in a public dialogue, First Amendment protection is at its greatest."³⁵ Furthermore, the court explained that "within the confines of a professional relationship, First Amendment protection of a professional's speech is somewhat diminished."³⁶ Lastly, at the opposite end of this continuum, and where the court believes Senate Bill 1172 falls, "is the regulation of professional *conduct*, where the state's power is great, even though such regulation may have an incidental effect on speech."³⁷

The Ninth Circuit held that California's state law ban on conversion therapy on minors does not violate the First Amendment, even when that treatment is performed solely through speech.³⁸ Applying rational basis review, the court found that Senate Bill 1172 advances California's legitimate state interest in

27. *Otto v. City of Boca Raton, Fla.*, 981 F.3d 854 (11th Cir. 2020).

28. *Pickup*, 740 F.3d at 1223.

29. *Id.*

30. *Id.* at 1224.

31. *Id.* at 1221.

32. *Welch v. Brown*, 907 F. Supp. 2d 1102, 1122 (E.D. Cal. 2012), *abrogated by Pickup*, 740 F.3d 1208 (9th Cir. 2014).

33. *Pickup*, 740 F.3d at 1221-22.

34. *Id.* at 1227.

35. *Id.*

36. *Id.* at 1228.

37. *Id.* at 1229.

38. *Id.* at 1230.

protecting the well-being of minors.³⁹ The court reasoned that California's conversion therapy ban at issue is a regulation of the conduct of state-licensed professionals, and any effects Senate Bill 1172 may have on free speech interests are "merely incidental."⁴⁰ The court made this determination by explaining that Senate Bill 1172 regulates treatment only and leaves "mental health providers free to discuss and recommend, or recommend against, SOCE."⁴¹ The Ninth Circuit's decision highlights its stance on the circuit split debate. This opinion, along with the Ninth Circuit's reasoning, is important to remember when analyzing subsequent cases such as the *National Institute of Family & Life Advocates v. Becerra*, which abrogated part of *Pickup*.⁴²

B. Overview of United States Supreme Court's decision in National Institute of Family & Life Advocates v. Becerra

Four years after *Pickup*, the Supreme Court decided *National Institute of Family & Life Advocates v. Becerra*. In this case, an organization of crisis pregnancy centers brought suit against various California officials after the governor signed the FACT Act.⁴³ They argued that state law required these licensed clinics to provide notice of services, including contraception and abortions.⁴⁴ They also urged that requiring unlicensed clinics to provide notice they were unlicensed violated their free speech rights under the First Amendment.⁴⁵ After the United States District Court for the Southern District of California denied the plaintiffs' motion for preliminary injunction, the Ninth Circuit affirmed this decision.⁴⁶ Then, the Supreme Court of the United States granted certiorari.⁴⁷

The Supreme Court held that the plaintiffs were likely to succeed in their claim that the California state law at issue, known as the FACT Act, violates the First Amendment.⁴⁸ The Court reasoned that "professional speech" does not constitute a separate category of speech.⁴⁹ Furthermore, the Court explained that states "may not, under the guise of prohibiting professional misconduct, ignore constitutional rights."⁵⁰ The Court abrogated *Pickup*, explaining that "[t]his Court has not recognized 'professional speech' as a separate category of speech. Speech is not unprotected merely because it is uttered by 'professionals.'"⁵¹

39. *Id.* at 1231.

40. *Id.*

41. *Id.*

42. *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 779 (2018).

43. *Id.* at 765.

44. *Id.* at 763-64.

45. *Id.* at 765.

46. *Id.*

47. *Id.*

48. *Id.* at 779.

49. *Id.* at 767.

50. *Id.* at 769 (citing *NAACP v. Button*, 371 U.S. 415, 439 (1963)).

51. *Id.* at 767.

The Court further explained the dangers associated with regulating professional speech, specifically highlighting how regulating professionals' speech "pose[s] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information."⁵² The Court clarified that making something a "profession" requires only "that it involves personalized services and requires a professional license from the State," giving states unconstrained power to reduce a certain group's First Amendment rights by imposing certain licensing requirements.⁵³ Consequently, the Court explained that "[s]tates cannot choose the protection that speech receives under the First Amendment, as that would give them a powerful tool to impose 'invidious discrimination of disfavored subjects.'"⁵⁴ In sum, the Court concluded, "neither California nor the Ninth Circuit has identified a persuasive reason for treating professional speech as a unique category exempt from ordinary First Amendment principles."⁵⁵ However, the Court followed up by acknowledging it "do[es] not foreclose the possibility that some such reason exists."⁵⁶

C. Overview of Court of Appeals for the Ninth Circuit's Tingley v. Ferguson Decision

Another four years later, in 2022, the Ninth Circuit weighed in on the issue when handing down its opinion in *Tingley v. Ferguson*. Washington law states that "[p]erforming conversion therapy on a patient under age eighteen" is a form of unprofessional conduct, which is subject to discipline.⁵⁷ Brian Tingley, a licensed marriage and family therapist in Washington, believes "sexual relationships are beautiful and healthy" only if they occur "between one man and one woman committed to each other through marriage."⁵⁸ Tingley filed suit against state officials in May 2021, alleging Washington's conversion therapy ban on minors violates his First Amendment rights to free speech and free exercise of religion while also claiming that the state law is unconstitutionally vague under the Fourteenth Amendment.⁵⁹ After the district court rejected Tingley's constitutional claims by applying *Pickup v. Brown*, Tingley appealed.⁶⁰

The Ninth Circuit held that Tingley's claims could not proceed under precedent from *Pickup v. Brown* and the "well-established tradition of

52. *Id.* at 771 (citing *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 641 (1994)).

53. *Id.* at 773.

54. *Id.* (citing *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 423-24 n.19 (1993)).

55. *Id.*

56. *Id.*

57. WASH. REV. CODE § 18.130.180(26) (2023).

58. *Tingley v. Ferguson*, 47 F.4th 1055, 1065 (9th Cir. 2022), *cert. denied*, 144 S. Ct. 33 (2023).

59. *Id.* at 1066.

60. *Id.*

constitutional regulations on the practice of medical treatments.”⁶¹ The court explained that *National Institute of Family & Life Advocates v. Becerra* abrogated only part of *Pickup* but did not abrogate its central holding that California’s ban on conversion therapy regulated professional conduct and only incidentally burdened speech.⁶² Therefore, the court explained that the decision in *Pickup* remained binding and thus controlled the outcome of Tingley’s case.⁶³

The court described California’s law as essentially identical to Washington’s law regarding a ban on conversion therapy, with the same purpose of protecting the well-being of minors from harmful exposure caused by conversion therapy treatment.⁶⁴ Furthermore, the court explained that the Washington Legislature considered evidence demonstrating “scientifically credible proof of harm” from conversion therapy to minors and acted rationally when preventing licensed providers from practicing conversion therapy on them.⁶⁵ While systematically reviewing the scientific research on conversion therapy presented to Washington, the American Psychiatric Association confirmed the research “showed harm from both aversive practices and non-aversive practices, such as talk therapy.”⁶⁶ The report concluded there is a “fair amount of evidence that conversion therapy is associated with negative health outcomes such as depression, self-stigma, cognitive and emotional dissonance, emotional distress, and negative self-image”⁶⁷ Moreover, the report indicated a significant percentage of surveyed people who have been a part of conversion therapy report negative health effects associated with these efforts.⁶⁸ Additionally, the court explained that Washington’s law belongs to a “long . . . tradition” of categories of speech that warrant lesser scrutiny regarding the First Amendment.⁶⁹

In December 2023, the United States Supreme Court denied the petition for a writ of certiorari in this case.⁷⁰ The Ninth Circuit’s decision, along with the subsequent denial of certiorari by the Supreme Court, importantly highlights their position that subjecting LGBTQ+ individuals to conversion therapy is not protected speech under the First Amendment. Considering these significant de-

the Court of Appeals for the Eleventh Circuit weighed in when issuing its opinion in *Otto v. City of Boca Raton*.

61. *Id.* at 1091.

62. *Id.* at 1077.

63. *Id.*

64. *Id.* at 1078.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* at 1079.

70. *Tingley v. Ferguson*, 144 S. Ct. 33 (2023).

*D. Overview of The Court of Appeals for the Eleventh Circuit's
Otto v. City of Boca Raton, Fla. Decision*

In 2017, both Palm Beach County, Florida, and the City of Boca Raton passed ordinances prohibiting sexual orientation change efforts based on legislative findings that these practices pose serious health risks to minors.⁷¹ Robert Otto and Julie Hamilton, licensed marriage and family therapists in Florida, provided counseling to minors with gender identity issues and same-sex attraction.⁷² Otto and Hamilton filed suit regarding the ordinances, alleging they were preempted by state law and violated their First Amendment rights.⁷³ Regarding the First Amendment claim, the court found that the therapists “failed to demonstrate a substantial likelihood of success on the merits.”⁷⁴ As to their preemption claim, the court found that even if the likelihood of success on the merits could be demonstrated, the plaintiffs could not demonstrate irreparable harm.⁷⁵ Consequently, the plaintiffs filed an interlocutory appeal.⁷⁶

While rejecting the *Pickup* case, the Eleventh Circuit held that conduct involved in talk therapy “consists—entirely—of words,” and “[t]he government cannot regulate speech by relabeling it as conduct.”⁷⁷ The court reasoned that if SOCE is conduct, the same could be said of protesting, teaching, and even book clubs, which are all activities consisting entirely of speech.⁷⁸ Furthermore, the Eleventh Circuit concluded the First Amendment “protects speech itself, no matter how disagreeable that speech might be to the government.”⁷⁹ Regarding SOCE specifically, the court asked, “What good would it do for a therapist whose client sought SOCE therapy to tell the client that she thought the therapy could be helpful, but could not offer it?”⁸⁰

The court reasoned, “Speech is speech, and it must be analyzed as such for purposes of the First Amendment.”⁸¹ Further criticizing the decision in *Pickup*, the court explained that it is not enough for the government to frame speech as conduct, and “[s]aying that restrictions on writing and speaking are merely incidental to speech is like saying that limitations on walking and running are merely incidental to ambulation.”⁸² The court explained that First Amendment restraints are not relaxed simply because the laws target “professional speech,”

71. *Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 859 (11th Cir. 2020).

72. *Id.* at 860.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 865.

78. *Id.*

79. *Id.* at 863.

80. *Id.*

81. *Id.* at 866.

82. *Id.*

and content-based restrictions may be justified “only if the government proves that they are narrowly tailored to serve compelling state interests.”⁸³

Although recognizing the government’s strong interest in protecting minors, the court explained that this interest “does not include a free-floating power to restrict the ideas to which children may be exposed.”⁸⁴ Applying a strict scrutiny standard to the First Amendment implication, the court explained that although these professional groups consist of well-educated people who presumably act in good faith, they “cannot define the boundaries of constitutional rights.”⁸⁵

These aforementioned cases shed light on the circuit split regarding whether conversion therapy is a protected free speech right under the First Amendment of the U.S. Constitution. Because conversion therapy is not a free speech right, it is essential that steps are taken to prohibit licensed medical professionals from subjecting LGBTQ+ individuals to harmful SOCE. The Eleventh Circuit exhibited faulty reasoning by ignoring the fact that examples such as protesting and speech in book clubs are inherently different than dialogue between licensed medical professionals and patients because licensed medical professionals must adhere to licensing standards.⁸⁶ Continually permitting medical personnel to conceal blatant discriminatory practices targeting LGBTQ+ individuals behind their status as a licensed professional must be put to rest.

III. POLICY ARGUMENTS FOR PROHIBITING CONVERSION THERAPY FOR LGBTQ+ PATIENTS BY LICENSED MEDICAL PROFESSIONALS

A. Arguing Against Disguising Medical Expertise as a Way to Push a Specific Agenda to Target the Rights of LGBTQ+ Patients

The National Alliance on Mental Illness, an organization advocating for the interests of those suffering from mental illness, describes conversion therapy treatment as a discredited practice that lacks evidential basis and “is opposed by all major medical organizations.”⁸⁷

Moreover, The American Psychiatric Association described the potential risks of conversion therapy as “great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient.”⁸⁸ The National Alliance on Mental Illness corroborated these findings, finding

83. *Id.* at 867-68.

84. *Id.* at 868.

85. *Id.* at 869.

86. FLA. STAT. § 456.072 (2021).

87. *Conversion Therapy*, NAT’L ALL. OF MENTAL ILLNESS, <https://www.nami.org/Advocacy/Policy-Priorities/Stopping-Harmful-Practices/Conversion-Therapy> [https://perma.cc/FY3B-RFLM] (last visited Oct. 9, 2023).

88. *Id.*

those subjected to conversion therapy “are at a greater risk for depression, anxiety, and self-destructive behavior such as drug misuse and suicide.”⁸⁹

According to a JAMA Pediatrics economic evaluation study and systematic literature review comprised of LGBTQ+ individuals of varying ages, there are high societal costs and a high economic burden associated with conversion therapy.⁹⁰ The study explained that individuals who experience sexual orientation and gender identity change efforts (SOGICE), also called conversion therapy, experience increased rates of depression, suicidality, substance abuse, and psychological distress.⁹¹ Furthermore, the study explained that the downstream effects of conversion therapy “are associated with lifetime excess costs of \$83366 per individual at risk, primarily associated with suicidality, anxiety, severe psychological distress, depression, and substance abuse,” which translates to “total costs of \$650 million for SOGICE in 2021, with harms associated with an estimated economic burden of \$9.23 billion.”⁹² When compared to LGBTQ+ people who did not undergo SOGICE, the study showed individuals who underwent SOGICE suffered several serious consequences, including severe psychological distress (47% vs. 34%), depression (65% vs. 27%), problematic substance use (67% vs. 50%), attempted suicide (58% vs. 39%), and attempted suicide causing moderate or severe injury (67% higher odds).⁹³

In addition to this study, Victor Madrigal-Borloz, the UN Independent Expert on sexual orientation and gender identity, stated conversion therapy practices are “inherently discriminatory” and they may amount to torture depending on the severity of pain and suffering inflicted on the victims.⁹⁴ In his report to the Human Rights Council, Madrigal-Borloz stated that conversion therapy often leads to pain and suffering that lasts far longer than the initial experience itself and may lead to damaged self-worth due to the combined effects of feeling powerless, humiliated, shameful, and worthless.⁹⁵ Furthermore, Madrigal-Borloz explained that the various methods of attempting conversion include “physical, psychological and sexual abuse, electrocution and forced medication, isolation and confinement, verbal abuse, and humiliation.”⁹⁶

In 2012, the Pan American Health Organization stated that conversion therapy “had no medical justification and represented a severe threat to health

89. *Id.*

90. Anna Forsythe, et al., *Humanistic and Economic Burden of Conversion Therapy Among LGBTQ Youths in the United States*, 176(5) JAMA PEDIATRICS 493, 493-501 (2022) (discussing a systematic literature review and economic evaluation gathering evidence of the consequences of conversion therapy among LGBTQ+ members in the United States).

91. *Id.* at 497.

92. *Id.* at 498.

93. *Id.* at 497.

94. ‘Conversion Therapy’ Can Amount to Torture and Should Be Banned Says UN Expert, UNITED NATIONS HUMAN RIGHTS (Jul. 13, 2020), <https://www.ohchr.org/en/stories/2020/07/conversion-therapy-can-amount-torture-and-should-be-banned-says-un-expert>.

95. *Id.*

96. *Id.*

and human rights of victims.”⁹⁷ Additionally, in 2016, the World Psychiatric Association recognized that “there is no sound scientific evidence that innate sexual orientation can be changed,”⁹⁸ while the Independent Forensic Expert Group declared conversion therapy “a form of deception, false advertising and fraud” in 2020.⁹⁹ Furthermore, conversion therapists’ claims of changing a person’s sexual orientation have never been supported by any credible scientific study, and the American Psychological Association Task Force found it unlikely that same-sex attractions would be reduced through sexual orientation change efforts based on research in its 2009 report.¹⁰⁰

The Trevor Project’s 2020 National Survey on LGBTQ+ Youth Mental Health found that 10% of LGBTQ+ youth who underwent conversion therapy reported more than twice the rate of attempted suicide in the prior year than LGBTQ+ youth who did not experience conversion therapy.¹⁰¹ Additionally, according to a 2018 study by The Family Acceptance Project, “[s]uicide attempts nearly tripled for LGBTQ+ young people who reported both home-based and out-of-home efforts to change their sexual orientation.”¹⁰² The Family Acceptance Project’s 2018 study also found that “[h]igh levels of depression more than doubled (33%) LGBTQ+ young people whose parents tried to change their sexual orientation compared with those who reported no conversion experiences (16%) and more than tripled (52%) for LGBTQ+ young people who reported both home-based and out-of-home efforts to change their sexual orientation.”¹⁰³

In light of the various studies and aforementioned statistics emphasizing the mental health struggles and associated financial burden that conversion therapy places on members of the LGBTQ+ community, putting a stop to this harmful discrimination is crucial. Licensed medical professionals should not be allowed to use their medical expertise to target LGBTQ+ patients by subjecting them to conversion therapy. Consequently, unexpected conversion therapy discussions from medical professionals may make LGBTQ+ individuals less likely to seek medical care for fear of facing such damaging discrimination.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Conversion Therapy: A Harmful Practice Targeting LGBTQ+ Youth*, EQUALITY TEX. <https://www.equalitytexas.org/conversion-therapy/> [https://perma.cc/B64J-YDXG] (last visited Sept. 22, 2024).

101. *Id.*

102. *Id.*

103. *Id.*

B. LGBTQ+ Patients Deserve the Right to Seek Medical Assistance Without Fear of Offensive Conversion Therapy Discussion and Discrimination

According to a 2020 survey of 1,528 LGBTQ+ individuals conducted by the Center for American Progress, more than one in three LGBTQ+ individuals, including nearly two in three transgender individuals, reported experiencing discrimination in the last year.¹⁰⁴ In this study, 15% of respondents stated they postponed or purposely did not seek medical care when sick or injured because of disrespect or discrimination from providers.¹⁰⁵ Moreover, 16% of all LGBTQ+ respondents stated they have postponed seeking preventive screenings in the past year because of disrespect or discrimination from healthcare providers.¹⁰⁶ Additionally, 47% of transgender respondents said they had experienced some form of negative or discriminatory treatment from a provider in the last year, while 20% of all gay, lesbian, queer, or bisexual respondents stated they experienced some form of negative or discriminatory treatment from a provider in the last year.¹⁰⁷ More specifically, 15% of transgender individuals responded that, in the prior year, doctors or other medical providers refused to provide care to them because of religious beliefs.¹⁰⁸ Consequently, 20% of all LGBTQ+ respondents reported avoiding doctor's offices to avoid such discrimination.¹⁰⁹ The respondents' answers to the various questions in the survey emphasize the clear presence of discriminatory treatment that LGBTQ+ members face when seeking medical treatment in the United States, highlighting the immense need for change to ensure protections for members of the LGBTQ+ community when seeking treatment.

B. Supreme Court Decisions Acknowledging LGBTQ+ Protections

In light of this statistical information highlighting the challenging discriminatory treatment and mental health struggles LGBTQ+ people endure, consider the 2003 decision in *Lawrence v. Texas*, which acknowledges the right for homosexual people to engage in same-sex sexual activity.¹¹⁰ In *Lawrence*, upon entering John Lawrence's apartment in response to a reported weapons disturbance, Houston police saw Lawrence engaging in a private, consensual sexual act with Tyron Garner.¹¹¹ The two men sued after they were arrested and

104. Lindsay Mahowald, Mathew Brady & Caroline Medina, *Discrimination and Experiences Among LGBTQ People in the US: 2020 Survey Results*, CTR. FOR AM. PROGRESS (Apr. 21, 2021), <https://www.americanprogress.org/article/discrimination-experiences-among-lgbtq-people-us-2020-survey-results/> [https://perma.cc/UGE2-DCV6].

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Lawrence v. Texas*, 539 U.S. 558, 578 (2003).

111. *Id.* at 563.

convicted of deviant sexual intercourse for violating a Texas statute forbidding same-sex intimate sexual conduct.¹¹² The Supreme Court, in holding the Texas statute violated the Due Process Clause, explained that two adults engaging in sexual practices in their home with full and mutual consent from each other are entitled to respect for their private lives.¹¹³

The Court stated, “Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government.”¹¹⁴ After acknowledging action taken in other nations affirming the protected right of same-sex adults to engage in intimate, consensual conduct, the Court recognized that “[t]here has been no showing that in this country the governmental interest in circumscribing personal choice is somehow more legitimate or urgent.”¹¹⁵ The Court reasoned that “[w]hen homosexual conduct is made criminal by the law of the State, that declaration in and of itself is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres.”¹¹⁶ Lastly, the Court, in recognizing the ability of future generations to identify oppressive laws that were once thought to be necessary and proper, stated, “As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.”¹¹⁷

Now consider the Supreme Court’s 2015 decision in *Obergefell v. Hodges*, which came twelve years after *Lawrence* and further emphasizes the nation’s forward-thinking trend toward LGBTQ+ acceptance.¹¹⁸ In *Obergefell v. Hodges*, same-sex couples brought an action alleging that the Michigan Marriage Amendment, which prohibited same-sex marriage, violated their constitutional rights.¹¹⁹ The Supreme Court of the United States held that “the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, couples of the same-sex may not be deprived of that right and that liberty.”¹²⁰ The Court reasoned that “the right to personal choice regarding marriage is inherent in the concept of individual autonomy.”¹²¹ Furthermore, referring to the same-sex couples in this case, the Supreme Court stated, “Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions.”¹²² Lastly, as the Court mentions, the petitioners in this case are asking for “equal dignity in the eyes of the law,” and “[t]he Constitution grants them that right.”¹²³

112. *Id.*

113. *Id.* at 578.

114. *Id.*

115. *Id.* at 576-77.

116. *Id.* at 575.

117. *Id.* at 579.

118. *Obergefell v. Hodges*, 576 U.S. 644, 670-71 (2015).

119. *Id.* at 654-55.

120. *Id.* at 675.

121. *Id.* at 665.

122. *Id.* at 681.

123. *Id.*

The recent case of *Obergefell*, along with *Lawrence*, shows the importance of our nation's progressive trend toward acceptance of the LGBTQ+ community in general, with the Court stating these exclusionary laws "impose stigma and injury of the kind prohibited by our basic charter."¹²⁴ The Court also highlights the changing history of marriage as a "characteristic of a Nation where new dimensions of freedom become apparent to new generations."¹²⁵ *Obergefell*, although focused primarily on marriage equality, highlights the Supreme Court's important recognition of the rights of the LGBTQ+ community, who should not face discrimination for wanting to exercise those rights.

The Supreme Court continued its trend of defending LGBTQ+ rights in *Bostock v. Clayton County, Ga.*, by upholding Title VII protections against sex discrimination and extending those protections to gay and transgender employees.¹²⁶ The case is comprised of three actions.¹²⁷ In the first action, Clayton County, Georgia, fired Gerald Bostock shortly after Bostock joined a gay recreational softball league.¹²⁸ In a separate action, Donald Zarda was fired by Altitude Express just days after mentioning he was gay.¹²⁹ In a third action, Aimee Stephens, who presented as a male when hired, was fired by R.G. & G.R. Harris Funeral Homes after she informed her employer she intended to "live and work full-time as a woman."¹³⁰ Each employee subsequently sued under Title VII of the Civil Rights Act of 1964, alleging sex discrimination.¹³¹ The employers argued that "the term 'sex' in 1964 referred to 'status as either male or female [as] determined by reproductive biology,'" while the employees argued the term was broader in scope and "reach[ed] at least some norms concerning gender identity and sexual orientation."¹³²

Holding that the employers violated Title VII of the Civil Rights Act of 1964, the Supreme Court explained, "There is simply no escaping the role intent plays here: Just as sex is necessarily a but-for *cause* when an employer discriminates against homosexual or transgender employees, an employer who discriminates on these grounds inescapably *intends* to rely on sex in its decisionmaking."¹³³ The Court further asserted that "[f]or an employer to discriminate against employees for being homosexual or transgender, the employer must intentionally discriminate against individual men and women in part because of sex," which Title VII has always prohibited.¹³⁴ Addressing the objection that Congress could not possibly have meant to protect disfavored

124. *Id.* at 671.

125. *Id.* at 660.

126. *Bostock v. Clayton Cty.*, 590 U.S. 644, 651-52 (2020).

127. *Id.* at 653.

128. *Id.*

129. *Id.*

130. *Id.* at 653-54.

131. *Id.* at 654.

132. *Id.* at 655.

133. *Id.* at 661.

134. *Id.* at 662.

groups, the Supreme Court explained that refusing enforcement solely because parties were unpopular at the time a law was passed “would not only require us to abandon our role as interpreters of statutes; it would tilt the scales of justice in favor of the strong or popular and neglect the promise that all persons are entitled to the benefit of the law’s terms.”¹³⁵

As society evolves and antiquated ways of thinking are shifting, it is essential now, perhaps more than ever, to look inward and ask, “If I were in this position, would I be willing to accept the blatant discrimination inflicted on me?” Putting oneself in another’s shoes and attempting to view a situation from a perspective different from one’s own is vital in moving toward a more accepting society that recognizes discriminatory, hateful, and damaging practices targeting the LGBTQ+ community as entirely unacceptable.

As circuit courts and the United States Supreme Court have issued opinions weighing in on whether conversion therapy efforts by licensed medical professionals constitute free speech under the First Amendment, a new law in the state of Indiana has brought this debate into focus.

IV. PROPOSED SOLUTION IN INDIANA

Regarding a proposed solution in Indiana, subsection A below first discusses various Indiana-specific statistics surrounding LGBTQ+ individuals. Then, subsection A discusses legislation in Indiana, leaving Indiana’s LGBTQ+ community at risk for encountering harmful, discriminatory conversion therapy practices. Lastly, subsection A proposes a statutory ban on conversion therapy in Indiana, along with an alternative option to repeal Indiana’s new law blocking local governments from regulating behavioral health and human services subject to licensing or certification.¹³⁶ Subsection B provides proposed statutory language regarding a ban on conversion therapy in Indiana.

A. Arguing for Indiana Statutory Ban on Conversion Therapy by Licensed Medical Professionals on LGBTQ+ Patients

The Trevor Project, the leading suicide prevention organization for young members of the LGBTQ+ community, tracks legislation and conducts research specific to the LGBTQ+ community.¹³⁷ According to research from The Trevor Project, roughly 18% of LGBTQ+ youth in Indiana reported being either subjected to or threatened with conversion therapy.¹³⁸ Director of State Advocacy Campaigns at The Trevor Project, Troy Stevenson, explained that

135. *Id.* at 677-78.

136. IND. CODE § 25-23.6-2-8.5 (2024).

137. Elliott Sylvester, *The Trevor Project Opposes Indiana Bill Undermining LGBTQ Youth Protections Against Conversion Therapy*, THE TREVOR PROJECT (Feb. 13, 2023), <https://www.thetrevorproject.org/blog/the-trevor-project-opposes-indiana-bill-undermining-lgbtq-youth-protections-against-conversion-therapy/> [https://perma.cc/WP9C-BJJC].

138. *Id.*

protections against conversion therapy exist in twenty-six states and roughly 100 municipalities throughout the country, and Indiana's current law puts LGBTQ+ members at risk due to its harmful legislation prohibiting protection against conversion therapy.¹³⁹

In 2022, the Trevor Project published its national survey for the first time, which is segmented by all fifty states and captures roughly 34,000 LGBTQ+ people ages 13-24 across the United States.¹⁴⁰ The survey data captures critical insights regarding barriers faced by LGBTQ+ community members, such as suicide risk, access to mental health care, and prevalence of anti-LGBTQ+ victimization.¹⁴¹ The Trevor Project's 2022 National Survey on LGBTQ+ Youth Mental Health revealed that roughly 45% of Indiana's LGBTQ+ youth considered suicide within the past year.¹⁴² The survey results also showed that 75% of LGBTQ+ youth in Indiana reported experiencing anxiety, while 58% reported experiencing depression.¹⁴³

Regarding specific challenges faced by LGBTQ+ youth in Indiana, The Trevor Project's 2022 National Survey results concluded that 39% experienced threats or physical harm based on sexual orientation or gender identity, while 76% experienced some degree of discrimination.¹⁴⁴ Moreover, regarding access to mental health care in Indiana, 62% of LGBTQ+ youth who sought mental health care in the past year were unable to receive it.¹⁴⁵ Of the 62% who were unable to receive mental health care, 48% stated they were afraid to discuss their mental health concerns with someone else, while 44% reported being afraid they would not be taken seriously.¹⁴⁶ These statistics highlight the prevalent dangers LGBTQ+ members face in Indiana, which could become far more damaging considering the harmful legislation exhibiting homophobic and transphobic trends within the state, including newly introduced laws in Indiana regarding conversion therapy.¹⁴⁷

Indiana is one of eight states with a "Don't Say LGBTQ" law explicitly censoring discussion of LGBTQ+ individuals or their issues in all school curricula.¹⁴⁸ These harmful and exclusionary laws explicitly prohibit teachers and staff from discussing any LGBTQ person, along with any issues faced by

139. *Id.*

140. THE TREVOR PROJECT, 2022 NATIONAL SURVEY ON LGBTQ YOUTH MENTAL HEALTH INDIANA 1 (2021).

141. *Id.*

142. Sylvester, *supra* note 137.

143. 2022 NATIONAL SURVEY ON LGBTQ YOUTH MENTAL HEALTH INDIANA, *supra* note 140 at 2.

144. *Id.* at 4.

145. *Id.* at 3.

146. *Id.*

147. Sylvester, *supra* note 137; *see also* IND. CODE § 25-23.6-2-8.5 (2024).

148. *LGBTQ Curricular Laws*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/curricular_laws [<https://perma.cc/ZF9C-8SZF>] (last visited Nov. 7, 2024); *see also* IND. CODE § 20-30-10-17 (2023).

members of the LGBTQ+ community.¹⁴⁹ Additionally, Indiana is one of twenty-four states that have passed a law banning transgender students from participating in school sports.¹⁵⁰ More frequent in K-12 schools, this restrictive legislation means that, for example, transgender girls are not allowed to play sports with other girls in the state of Indiana.¹⁵¹ Furthermore, Indiana is one of eight states with a law forcing the outing of transgender youth in schools.¹⁵² Since 2020, transgender individuals, particularly transgender youth, have been the target of legislative attacks with laws such as this one, which requires school staff members to out transgender children to their families, often with blatant disregard for the potentially harmful impact on these children.¹⁵³

Moreover, despite describing the bill as “clear as mud,” Indiana Governor Eric Holcomb signed Senate Bill 480 into law on April 5, 2023.¹⁵⁴ This bill “not only bans gender affirming surgery for minors (something that no hospital in Indiana does)—it bans nearly any gender affirming care and treatment provided by licensed health care professionals to their transgender and non-binary minor patients.”¹⁵⁵ Included in this ban is “the use of medications that delay puberty so that decisions about gender affirming care can be made when the patient is an adult.”¹⁵⁶ Lastly, Senate Bill 480 disrupts evidence-based care plans designed to thoughtfully care for transgender and non-binary youth by giving minors already receiving such medications six months to taper off of them.¹⁵⁷ These laws represent a series of legislative attacks on the LGBTQ+ community in Indiana. Consider these laws in addition to recent legislation surrounding conversion therapy in the state, which further emphasizes the prevalent and persistent homophobic and transphobic trends putting Indiana’s LGBTQ+ community at risk of discrimination and harm.

In early 2023, Indiana’s Senate passed Senate Bill 350 to block local governments from implementing certain bans on counseling and behavioral health services.¹⁵⁸ This bill originated over a pastor’s feud with the city of West

149. *LGBTQ Curricular Laws*, *supra* note 148.

150. *Bans on Transgender Youth Participation in Sports*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/youth/sports_participation_bans [https://perma.cc/SV2H-7A7T] (last visited Nov. 7, 2024); *see also* H.B. 1041, 122nd Gen. Assemb., Second Reg. Sess. (Ind. 2022).

151. *Id.*

152. *Forced Outing of Transgender Youth in Schools*, MOVEMENT ADVANCEMENT PROJECT, https://www.lgbtmap.org/equality-maps/youth/forced_outing [https://perma.cc/VBQ2-8QGR] (last visited Nov. 7, 2024); *see also* IND. CODE § 20-30-10-17 (2023).

153. *Forced Outing of Transgender Youth in Schools*, *supra* note 152; *see also* IND. CODE § 20-30-10-17 (2023).

154. Jane Harstock et al., *Op/Ed: Gov. Holcomb Signed a Bill He Called ‘Clear as Mud.’ We’re Confused and Concerned.*, *IndyStar* (Apr. 12, 2023), <https://www.indystar.com/story/opinion/2023/04/12/indiana-governor-called-sb-480-clear-as-mud-but-signed-it-anyway/70103354007/> [https://perma.cc/9ER3-EMLL]; *see also* IND. CODE § 25-1-22 (2023).

155. Harstock et al., *supra* note 154; *see also* IND. CODE § 25-1-22 (2023).

156. *Id.*

157. *Id.*

158. Muñiz, *supra* note 5; *see also* IND. CODE § 20-25-23.6-2-8.5 (2023).

Lafayette regarding a withdrawn ordinance banning unlicensed counselors from conducting conversion therapy.¹⁵⁹ Indiana Senator Jeff Raatz brought the bill on behalf of the church leader in West Lafayette, who opposed the city council over its proposed ban against conversion therapy efforts for minors.¹⁶⁰

Steve Viars, senior pastor at Faith Church of Lafayette, threatened to sue the city of West Lafayette when a proposed ordinance threatened to ban unlicensed practitioners from conversion therapy treatments with minors.¹⁶¹ The original West Lafayette ordinance would have prohibited unlicensed practitioners from practicing conversion therapy, which was defined as “any practices or treatments that seek to change an individual’s sexual orientation or gender identity, including efforts to change gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender.”¹⁶² Viars argued that the term “conversion therapy” was defined too broadly, stating that “we could possibly be accused of doing some of those things.”¹⁶³ After Viars argued before a committee that “there are plenty of other small churches doing good things in their community that need to have the freedom to practice,” the City of West Lafayette withdrew the ordinance.¹⁶⁴ Senators broadened the bill, effectively stopping local governments from regulating services subject to state licensure.¹⁶⁵

Consequently, this harmful law prevents state and local governments in Indiana from implementing critical safeguards against conversion therapy practices, which could lead to increased suicide risk and a decline in mental health outcomes.¹⁶⁶ Due to the harmful nature of Indiana’s enactment of Senate Bill 350, a statutory ban on conversion therapy in Indiana is necessary to ensure essential protections for members of the LGBTQ+ community.¹⁶⁷ Alternatively, Senate Bill 350 should be repealed to allow localities to implement their own bans.

In light of the statistical evidence, banning conversion therapy in Indiana is essential to combat the adverse mental health outcomes affecting many LGBTQ+ people. Members of the LGBTQ+ community have fought, and continue to fight, countless attacks fueled by hatred, discrimination, and blatant disregard for acceptance and equality. Accordingly, banning conversion therapy efforts to protect the rights and well-being of LGBTQ+ individuals in Indiana is imperative.

159. Muñiz, *supra* note 5.

160. Arika Herron, *Bill to Protect Churches Offering ‘Conversion Therapy’ Stalls in Indiana Senate*, *IndyStar* (Feb. 3, 2023), <https://www.indystar.com/story/news/politics/2023/02/03/indiana-statehouse-bill-protect-conversion-therapy-senate-bill-350-faith-church-lafayette/69867106007/> [<https://perma.cc/C2QM-G9M2>].

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. Muñiz, *supra* note 5; *see also* IND. CODE § 20-25-23.6-2-8.5 (2023).

166. Sylvester, *supra* note 137.

167. *Id.*

B. Conversion Therapy Ban in Indiana: Proposed Statutory Language

A. Purpose: The purpose of this section is to protect Indiana's LGBTQ+ community from sexual orientation change efforts, also called conversion therapy.

B. Definitions

1. Indiana Code defines "Health care provider" as the following:

An individual, a partnership, a limited liability company, a corporation, a professional corporation, a facility, or an institution licensed or legally authorized by this state to provide health care or professional services as a physician, psychiatric hospital, hospital, health facility, emergency ambulance service, dentist, registered or licensed practical nurse, physician assistant, certified nurse midwife, anesthesiologist assistant, optometrist, podiatrist, chiropractor, physical therapist, respiratory care practitioner, occupational therapist, psychologist, paramedic, advanced emergency medical technician, or emergency medical technician, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person's employment.¹⁶⁸

2. "'Sexual orientation change efforts' means any practices by [health care providers] that seek to change an individual's sexual orientation. This includes efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex."¹⁶⁹

a. This definition does not include psychotherapies providing (A) facilitation of individuals' coping, support, and self-exploration, including interventions to prevent unlawful conduct or address unsafe sexual behavior or practices; and (B) do not attempt to change individuals' sexual orientation.¹⁷⁰

C. Prohibition of Sexual Orientation Change Efforts

1. Under no circumstances shall a health care provider engage in sexual orientation change efforts with any individual of any age.

2. Any sexual orientation change efforts attempted on an individual by a health care provider shall be considered professional misconduct,

168. IND. CODE § 34-18-2-14(1) (1998).

169. S.B. 1172, 2011–2012 Leg., Reg. Sess. (Cal. 2012).

170. *Id.*

subjecting the health care provider to disciplinary action by the licensing entity for that health care provider.¹⁷¹

CONCLUSION

The current circuit split regarding the prohibition of conversion therapy by licensed medical professionals on LGBTQ+ patients, in conjunction with various scientific studies about the harmful effects of conversion therapy, highlights the importance of protecting LGBTQ+ individuals from such efforts. Without adequate protection from conversion therapy efforts, members of the LGBTQ+ community are undoubtedly at risk of being subject to these harmful practices, which may lead to various adverse and potentially lifelong effects.

Speaking from experience as a licensed medical professional, one of my primary concerns when advocating for patients, sexual orientation and gender identity aside, is the patient's best interest for achieving optimal health, happiness, and continued self-growth in the future. As someone who has been on the receiving end of prejudicial remarks by two different healthcare providers regarding my own sexual orientation, when licensed professionals use their status as medical experts to weave in conversations regarding conversion therapy, the focus of care shifts from being helpful to hurtful and discriminatory. Therefore, conversion therapy for LGBTQ+ patients by licensed medical professionals must be prohibited.

After discussing the history of homosexuality in the American Psychiatric Association's Diagnostic and Statistical Manual, this note examined the circuit split regarding this issue and how the courts justified their holdings. The various holdings and accompanying reasonings are essential in understanding the conflicting viewpoints of the central issue. They provided a foundation for this note to explore the significance of the circuit split with evidence from various studies and organizations. This note concluded that conversion therapy efforts harm patients, members of the LGBTQ+ community, and their extended families.

Specifically, by highlighting the numerous harmful and sometimes lifelong effects of conversion therapy including increased rates of anxiety, depression, and suicidal ideation, this note argued that conversion therapy efforts on LGBTQ+ patients by licensed medical professionals should be strictly prohibited. In addition to the numerous harmful effects of conversion therapy, this note discussed the economic burden of conversion therapy, despite no existence of any credible studies showing conversion therapy efforts may actually change a person's sexual orientation. Furthermore, this note highlighted United States Supreme Court decisions focusing on the rights of the LGBTQ+ community.

Lastly, this note argued for a statutory ban on conversion therapy in the state of Indiana, where current law prohibits local governments from banning

171. *Id.*

conversion therapy practices. While highlighting Indiana statistics regarding conversion therapy and other legislation targeting the LGBTQ+ community, this note argued for much-needed protection for LGBTQ+ community members against the harmful effects associated with conversion therapy efforts. Moreover, this note provided an example of statutory language to potentially be used to enact legislation preventing conversion therapy efforts in Indiana.