



January 24, 2023

Members of the Health Finance and Policy Committee
State Office Building
100 Rev. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: Legislative Testimony HF 16

Dear Members,

True North Legal is a non-profit legal organization that advocates for life, family, and religious freedom on behalf of all Minnesotans. We offer a high-level analysis regarding significant legal and policy concerns regarding HF 16.

HF 16 prohibits licensed counselors in Minnesota from providing “conversion therapy”, thus creating barriers to counseling services impacting all Minnesotans. This bill distorts the usual functioning of the counseling relationship—a private medium of expression—to suppress speech the government disfavors. These bans are unnecessary, unconstitutional, and cause more harm than the good this bill proposes to remedy.

The plain language of the bill leaves no question that the intent is not to ban egregious therapy practices sometimes associated with conversion therapy—such as electric shock therapy, nausea-inducing drugs, and castration—as such legislation would have already passed the legislature with bipartisan support. Rather, HF 16 is an attempt to silence those who hold a certain viewpoint about sexual orientation and gender identity.

HF 16 prohibits minors and vulnerable adults from accessing critical counseling and mental health care, based on self-selected counseling goals. The bill as proposed renders it impossible for individuals who desire to live consistent with their sex to accomplish their mental health goals or exercise their fundamental right to self-determination. Children in particular¹, need the space and time to process their feelings and even confusion about their sex with a licensed counselor, but this bill offers only one option for them—a pathway to experimental medicine and irreversible bodily harm.²

Equally concerning, HF 16 seeks to provide the government with impermissible censorship over a broad range of legally protected activities while threatening violators with severe consequences. Under the proposed legislation, faith-driven activities could be considered fraudulent and deceptive practices, subjecting anyone who engages in them to ruinous lawsuits, punitive damages, and attorneys’ fees. It rejects Justice Kennedy’s admonition in *Obergefell v. Hodges*, that “religious organizations and persons [be] given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths.”³

¹ *The NHS Ends the “Gender-Affirmative Care Model” for Youth in England*, SEGM (Oct. 2022) <https://www.segm.org/England-ends-gender-affirming-care> (accessed January 23, 2023) (finding that after “extensive stakeholder engagement and a systematic review of evidence, England’s National Health Service (NHS) has issued new draft guidance for the treatment of gender dysphoria in minors, which sharply deviates from the ‘gender-affirming’ approach.”).

² Abigail Shrier. *Irreversible Damage: The Transgender Craze Seducing Our Daughters*. Regnery Publishing, 2020.

³ *Obergefell v. Hodges*, 135 S. Ct. 2584, 2607 (2015).



HF 16 is arguably unconstitutional and would invite legal challenges if passed. In November, 2020, a federal appellate court struck down a ban narrower than Minnesota’s proposed language as an infringement on constitutionally protected free speech under the First Amendment⁴. Further, the United States Supreme Court signaled its position on these bans in *National Institute of Family and Life Advocates (NIFLA) v. Becerra*.⁵ Consequentially, HF 16 as introduced in Minnesota presents the same constitutional infirmities, as this legislation: 1) censors constitutionally protected speech of licensed counselors, clients, and many others, based on content and viewpoint; 2) is impermissibly vague and entirely subjective; 3) infringes on the free exercise of religion; 4) strips parents of constitutionally protected rights; 5) extends its reach over the choices of otherwise competent adults in its application to vulnerable adults; and 6) impermissibly regulates speech under the guise of regulatory conduct, with prohibitions that reach far beyond counseling.

Any legislative body that votes to strip counseling and mental health care from individuals desiring to reconcile their hearts and minds with what many believe to be their God-given sex sends a clear message—in Minnesota, you do not matter. There is simply no way to justify legislation that seeks to ban speech and exclude certain individuals from receiving care and counseling to achieve their mental health goals. Government officials will likely expose themselves to costly and time-consuming litigation if they choose to enact the unconstitutional proposals in HF 16.

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⁴ *Otto v. City of Boca Raton*, 981 F. 3d 854, 864 (11th Cir. 2020).

⁵ *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 2371 (2018)). More specifically, the Court cited to the erroneous conclusions in *King v. Governor of the State of New Jersey*, 767 F.3d 216, 232 (3d Cir. 2014) (“[A] licensed professional does not enjoy the full protection of the First Amendment.”), and *Pickup v. Brown*, 740 F.3d 1208, 1229 (9th Cir. 2014) (“Most, if not all, medical and mental health treatments require speech, but that fact does not give rise to a First Amendment claim when the state bans a particular treatment.”).