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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

BRIAN TINGLEY,)
)
Plaintiff,)
)
v.)
)
ROBERT W. FERGUSON, in his official)
capacity as Attorney General for the State)
of Washington; **UMAIR A. SHAH,** in his)
official capacity as Secretary of Health for)
the State of Washington; and **KRISTIN)
PETERSON** in her official capacity as)
Assistant Secretary of the Health Systems)
Quality Assurance division of the)
Washington State Department of Health,)
)
Defendants.)

Case No. 3:21-cv-5359

**VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

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INTRODUCTION

1
2 1. Plaintiff Brian Tingley is a licensed Marriage and Family Therapist
3 practicing in Fircrest, Washington. For over twenty years, Mr. Tingley’s clients
4 have looked to him for support in pursuing meaningful and positive change in their
5 lives.

6 2. Plaintiff finds great fulfillment in working with clients to identify their
7 objectives and encouraging them to achieve the goals that they set for themselves,
8 consistent with their own moral values and religious beliefs. In close relationships
9 built on a strong foundation of trust and openness, Plaintiff has seen adults,
10 couples, teenagers, and children achieve great improvements in relationships as
11 well as in personal stability and happiness simply by talking through the personal
12 challenges that they face.

13 3. Plaintiff works with couples, individual adults, family groups, and
14 individual children and teenagers, depending on the need. Among the wide range of
15 issues that Plaintiff addresses from time to time with minor clients are issues
16 relating to gender and sexual attractions and behaviors. Needless to say, these are
17 among the most sensitive and private conversations possible.

18 4. Yet in passing Senate Bill 5722, codified at Wash. Rev. Code §§
19 18.130.020 and 18.130.180 (the “Counseling Censorship Law,” or “the Law”),
20 Washington State seeks to insert itself into the privacy of Plaintiff’s counseling
21 room and censor his discussion and exploration of certain ideas with his young
22 clients. The Law threatens severe sanctions—including substantial fines,
23 suspension from practice, and even loss of his license and livelihood—if Plaintiff
24 speaks ideas, and assists his clients towards goals, of which the State disapproves.

25 5. Through the Counseling Censorship Law, Washington State seeks to
26 impose uniformity and silence dissent on topics about which both clients and
27

1 counselors hold differing views motivated by ideology, faith beliefs, and differing
2 interpretations of science.

3 6. Specifically, the Counseling Censorship Law prohibits—in vague and
4 expansive terms—any conversation or exchange of ideas between a counselor and
5 his minor client in pursuit of a goal to “change” that young person’s gender identity
6 or sexual attractions, orientation, or behaviors.

7 7. The Law is not aimed at any particular practices. Amendments to limit
8 the law to physically abusive practices were rejected. Instead, and by design, the
9 Law sweeps in even simple conversation, within a voluntary counseling relationship
10 between a minor client and his chosen counselor, in pursuit of personal goals set by
11 the client.

12 8. Worse, the Counseling Censorship Law intrudes and censors with a
13 decidedly biased and unbalanced hand.

14 9. For a minor client who seeks the assistance of a counselor to pursue a
15 personally chosen goal of achieving comfort with a gender identity congruent with
16 the client’s biological sex, or a goal of reducing same-sex attraction and increasing
17 sexual attraction to the opposite sex, the Law steps in to deny that young person the
18 professional help that he or she desires.

19 10. For a minor client of faith who seeks the assistance of a counselor who
20 shares his faith, to help him align his thoughts and his conduct with the teachings
21 of his faith, the Law again says “No,” denying that young person professional help
22 towards his goal.

23 11. Meanwhile, however, the Law imposes no barrier to a counselor
24 supporting a client in “exploring” or “developing” any other sort of gender or sexual
25 identity—or even guiding a minor towards permanently sterilizing treatments and
26 procedures to alter that young person’s body to more closely match a perceived
27 gender identity.

1 12. In short, through the Counseling Censorship Law, the State of
2 Washington seeks to impose its own new orthodoxy concerning sexual morality,
3 human nature, personal identity, and free will. And it seeks to do all this at expense
4 of the freedom, beliefs, and even religious convictions of both counselors and clients.

5 13. But our Constitution does not permit government to impose any
6 orthodoxy in thought, belief, or speech. The First Amendment and Fourteenth
7 Amendment strongly protect the rights of both counselors and clients to speak
8 freely between themselves on any topic, in pursuit of any personal goal, and guided
9 by any religious or moral convictions.

10 14. Under our system, the government has no power to censor ideas and
11 speech with which it disagrees, even if it believes those ideas to be wrong, offensive,
12 and potentially harmful.

13 15. As a result, the Washington State Counseling Censorship Law is
14 unconstitutional and unenforceable in its entirety.

15 16. Because the Law violates the rights of Plaintiff Brian Tingley and of
16 his clients, and because it threatens Plaintiff with the loss of his livelihood, Plaintiff
17 brings this lawsuit to obtain a declaration that the Counseling Censorship Law is
18 unconstitutional both on its face and as applied, and to enjoin its enforcement.

19
20 **I. JURISDICTION AND VENUE**

21 17. This civil rights action pursuant to 42 U.S.C. § 1983 raises federal
22 questions under the United States Constitution, particularly the First and
23 Fourteenth Amendments.

24 18. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343.

25 19. This Court has authority to award the requested declaratory relief
26 under 28 U.S.C. §§ 2201-02 and Federal Rule of Civil Procedure 57; the requested
27

1 injunctive relief under 28 U.S.C. § 1343 and Federal Rule of Civil Procedure 65; and
2 costs and attorneys' fees under 42 U.S.C. §1988.

3 20. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a
4 substantial part of the events or omissions giving rise to the claims occurred in this
5 District and the Defendants are located in relevant part in this District.

6
7 **II. PARTIES**

8 **A. Plaintiff**

9 21. **Plaintiff Brian Tingley** is a licensed Marriage and Family Therapist
10 in the State of Washington. He resides in Tacoma, Washington and practices in
11 Fircrest, Washington.

12 22. Mr. Tingley obtained his Master of Science in Marriage and Family
13 Therapy from Seattle Pacific University in 2001, and has gained 20 years of
14 experience in active practice since that time. Previously, he had an award-winning
15 career in video and news production for local network affiliates, during which he
16 took on many assignments focusing on the needs of youth, family, and the
17 community.

18 23. Mr. Tingley is an Approved Supervisor by the State of Washington and
19 the American Association for Marriage and Family Therapy, as well as a Clinical
20 Fellow Member of the American Association for Marriage and Family Therapy. He
21 has maintained a private practice of counseling since 2002, working with
22 adolescents, adults, and couples on a wide variety of matters. He also has
23 experience in crisis intervention and has worked alongside child protective services
24 and law enforcement where children have been placed in protective custody.

25 24. Mr. Tingley has taught college courses in Psychology and Human
26 Relations, and has facilitated training seminars and workshops at the request of
27 local therapist groups.

1 25. He has provided both in-person and written testimony to the
2 Washington State Legislature on issues pertaining to teenage sexuality and identity
3 on several occasions, including in connection with the bill that was ultimately
4 passed as the Counseling Censorship Law.

5 26. Mr. Tingley is a committed Christian who also has theological
6 training, having received a Diploma in Ministry and Biblical Studies in 1984. He is
7 regularly asked to provide seminars and workshops to local churches on challenges
8 facing children and families that take into account a biblical perspective as well as
9 his professional expertise.

10 27. While Mr. Tingley does not impose his Christian faith on anyone, his
11 faith informs his views concerning human nature, healthy relationships, and what
12 paths and ways of thinking will enable his clients to achieve comfort with
13 themselves and live happy and satisfied lives.

14 28. Mr. Tingley works with both Christian and non-Christian clients, and
15 he approaches counseling of any clients who choose his services in a consistent way.
16 However, many of his clients are referred to him by local churches, and the majority
17 of his clients share his Christian faith.

18 B. Defendants

19 29. **Defendant Umair A. Shah** is the Secretary of Health for the State of
20 Washington, having been appointed by Governor Jay Inslee on December 21, 2020.

21 30. By virtue of his position as Secretary of Health, Dr. Shah has
22 jurisdiction and disciplinary authority over a number of licensed professions
23 pursuant to Wash. Rev. Code (“RCW”) § 18.130, including licensed marriage and
24 family therapists under RCW § 18.130.040 (2)(a)(x).

25 31. Dr. Shah is authorized under RCW § 18.130.050 to “investigate all
26 complaints or reports of unprofessional conduct” and to conduct any associated
27 hearings. He is further authorized under RCW § 18.130.185 to bring an action

1 against any regulated professional to enjoin him or her from violating the
2 Counseling Censorship Law.

3 32. Dr. Shah is named in his official capacity only.

4 33. **Defendant Kristin Peterson** is the Assistant Secretary of the Health
5 Systems Quality Assurance division of the Washington State Department of Health.

6 34. Under the direction of Ms. Peterson, the Health Systems Quality
7 Assurance team within the Department of Health claims the right to investigate
8 and prosecute complaints against healthcare providers licensed by the State of
9 Washington further to RCW § 18.130.¹

10 35. Complaints against healthcare providers and facilities in the State of
11 Washington are to be directed to the Health Systems Quality Assurance group,
12 which considers the substance of the complaint and determines what action is to be
13 taken.

14 36. Ms. Peterson is named in her official capacity only.

15 37. **Defendant Robert W. Ferguson** is the Attorney General for the
16 State of Washington.

17 38. As Attorney General, Mr. Ferguson is the first person identified by
18 RCW § 18.130.185 as authorized to bring an enforcement action to enjoin a person
19 from violating the Counseling Censorship Law.

20 39. On information and belief, the Attorney General works with the
21 Health Systems Quality Assurance team to identify potential violations and
22 evaluate evidence concerning alleged violations of the Counseling Censorship Law.²
23

24 _____
25 ¹ Health Systems Quality Assurance, WASHINGTON STATE DEPARTMENT OF HEALTH,
<https://www.doh.wa.gov/AboutUs/ProgramsandServices/HealthSystemsQualityAssurance> (last
visited April 29, 2021).

26 ² Health Professions Complaints Process, WASHINGTON STATE DEPARTMENT OF HEALTH,
27 <https://www.doh.wa.gov/LicensesPermitsandCertificates/FileComplaintAboutProviderorFacility/HealthProfessionsComplaintProcess> (last visited April 29, 2021).

1 40. Mr. Ferguson is named in his official capacity only.

2 **III. FACTUAL BACKGROUND**

3
4 A. The Counseling Censorship Law

5 41. In March 2018, Washington Governor Jay Inslee signed Senate Bill
6 5722 into law, which came into effect on June 7, 2018, and was codified at RCW §
7 18.130.020 and 18.130.180.

8 42. The Counseling Censorship Law added “performing conversion therapy
9 on a client under age eighteen” to the list of conduct, acts, or conditions that would
10 constitute “unprofessional conduct” for a “license holder.”

11 43. Marriage and Family Therapists are among those deemed to be
12 covered “license holders” under the definitions outlined in RCW § 18.120.020.

13 44. “Conversion therapy” is defined in terms that are vague, content-
14 based, and biased against one perspective or point of view:

15 “Conversion Therapy” means a regime that seeks to change an individual's
16 sexual orientation or gender identity. The term includes efforts to change
17 behaviors or gender expressions, or to eliminate or reduce sexual or romantic
18 attractions or feelings toward individuals of the same sex. The term includes,
19 but is not limited to, practices commonly referred to as “reparative therapy.”

19 “Conversion therapy” does not include counseling or psychotherapies that
20 provide acceptance, support, and understanding of clients or the facilitation
21 of clients’ coping, social support, and identity exploration and development
22 that do not seek to change sexual orientation or gender identity.”

21 45. The Counseling Censorship Law provides no definitions of the terms
22 “gender identity”, “gender expressions”, “identity exploration”, and “identity
23 development.” It provides no information at all as to what “behaviors” a therapist
24 may not help a client attempt to change.

25 46. The Law provides no explanation on how an individual can engage in
26 “exploration and development” relating to sexual orientation or gender identity
27

1 without undergoing “change,” or where the boundary between “exploration and
2 development” and “change” might be.

3 47. The Law does not state whether the violative intent to “seek” change is
4 the intent of the therapist, or the client, or both.

5 48. The Law contains no language concerning “sexual or romantic
6 attractions or feelings towards individuals” of the opposite sex.

7 49. The prohibitions of the Counseling Censorship Law seek to enforce the
8 Washington legislature’s particular viewpoint concerning human sexuality,
9 identity, and morality. Under this view, feelings of identification with the opposite
10 sex, or sexual or romantic attractions or feelings toward individuals of the same sex,
11 are the highest value, and must only be “affirmed,” regardless of the wishes,
12 personal life goals, and religious beliefs of the individual affected.

13 50. It is well known that many religious faiths have for countless
14 generations taught a different view concerning sexual morality and the proper place
15 of sexuality in relation to one’s identity, conduct, and relationships. Nevertheless,
16 the Counseling Censorship Law contains no meaningful religious exemption to
17 protect the freedoms of counselors and clients to hold, speak and act on such faith-
18 based views of human nature, healthy relationships, and morality.

19 51. Instead, the Counseling Censorship Law provides a sham exemption
20 that is in fact no exemption at all. The Counseling Censorship Law states that it
21 does not apply to “religious practices or counseling under the auspices of a religious
22 denomination, church, or organization that do not constitute performing conversion
23 therapy by licensed health care providers on clients under age eighteen.” However,
24 as the Counseling Censorship Law prohibits nothing *except* “performing conversion
25 therapy by licensed health care providers on clients under age eighteen,” this does
26 not exempt religious providers and clients from anything at all. Instead, it
27 indirectly asserts the right and power to prohibit even “religious . . . counseling” by

1 a license holder “under the auspices of a . . . church,” if the counsel that is given
2 disagrees with the viewpoint enshrined in the Counseling Censorship Law.

3 52. Similarly, the Counseling Censorship Law states that it does not apply
4 to “nonlicensed counselors acting under the auspices of a religious denomination,
5 church, or organization.” But this again is a sham and empty exception, since the
6 Law never applies to “nonlicensed counselors,” whether religious or not.

7 53. The Counseling Censorship Law threatens severe sanctions against
8 any therapist or counselor found to have violated its vague and viewpoint-based
9 prohibitions. It threatens these penalties based on nothing more than private
10 conversations and counsel that is desired by clients and their parents.

11 54. As stipulated in RCW § 18.130, in the event of a violation of the
12 Counseling Censorship Law, the Secretary “must” impose one of a number of
13 sanctions listed in RCW § 18.130.160 that range from “censure or reprimand,” to
14 fines of \$5,000 for each violation, to permanent revocation of the professional’s
15 license—destroying that professional’s very means of earning a living and
16 supporting a family.

17 55. Further, the Law authorizes not just the Secretary or responsible
18 disciplinary bodies, but “any other person” to file a lawsuit accusing a counselor or
19 therapist of violating the Counseling Censorship Law, RCW § 18.130.185, exposing
20 professionals who do not agree with the State’s approved viewpoint on these
21 matters of sexuality and identity to harassment and attack by private activists.

22 56. Restrictions on so-called “conversion therapy” are often justified by
23 claims that unscrupulous practitioners have resorted to electroshock therapy or
24 physical restraint, and the bill’s primary sponsor Senator Lias asserted that the
25 law is directed against “barbaric practices.” The Senate Bill Report behind SB 5722
26 expressed concern about supposed practices that “induce nausea, vomiting, and
27 other responses from youth, while showing them erotic images.”= No specific

1 instances are documented in the Report. The House Report asserted that
2 problematic practices include “physical abuse of children.” However, the legislative
3 record of the Counseling Censorship Law did not contain any testimony or evidence
4 that such practices have *ever* been engaged in by “license holders” in the State of
5 Washington.

6 57. In reality, the Counseling Censorship Law is directed against specific
7 ideas and personal goals, not against specific practices. During consideration of the
8 Law, the Washington legislature rejected an amendment that would have limited
9 the proscribed conduct to “aversion therapy” that involved “electrical shock, extreme
10 temperatures, prolonged isolation, chemically induced nausea or vomiting, assault”
11 or other procedures intended to cause “pain, discomfort, or unpleasant sensations.”

12 58. Likewise, the Washington legislature rejected an amendment that
13 would have limited the definition of prohibited “conversion therapy” to mean
14 “aversive or coercive” regimes that would include physical restraints, “use of
15 pornographic material, and electroconvulsive therapy conducted outside of
16 medically accepted use.”

17 59. It is revealing to note that the Washington legislature also rejected an
18 amendment that would have specifically exempted counseling that would have been
19 “consistent with the client's affirmatively stated goals or objectives.”

20 60. Instead, Senator Lias, one of the sponsors of the bill, argued in debate
21 that in his view counseling consisting of mere talk could be “just as pernicious” as
22 abusive practices, and affirmed that the bill was directed to “use [of] words.”

23 61. This legislative history confirms that the intent of the Counseling
24 Censorship Law is to suppress ideas and advice that the government of Washington
25 State frowns on, and instead to restrict counseling in this State to viewpoints and
26 advice that reflect certain values.

1 62. Further, it is well known to both advocates and practitioners in the
2 field, and on information and belief, was well known to the legislative sponsors of
3 the Counseling Censorship Law, that most of those who seek counseling to change
4 sexual orientation are motivated by religious convictions.

5 63. Thus, in 2013 the American Counseling Association issued a statement
6 declaring that “Conversion therapy as a practice is a religious, not psychologically-
7 based, practice.... The treatment may include techniques based in Christian faith-
8 based methods....” In other words, according to the ACA, what the Counseling
9 Censorship Law seeks to prohibit is “a religious . . . practice.”

10 64. Another of the Bill’s sponsors, Senator Maureen Walsh, implicitly
11 admitted this while advocating passage of the Bill when she denounced those who
12 (in her words) might seek to “pray the gay away.”

13 65. The Human Rights Campaign organization, which is active nationally
14 in promoting counseling censorship laws and ordinances, in its website accuses
15 “right-wing religious groups” of “promot[ing] the concept that an individual can
16 change their sexual orientation or gender identity.”

17 66. In a booklet published by the Human Rights Campaign and National
18 Center for Lesbian Rights titled “Protecting our children from the harms of
19 conversion therapy,” the introduction blames “churches, synagogues, mosques and
20 temples around the world” for telling LGBTQ people that “they are sinful,” and the
21 booklet refers to religious faith and religious leaders and institutions on almost
22 every page.

23 67. In a report published in 2009, a task force of the American
24 Psychological Association reported that “most SOCE [“sexual orientation change
25 efforts”] currently seem directed to those holding conservative religious and political
26 beliefs, and recent research on SOCE includes almost exclusively individuals who
27 have strong religious beliefs.” The Task Force further reported that those who seek

1 counseling with a goal of moving away from same-sex attractions are
 2 “predominately . . . men who are strongly religious and participate in conservative
 3 faiths.”³

4 68. Leading authors in the field have made the same observation
 5 repeatedly over the last two decades. In 1999, psychology professor and prominent
 6 advocate of counseling censorship laws Douglas Haldeman wrote that “Historically,
 7 most conversion therapy occurred in religious settings.” In 2004, Prof. Haldeman
 8 again wrote that “the vast majority of those seeking sexual orientation change
 9 because of internal conflict have strong religious affiliations.” Douglas C.
 10 Haldeman, *When Sexual & Religious Orientation Collide: Considerations in*
 11 *Working with Conflicted Same-Sex Attracted Male Clients*, 32 THE COUNSELING
 12 PSYCHOLOGIST 691, 693 (2004). And in an important paper in 2016, internationally
 13 prominent authors Prof. Lisa Diamond and Prof. Clifford Rosky cited multiple peer-
 14 reviewed papers to conclude that “[T]he majority of individuals seeking to change
 15 their sexual orientation report doing so for religious reasons rather than to escape
 16 discrimination.” Lisa M. Diamond & Clifford J. Rosky, *Scrutinizing Immutability:*
 17 *Research on Sexual Orientation & U.S. Legal Advocacy for Sexual Minorities*, 52 J.
 18 OF SEX RESEARCH, 1, 6 (2016).

19 69. In sum, through the Counseling Censorship Law, the State of
 20 Washington is not only seeking to censor and suppress ideas and personal goals
 21 with which it disagrees; it is targeting ideas and motivations well known to be
 22 primarily associated with and advocated by people of faith, for reasons of faith.

26 ³ American Psychological Association, *Task Force on Appropriate Therapeutic Responses to Sexual*
 27 *Orientation* (2009), <http://www.apa.org/pi/lgbc/publications/therapeutic-resp.html> (last visited April
 29, 2021).

1 B. The Plaintiff's clients and his practice

2 70. Plaintiff Tingley founded his own private therapy practice in 2002, and
3 since that time has offered a wide range of therapy services to adolescents, adults,
4 couples, and families addressing interpersonal and family conflict, communication
5 issues, marital and post-divorce issues, individual identity challenges, emotional
6 management including depression and anxiety, anger management, and adult
7 Attention Deficit Hyperactivity Disorder, among many other matters. The practice
8 web page states that the practice group consists of Christian counselors, who share
9 a goal of helping clients achieve "personal and relational growth as well as healing
10 for the wounded spirit, soul, and body through the healthy integration of relational,
11 psychological, and spiritual principles with clinical excellence."⁴

12 71. While Plaintiff is a committed Christian, his services are available to
13 anyone, regardless of whether they have a different faith background or no faith at
14 all. Nevertheless, Mr. Tingley's clients are frequently referred to him by local
15 churches, and the majority are Christians. Many of them come to Plaintiff because
16 they desire a counselor who shares and so will understand and respect their
17 Christian beliefs. Often, Plaintiff's clients express the belief that alignment between
18 their actions and feelings on the one hand, and their religious convictions on the
19 other, will be important to helping them to heal from past trauma, as well as to
20 pursuing their personal goals and the lives that they wish to lead going forward.

21 72. Plaintiff's counseling approach is to provide a safe environment for
22 each client to allow for his or her own self exploration. Plaintiff's first priority is
23 ensuring that he establishes trust with his clients, so that they feel safe in opening
24 up to discuss all kinds of sensitive issues. Once rapport is established, Plaintiff can
25

26 _____
27 ⁴ See Family Foundations Counseling, <https://www.familyfoundationscounseling.com/> (last visited April 29, 2021).

1 help clients identify their own objectives and then, through discussion over time,
2 work together to accomplish those objectives.

3 73. Because Mr. Tingley is a Christian himself, he is able to engage with
4 his Christian clients in a manner that is particularly understanding and respectful
5 of, and informed by, shared faith convictions and the personal goals of the client
6 that may be guided by the client's faith convictions, or by the client's desire to live a
7 life of integrity within his or her family.

8 74. Where clients have a strong faith, Mr. Tingley has recognized that it
9 can be of particular importance to them to know that there are no unspoken
10 concerns or suspicions about their beliefs on the part of their counselor. This is
11 because of the central role that faith plays in their lives—touching on all aspects of
12 their lives—as well as their prior experiences of varying degrees of opposition to
13 their faith from those who do not share their beliefs. Consequently, in many cases
14 he is specifically sought out by clients because they want to speak with a counselor
15 who shares their Christian worldview about the issues that are affecting their lives.

16 75. However, Plaintiff is not a pastor, and does not consider it part of his
17 role to rebuke clients, or to tell them how they should live their lives.

18 76. Working with his clients, all Mr. Tingley does is listen and talk with
19 them. He spends time listening to their stories, their fears, and their hopes—at
20 times probing with questions to aid their own self-discovery. Through thoughtful
21 discussion, ideas are exchanged and positions are queried. This process allows
22 clients to reflect on their identity and their beliefs, as well as enabling them to
23 identify personal goals and objectives which are not immediately clear to them.

24 77. Plaintiff provides counseling concerning a wide array of issues that
25 arise in personal, marriage, and family life. Issues relating to gender identity and
26 sexual attractions and behaviors are simply some of the many issues that clients
27 bring into his counseling room and about which they ask his assistance.

1 78. Given his expertise and his family-oriented practice, a significant part
2 of Mr. Tingley’s practice is dedicated to counseling minors. He works with minors on
3 a wide variety of issues as they transition into adulthood, but his basic approach to
4 them as clients remains the same.

5 79. Although the wishes of the parents may often overlap with those of
6 their children, Mr. Tingley’s approach is to support the minor in his or her own
7 personal exploration and development. As he works with the minors over the course
8 of continued discussion, he seeks to offer them the support and encouragement that
9 they need to achieve the goals and objectives that they set for themselves.

10 80. While in most cases the minor will initially attend on the prompting of
11 their parent or parents, Mr. Tingley will only continue to see a minor as a client if
12 the minor is willing to work with him, and participates voluntarily.

13 81. Topics about which Plaintiff has counseled minors include depression,
14 anxiety, anger management, and other issues of emotional management. They also
15 include concerns or confusion about gender identity, unwanted same-sex attraction,
16 and other unwanted sexual behaviors such as addiction to pornography.

17 82. In these cases, as with any other, Mr. Tingley does nothing but talk
18 with his clients. He simply listens to what his clients say, asks them questions, and
19 talks with them.

20 C. Plaintiff’s counseling relating to gender identity

21 83. “Gender identity” is not defined in the Counseling Censorship Law.

22 84. Gender dysphoria is defined in the American Psychiatric Association’s
23 Diagnostic and Statistical Manual of Mental Disorders (“DSM-5”), in adolescents
24 and adults, as “A marked incongruence between one’s experienced/expressed gender
25 and assigned gender [i.e., biological sex], of at least 6 months duration,” along with
26 certain other indicators, and resulting in “clinically significant distress or
27 impairment in social, occupational, or other important areas of functioning.”

1 85. In recent years, rapidly increasing numbers of minors have been
2 referred to gender clinics for diagnosis for potential gender dysphoria, with one
3 noted clinic reporting a more than eight-fold increase between 2002 and 2013, M.
4 Aitken et al., *Evidence for an Altered Sex Ratio in Clinic-Referred Adolescents with*
5 *Gender Dysphoria*, 12 J. OF SEXUAL MEDICINE, 756, 757 (2015), and a more recent
6 paper recognizing that “most studies” demonstrate a “clear trend” of “growth in the
7 proportion of [transgender] self-identifying individuals over time.” Ian Nolan et al.,
8 *Demographic and Temporal Trends in Transgender Identities and Gender*
9 *Conforming Surgery*, 8 TRANSITIONAL ANDROLOGY AND UROLOGY, 184, 185 (2019).

10 86. Nolan et al. report that transgender identification "appears to be more
11 common among younger age groups," with noticeable geographic concentrations. In
12 particular, a 2016 survey of 9th to 11th graders in Minnesota reported
13 “exceptionally high rates of [transgender] identities,” reaching 2,700 per 100,000
14 youths, or almost 3%. *Id.* at 185.

15 87. Of particular concern, across the last 20 years the proportion of
16 adolescents referred to gender clinics who are biologically female—girls—has
17 changed rapidly, *doubling* at one clinic from about 30% during the 1999-2005 time
18 period to more than 60% during the 2006-2013 time period. Aitkin et al. at 758.
19 Academics and practitioners in the field have described evidence that many of these
20 girls appear to have been strongly influenced by internet contacts, or by local friend
21 groups. Lisa Littman, *Parent Reports of Adolescents and Young Adults Perceived to*
22 *Show Signs of a Rapid Onset of Gender Dysphoria*, 13 PLoS ONE, e0202330 (2018).

23 88. Rapid changes in numbers and sex ratios of individuals reporting
24 concerns about gender identity, as well as striking geographic variations, strongly
25 suggest that social and cultural factors are affecting many adolescents’ sense of
26 comfort with—or distress about—their natal sex.

27

1 89. The widely urged path of “affirming” a transgender identity for girls
2 includes the use of puberty blockers beginning as young as eight; cross-sex
3 hormones a few years later which build muscle mass, cause growth of facial hair
4 and a deepened voice; “social transition” including adoption of a male name and
5 male pronouns and dress; breast-binding to conceal their developing female biology;
6 and ultimately double mastectomy and hysterectomy, followed by life-long
7 administration of cross-sex hormones.

8 90. Obviously “sex reassignment surgery,” which removes testicles or
9 ovaries, permanently sterilizes the affected individual. However, it is generally
10 recognized by practitioners that cross-sex hormones, which are increasingly
11 prescribed even for minors, may also irreversibly sterilize a child for life. A Harvard
12 Medical School professor and her co-authors, who are active in medically
13 transitioning minors, admit that “cross-sex hormones . . . may have irreversible
14 effects,” and describes infertility as “a side effect” of these drugs. Carly Guss et al.,
15 *Transgender and Gender Nonconforming Adolescent Care: Psychosocial and Medical*
16 *Considerations*, 26 CURR. OPIN. PEDIATRICS, 421, 424-5. Another team of prominent
17 practitioners in the field caution that there is evidence that cross-sex hormones
18 administered to minors will permanently and irreversibly sterilize at least some of
19 these youths, both male and female. Yet these practitioners also recognize that
20 “research suggest[s] some of these individuals may desire genetic children as
21 adults.” Amy Tishelman et al., *Health Care Provider Perceptions of Fertility*
22 *Preservation Barriers and Challenges with Transgender Patients*, 36 J. OF ASSISTED
23 REPRODUCTION AND GENETICS, 579, 580 (2019).

24 91. In addition to permanent sterilization, accepting and living in a
25 transgender identity carries a number of known or likely lifetime costs and risks for
26 a young person.

1 92. Any individual whose testicles or ovaries are surgically removed
2 through so-called “sex reassignment surgery” requires life-long medical hormonal
3 therapy. In general, the use of cross-sex hormones, once begun, will be continued for
4 life.

5 93. As a result of chemical or surgical impacts on their sexual development
6 and organs, some transgender adults experience diminished sexual response, and
7 are unable ever to experience orgasm.

8 94. Multiple authors have cautioned that administration of cross-sex
9 hormones to biological males increases the individual’s risk of blood clots and
10 resulting strokes, heart attack, and lung and liver failure.

11 95. It is often asserted that transgender youth attempt suicide at much
12 higher rates than the general adolescent population. This is true. But it is not true
13 that there is any statistically significant evidence that “affirmation” in a
14 transgender identity substantially reduces actual suicide attempts. Instead,
15 multiple studies report that adolescents and adults who adopt and live in a
16 transgender identity continue to suffer severely negative mental health outcomes—
17 including suicide and attempted suicide—throughout their lives, and this remains
18 true even if they undergo the ultimate “gender-affirming” step of extensive surgery
19 to reconfigure their body to conform in appearance to their desired gender identity.

20 96. A long-term study in Sweden found that *after* sex-reassignment
21 surgery transgender individuals exhibited a rate of completed suicide 19 times
22 higher than the control group, suicide attempts at a 7.6 times higher rate, and
23 hospitalization for any psychiatric condition at a 4.2 times higher rate. These
24 researchers concluded that “[t]he most striking result was the high mortality rate in
25 both male-to-females and female-to-males, compared to the general population.” C.
26 Dhejne et al., *Long-Term Follow-Up of Transsexual Persons Undergoing Sex*
27 *Reassignment Surgery: Cohort Study in Sweden*, 6 PLoS ONE, e16885, 5-6 (2011).

1 97. Similarly, a study in the United States found that the death rates of
2 transgender-identifying veterans are comparable to those who suffer from
3 schizophrenia and bipolar diagnoses—dying 20 years earlier on average than a
4 comparable population.

5 98. Many academics and practitioners and even transgender activists have
6 observed that gender identity is not necessarily either binary or fixed for life.
7 Indeed, in formally promulgating a rule in 2016, the United States Department of
8 Health and Human Services defined “gender identity” as “an individual’s internal
9 sense of gender, which may be male, female, neither, or a combination of male and
10 female, and which may be different from an individual’s sex assigned at birth,” and
11 disparaged “the expectation that individuals will consistently identify with only one
12 gender” as an inaccurate “sex stereotype.” *Nondiscrimination in Health Programs
13 and Activities*, 81 Fed. Reg. 31,376 (May 18, 2016) at 31,384 and 31,468.

14 99. In addition, at least for pre-adolescents who experience gender
15 dysphoria and receive therapeutic support but do *not* socially transition, “*every*
16 follow-up study of GD children, without exception, found the same thing: By
17 puberty, the majority of GD children ceased to want to transition.” J. Cantor,
18 *Transgender and Gender Diverse Children and Adolescents: Fact-Checking of AAP
19 Policy*, 46 J. OF SEX & MARITAL THERAPY, 1, 1 (2019). In fact, multiple studies have
20 documented that for pre-pubertal children who suffer from gender dysphoria, the
21 very large majority—estimates range between 80%-98% percent—will grow into
22 comfort with a gender identity congruent with their biological sex by young
23 adulthood, so long as they are *not* affirmed as children in a transgender identity. S.
24 Adelson & American Academy of Child & Adolescent Psychiatry, *Practice Parameter
25 on Gay, Lesbian, or Bisexual Sexual Orientation, Gender Nonconformity, and
26 Gender Discordance in Children and Adolescents*, 51 J. AM. ACAD. CHILD
27 ADOLESCENT PSYCHIATRY, 957, 963 (2012).

1 100. It is not surprising, therefore, that increasing numbers of young
 2 women are speaking up who for a time transitioned to live in a male gender
 3 identity, and underwent varying degrees of hormonal and surgical “transition,” but
 4 who later regretted those decisions, and reclaimed a female gender identity. These
 5 women are publicly expressing regret about the harm done to their bodies and
 6 minds, and anger against the too-hasty counsel and medical advice they received as
 7 minors which steered them into that transgender identity and those medical
 8 choices.

9 101. While many of these women had previously detailed their experiences
 10 on internet blog websites pseudonymously, in recent years they have become more
 11 visible, writing under their real names, posting videos online, and forming support
 12 groups for those in similar situations.⁵ In 2018, *The Atlantic* profiled several high-
 13 profile “detransitioners” who have been raising awareness of their own stories as a
 14 warning to those who are promoting or hearing only positive narratives about the
 15 impact of gender transition on affected individuals.⁶

16 102. For example, Max Robinson, who has been featured at length in both
 17 *The Atlantic* and *The Economist*⁷, became convinced that her internal discomfort
 18 needed to be resolved by a sex “transition” after discovering the “world of online
 19 gender-identity exploration” at age 15. A doctor prescribed cross-sex hormones for
 20 her beginning at age 16, and at age 17 she underwent a double mastectomy. While
 21 Max was initially pleased with the results, it wasn’t long before she realized that

22 _____
 23 ⁵ See Pique Resilience Project, <https://www.piqueresproject.com/> (last visited April 29, 2021); Detrans
 24 Canada, <https://detranscanada.com/> (last visited April 29, 2021); and Lost in Transition,
<https://lostintransition.info/> (last visited April 29, 2021), among others.

25 ⁶See Jesse Singal, *When Children Say They’re Trans*, *The Atlantic*, July/August 2018,
 26 <https://www.theatlantic.com/magazine/archive/2018/07/when-a-child-says-shes-trans/561749/>,
 attached as Exhibit A.

27 ⁷ See Charlie McCann, *When girls won’t be girls*, *The Economist*, Sept. 28, 2017,
<https://www.economist.com/1843/2017/09/28/when-girls-wont-be-girls>, attached as Exhibit B.

1 she had made a mistake and began the process of “detransitioning” at age 19. She
 2 lives with permanent physical changes—a deep voice, a beard, and a flat chest—
 3 that cannot be reversed. *See* attached Exhibits A and B.

4 103. Similarly, Cari Stella was prescribed cross-sex hormones by a doctor at
 5 age 17, and underwent a double mastectomy at age 20. According to Cari, from the
 6 time she first saw a therapist, no professional ever suggested or helped her explore
 7 alternatives to a “transition.”⁸ Already by age 22, Cari realized that she had been
 8 led into a mistake, and “detransitioned.” Cari maintained a blog⁹ and YouTube
 9 channel¹⁰ reflecting on her experiences, and in a video posted in 2016 said: “I’m a
 10 real-live 22-year-old woman with a scarred chest and a broken voice and a 5 o’clock
 11 shadow because I couldn’t face the idea of growing up to be a woman.”

12 104. In the United Kingdom, 23-year-old Keira Bell successfully sued the
 13 Tavistock and Portman NHS Trust—the leading British clinic responsible for
 14 administering puberty blocking drugs—after her own experience culminated in the
 15 realization that she had been rushed “down the wrong path.”¹¹ As a teenager, Keira
 16 went through a regimen of puberty blockers and cross-sex hormones, before
 17 undergoing a double mastectomy at age 20. She initially believed that the measures
 18 would help her achieve happiness, but “detransitioned” shortly after having the
 19 double mastectomy. Keira has become an outspoken campaigner for reform, stating
 20 that her doctors had failed her as a confused and distressed adolescent by failing to
 21

22 _____
 23 ⁸ *See In praise of gatekeepers: An interview with a former teen client of TransActive Gender Center*,
 4th Wave Now, April 21, 2016, <https://4thwavenow.com/2016/04/21/in-praise-of-gatekeepers-an-interview-with-a-former-teen-client-of-transactive-gender-center/>

24 ⁹ *See* Cari Stella, Guide on Raging Stars Blog, <https://guideonragingstars.tumblr.com/> (last visited
 25 April 29, 2021).

26 ¹⁰ *See* Cari Stella, YouTube, https://www.youtube.com/channel/UChCA_LScK33yNsiq0BIAa2g (last
 visited April 29, 2021).

27 ¹¹ *See Puberty blockers: Under-16s “unlikely to be able to give informed consent,”* BBC News, Dec. 1,
 2020, <https://www.bbc.com/news/uk-england-cambridgeshire-55144148>.

1 “challenge” her oversimplified desires to be male. “I think it's up to these [medical]
2 institutions,” Keira has said, “to step in and make children reconsider what they are
3 saying, because it is a life-altering path.”

4 105. Many similar stories are coming to light as more individuals realize
5 that they are not alone in enduring these experiences.¹² It is not surprising,
6 therefore, that increasing numbers of young people who struggle with questions of
7 gender identity, and the parents of such young people, are aware that there are
8 often grave and lasting costs resulting from adopting a transgender identity, and
9 that adoption of or attraction to a transgender identity is not necessarily fixed,
10 unchangeable, or desirable.

11 106. It is also not surprising, and is entirely reasonable and legitimate, that
12 some young people (and/or their parents) wish to explore whether it is possible for
13 them to escape from gender dysphoria and achieve comfort with their own biological
14 sex, so as to avoid all of these potentially severe lifetime costs of living in a
15 transgender identity.

16 107. Meanwhile, there are no statistically significant studies that
17 demonstrate that voluntary conversational counseling which aims to help the client
18 towards a personally chosen goal of achieving or returning to comfort with his or
19 her own biological sex is in any way harmful to clients.

20 108. Mr. Tingley has worked with minors who have expressed discomfort
21 with their biological sex and struggled with questions and feelings around their
22 gender identity.

23 109. In one incidence since the enactment of the Counseling Censorship
24 Law, parents brought to Plaintiff’s clinic their teenage minor daughter who had
25 _____

26 ¹² See Post Trans, <https://post-trans.com/> (last visited April 29, 2021), *Voices*, Sex Change Regret,
27 <https://sexchangeregret.com/voices/> (last visited April 29, 2021), among others. See also Abigail
Shrier, *Irreversible Damage: The Transgender Craze Seducing Our Daughters*, Regnery Publishing
(2020).

1 been exposed to websites advocating transgender identification for girls, and who
2 had begun expressing unhappiness with her female gender identity, and even
3 asserting a male gender identity. This girl had been previously diagnosed with
4 high-functioning autism and was facing various social difficulties at school with her
5 peers, but in earlier years had appeared comfortable in her identity as a girl.

6 110. The parents were aware that gender dysphoria is often accompanied
7 by mental health co-morbidities, that gender identity in young people is not
8 necessarily fixed, and that long-term adoption of a transgender identity by their
9 daughter would likely lead to sterilization, lifelong dependence on extraordinary
10 medical care including cross-sex hormones, and an increased risk of physical, social,
11 and mental health difficulties.

12 111. The parents and child were also Christian. Contrary to basic
13 assumptions of contemporary “gender ideology,” many Christians, as well as
14 believers in other historic religions, believe that God intended and designed
15 humanity as “male and female,” that God has created each individual as either
16 male or female, and that obedience, well-being, and happiness lie in acceptance of
17 and gratitude for the particular sex that God has given each individual.

18 112. The parents’ desire was thus to find a counselor who would assist their
19 daughter in understanding herself and exploring the reasons for her unhappiness
20 with her sex and identity as a girl, and hopefully enable her to return to comfort
21 with her female body and reproductive potential, and with a gender identity as a
22 female, girl, and in years to come, woman.

23 113. The parents expressed these thoughts and goals to Mr. Tingley, and
24 sought his professional expertise as a counselor to work with their daughter
25 towards that goal. The daughter also expressed a willingness to meet and talk with
26 Plaintiff. Accordingly, Plaintiff entered into this counseling relationship, taking the
27 girl on as a client.

1 114. Plaintiff's counseling of this client mainly consisted of private
2 discussions, consisting for the most part of prompting questions, and sympathetic
3 listening. It also included discussions with the girl and her parents together.

4 115. At no point did the client indicate that she was talking with Plaintiff
5 against her will, or that she felt that Plaintiff was coercing her in any manner.

6 116. After several counseling sessions, the girl expressed a desire to become
7 more comfortable with her biological sex, notwithstanding her previous claims of a
8 male gender identity. Plaintiff did not challenge her new goal or the "change" that it
9 would mark, but worked with her toward that goal. Over the course of several years
10 of observing and talking with this girl, Plaintiff saw a notable improvement in her
11 demeanor and self-esteem, and understood the client to be more comfortable
12 identifying herself as a girl and to be much happier with her direction in life.

13 117. Another recent instance occurred when a Christian family came to Mr.
14 Tingley after their minor daughter had begun expressing discomfort with her
15 biological sex and asserting a male gender identity. This girl had exhibited no signs
16 associated with gender dysphoria as a young child, but had begun to assert a
17 transgender identity only after exposure to online material advocating transgender
18 identification.

19 118. Her parents were aware that gender dysphoria is often accompanied
20 by mental health co-morbidities, that gender identity in young people is not
21 necessarily fixed, and that long-term adoption of a transgender identity by their
22 daughter would likely lead to sterilization and lifelong medical complications.

23 119. These parents also sought a counselor who would assist their daughter
24 in understanding herself and exploring the reasons for her unhappiness with her
25 sex and identity as a girl, and hopefully enable her to return to comfort with her
26 female body and reproductive potential, and with a gender identity as a female, girl,
27 and in years to come, woman.

1 120. However, while the parents of this minor client expressed their faith-
2 based hopes and goals for their daughter’s counseling regarding gender identity,
3 they also discussed the Counseling Censorship Law with Plaintiff, and expressed
4 great fear about what being accused of being involved in a violation of that Law
5 might do to their family, including their fear that it could lead to the intrusion of
6 Child Protective Services between themselves and their daughter.

7 121. As the daughter was willing to meet and talk with Plaintiff, Plaintiff
8 took her on as a client. However after a few sessions, without expressing any
9 dissatisfaction with Plaintiff’s counseling, the parents terminated the counseling
10 relationship, on information and belief due to their fears resulting from the
11 Counseling Censorship Law.

12 122. Plaintiff has supported several adolescent clients in similar
13 circumstances who have sought his help as a therapist in addressing questions and
14 concerns surrounding their gender identity. In some of those cases, during
15 counseling the client has specifically expressed the desire to accept and achieve
16 comfort with their God-given sex as a faith-driven motivation for their goals in
17 counseling. In others of such cases, neither the parents nor the client have
18 expressed any religious motivation for achieving their chosen goals.

19 123. Given the rapid and large increase in children and teens who are
20 experiencing gender dysphoria, and given Plaintiff’s visible identity as a licensed
21 counselor who is a Christian who has previously and is currently helping clients
22 with these issues, Plaintiff expects with high confidence that parents and minors
23 will continue to come to him for counseling with a goal of helping a child who is
24 exhibiting gender dysphoria or a transgender identity return to comfort with a
25 gender identity aligned with his or her biological sex. Plaintiff wishes to provide
26 such counseling for minors who are willing to engage in such conversational
27 counseling on a strictly voluntary basis.

1 D. Counseling and change relating to sexual attractions

2 124. Individuals who experience same-sex attractions may and do have
3 multiple reasons not to accept those attractions nor to let those attractions define
4 their lives and relationships.

5 125. A young person may have a personal life goal to enter into a stable
6 marriage in which he or she can raise children who are the natural, genetic children
7 of both spouses. Indeed, the ability to form one’s own natural family has been
8 recognized as one of the greatest joys in life, and one of the most fundamental
9 human rights, across cultures and history. Of course, this can only happen in a
10 heterosexual relationship.

11 126. Further, major historic faiths including Judaism, Christianity, and
12 Islam, have long taught that the only moral context for sexual relationships is
13 within a heterosexual marriage. Individuals who believe any one of these religions
14 may well wish to bring both their desires and their conduct into conformity with the
15 moral teachings of their faith, and what they believe to be the commandments of
16 God. Indeed, recognizing that humans experience wrong or misguided desires in
17 many contexts—not just sexual—and striving to bring not just conduct but desires
18 into line with the moral teachings of the faith, is a central aspect of each of these
19 religions.

20 127. For example, the Lubavitcher Rebbe Menachem Mendel Schneerson,
21 an internationally famous Jewish teacher, in a well-known letter to a young man
22 who struggled with same-sex attractions, wrote that “Every day children are born
23 with particular natures and innate tendencies or drives, some of them good and
24 some of them bad. . . . The Creator endowed human beings with the capacity to
25 improve, indeed even to change their ‘natural’ (i.e. innate) traits.” Similarly,
26 Christianity teaches that our “natural” desires are often misguided and harmful,
27 but that God can work within an individual to give him a “new heart.”(Ezekiel

1 26:36.) The Bible’s teaching in the New Testament further emphasizes both the
2 necessity and the possibility of profound inner change, for example in the Apostle
3 Paul’s instruction to believers: “Do not conform to the pattern of this world, but be
4 transformed by the renewing of your mind. Then you will be able to test and
5 approve what God’s will is—his good, pleasing and perfect will.” (Romans 12:2.)
6 With regard to gender identity, formal teaching of the Catholic Church instructs
7 believers that “man . . . has a nature that he must respect and that he cannot
8 manipulate at will” (*Laudato Si*, No. 1555 (2015)), and that “the young need to be
9 helped to accept their own body as it was created” (*Amoris Laetitia*, No. 285 (2016)).

10 128. Each of these religions also teaches that, with divine help, individuals
11 *can* make real progress in changing our desires and bringing them into line with the
12 moral teachings of the faith—that is, that we are not mere machines irrevocably
13 destined to be inescapably controlled by chemically programmed desires.

14 129. Each of these religions also teaches that faith in God and obedience to
15 his moral law is more important to an individual’s being and personal identity than
16 are his or her sexual desires. Even noted authors Professors Lisa Diamond and
17 Clifford Rosky, who consider themselves advocates for LGBTQ issues, recognize
18 that assertions that sexual orientation cannot change “fail to adequately serve the
19 interests of sexual minorities [i.e., all who experience anything other than purely
20 heterosexual attractions] from ethnic, cultural, or religious backgrounds that do not
21 share the contemporary Western conceptualization of sexual orientation as a
22 defining status definition. Such individuals may believe that their status as a . . .
23 religious minority is more critical to their sense of selfhood than their status as a
24 sexual minority.” Diamond & Rosky (2016) 21.

25 130. In fact, the historic Western religions do not “share the contemporary
26 Western conceptualization” that sexual orientation defines the individual, and
27 instead contend that belief in and obedience to God is “more critical to [the

1 believer's] sense of selfhood" than is his or her sexual desires. Those who adhere to
2 these faiths are fully entitled to believe this, to structure their own lives
3 accordingly, and to pursue their own goals of personal identity and conduct
4 informed by those beliefs.

5 131. It is often asserted that sexual attractions or orientation are fixed and
6 not subject to change. But this is incorrect, and indeed is unsustainable in the face
7 of modern science. In fact, a much-cited recent review of the relevant scientific
8 literature by prominent LGBTQ-advocate authors concluded that "[A]rguments
9 based on the immutability of sexual orientation are unscientific, given that
10 scientific research does not indicate that sexual orientation is uniformly biologically
11 determined at birth or that patterns of same-sex and other-sex attractions remain
12 fixed over the life course." Diamond & Rosky (2016) 2. These authors conclude that
13 rather than resting on science, assertions that sexual orientation cannot change
14 "rely on unspoken legal and moral premises whose validity must be questioned."
15 Diamond & Rosky (2016) 11.

16 132. In the past many authors have hypothesized that same-sex attractions
17 are biologically determined. However, no such causes have been found. A 2019
18 large-scale study by a team of authors from Harvard, MIT, and several other
19 prestigious institutions analyzed the genomes of *almost half a million individuals*,
20 along with self-reported information about heterosexual and same-sex sexual
21 behaviors from these individuals. This massive study found only "very small"
22 correlations between any genes and same-sex behavior. The authors concluded that
23 the impact of genetic factors on sexual orientation were so small that they "do not
24 allow meaningful prediction of an individual's sexual preference." Andrea Ganna et
25 al., *Large-scale GWAS reveals insights into the genetic architecture of same-sex*
26 *sexual behavior*, SCIENCE, 882 (2019).

1 133. Before the extensive genomic work of Ganna et al. published in 2019,
2 some studies had attributed a somewhat higher influence of genetics on the
3 formation of sexual orientation. But even these studies attributed only minority
4 influence to genetics, leaving sexual orientation no more genetically determined
5 than “a range of characteristics that are not widely considered immutable, such as
6 being divorced, smoking, having lower back pain, and feeling body dissatisfaction.”
7 Diamond & Rosky (2016) 4.

8 134. Rather than being biologically predestined, many individuals who
9 identify as other than heterosexual believe that they possessed and exercised choice
10 in their sexual orientation. Surveying the literature again, Diamond and Rosky
11 reject the claims of “[b]oth scientists and laypeople . . . that same-sex sexuality is
12 rarely or never chosen,” instead concluding that “individuals who perceive that they
13 have some choice in their same-sex sexuality are more numerous than most people
14 think.” Diamond & Rosky (2016) 20.

15 135. Suggesting there is much left to learn about the complex origins of
16 same-sex attractions and behavior, the American Psychological Association’s stance
17 on the biological origin of sexual orientation has shifted over the years. In 1998, the
18 APA appeared to support the theory that homosexuality is innate and people were
19 simply “born that way,” asserting that “There is considerable recent evidence to
20 suggest that biology, including genetic or inborn hormonal factors, plays a
21 significant role in a person's sexuality.” But just ten years later, in 2008, the APA
22 described the matter differently:

23 “There is no consensus among scientists about the exact
24 reasons that an individual develops a heterosexual, bisexual,
25 gay, or lesbian orientation. Although much research has
26 examined the possible genetic, hormonal, developmental,
27 social, and cultural influences on sexual orientation, *no findings have emerged that permit scientists to conclude that sexual orientation is determined by any particular factor or*

1 *factors. Many think that nature and nurture both play complex*
2 *roles....” (Emphasis added).¹³*

3 136. As to the possibility of *change* in sexual attractions or behaviors; it has
4 often been assumed or asserted in the literature in the past, and is still often
5 asserted by non-scientists or in the popular press today, that sexual orientation is
6 fixed and unchanging. However, this assumption is not just unfounded, but
7 provably false. Diamond and Rosky concluded in 2016, after surveying the scientific
8 literature, that “Studies unequivocally demonstrate that same-sex and other-sex
9 attractions do change over time in some individuals,” and that the evidence for this
10 is now so clear as to be “indisputable.” Diamond & Rosky (2016) 6-7.

11 137. Empirically, the frequency of change in sexual orientation is
12 particularly high among those who experience same-sex attraction.

13 138. Thus, after reviewing and summarizing extensive scientific literature,
14 chapters in the American Psychological Association Handbook of Sexuality and
15 Psychology conclude that “research on sexual minorities [i.e., all those who do not
16 identify as exclusively heterosexual] has long documented that many recall having
17 undergone notable shifts in their patterns of sexual attractions, behaviors, or
18 identities over time” (636), and that “Youth who are unsure or uncertain of their
19 identity predominantly transition to a heterosexual identity” (562).

20 139. Many individual articles and studies reach the same conclusion.

21 140. A study by authors from the Harvard School of Public Health and
22 other respected institutions examined “gender- and age-related changes in sexual
23 orientation identity from early adolescence through emerging adulthood” in over
24 13,000 youth from 12 to 25 years of age, examining data collected for each

26 ¹³ American Psychological Association, *Answers to Your Questions For a Better Understanding of*
27 *Sexual Orientation and Homosexuality* (2008), <https://www.apa.org/topics/lgbtq/orientation> (last
visited April 29, 2021).

1 participant at four times over a period of seven years. Miles Ott et al., *Stability and*
2 *Change in Self-Reported Sexual Orientation Identity in Young People: Application of*
3 *Mobility Metrics*, 40 ARCH. SEXUAL BEHAV., 519 (2011). On this sample, Diamond
4 and Rosky note that “Of the 7.5% of men and 8.7% of women who chose a
5 nonheterosexual descriptor at ages 18 to 21, 43% of the men and 46% of the women
6 chose a different category by age 23. Among the same-sex-attracted youth who
7 changed, 57% of the men’s changes and 62% of the women’s changes involved
8 switching to completely heterosexual.”

9 141. Diamond and Rosky gather the results of the Ott et al. study along
10 with two separate “longitudinal” studies (i.e., studying the same individuals over
11 time), done by different researchers at different times on different samples, and
12 report that, for young adult populations (starting ages from 18 to 26), of those who
13 initially reported “any same sex attractions,” every study found that between 40% to
14 60% of each sex reported a “change in attractions” when resurveyed a few years
15 later. Of those who experienced a “change,” at least half and as high as 83%
16 “changed to heterosexuality at the second assessment.” Diamond & Rosky (2016) 7.

17 142. Authors analyzing data collected for approximately 2,500 individuals
18 as part of the National Survey of Midlife Development in the United States found
19 that, of those of any age who identified at the start of the study as bisexual, a
20 decade later approximately 32% identified as exclusively heterosexual, while of
21 those who identified at the start of the study as homosexual (that is, exclusively
22 attracted to the same sex), a decade later 28% identified as attracted to the opposite
23 sex (heterosexual or bisexual). Steven E. Mock & Richard P. Eibach, *Stability and*
24 *Change in Sexual Orientation Identity Over a 10-year Period in Adulthood*, 41
25 ARCHIVES OF SEXUAL BEHAVIOR 642 (2011) (Table 2). Heterosexual identity was far
26 more stable: among those who identified as heterosexual at the start of the study,
27

1 only 0.78% of men and 1.36% of women identified a different orientation a decade
2 later. Mock & Eibach (2012) 645.

3 143. Another often-cited paper by prominent researchers summarized
4 scholarship and cautioned that “there was little evidence of true bipolarity in sexual
5 orientation” and that sexual orientation is instead “a continuous construct.” These
6 authors observed that one study found that “Only 38% of exclusive same-sex
7 attracted females stayed in this group [between ages 21 and 26], with the rest
8 moving into ‘occasional’ same-sex attraction (38%) or exclusive opposite-sex
9 attraction (25%),” while another found that across a multi-year study period “Most
10 (62%) young women changed their identity labels at least once. . . Over time,
11 lesbian and bisexual identities lost the most adherents and heterosexual and
12 unlabeled identities gained the most.” In short, this paper’s literature review found
13 that “Evidence to support sexual orientation stability among nonheterosexuals is
14 surprisingly meager.” Ritch C. Savin-Williams & Geoffrey L. Ream, *Prevalence and*
15 *Stability of Sexual Orientation Components During Adolescence and Young*
16 *Adulthood*, 36 ARCHIVES OF SEXUAL BEHAVIOR 385, 386 (2007).

17 144. Savin-Williams’ and Ream’s own study of adolescents and young adults
18 pointed to the same conclusion, “highlight[ing] the high proportion of participants
19 with same- and both-sex attraction and behavior that migrated into opposite-sex
20 categories between [interview periods].” Savin-Williams & Ream (2007) 388.

21 145. Meanwhile, other noted scholars argue that the “sexual orientation”
22 categories of “gay” or “straight” are to some extent socially defined, such that
23 surrounding “cultural press” may in essence coerce an adolescent boy who merely
24 experiences “affectional bonding” with another male to categorize and thus
25 understand himself through the rigid binary category of “gay,” whereas that same
26 type of affection would not lead the boy to think of himself that way in a different
27

1 cultural setting. Phillip Hammack, *The Life Course Development of Human Sexual*
2 *Orientation: An Integrative Paradigm*, 48 HUMAN DEVELOPMENT, 267 (2005).

3 146. In light of these facts and considerations, some individuals who believe
4 that they are experiencing same-sex attractions may want to understand
5 themselves better, to understand relationships and life experiences that may have
6 produced those feelings in themselves, and to examine whether any of those
7 influences, understandings, and feelings can be changed, so that they can happily
8 pursue the life built around a heterosexual relationship that they desire, and that
9 they believe their faith instructs them to pursue. Because self-understanding is
10 difficult, they may wish the assistance of a sympathetic professional counselor to
11 assist them in that inquiry and effort.

12 147. It is also beyond dispute that there are large numbers of individuals
13 who at one time in their lives have considered themselves gay or lesbian, and who
14 have experienced same-sex attraction and even relationships, but who later, and
15 with the support of secular or religious counseling, developed opposite-sex
16 attractions, and even entered into lasting opposite-sex marriages. For some, this
17 change has been motivated by and assisted by religious conviction; for others, not.
18 Others, while not necessarily succeeding in eliminating same-sex attractions, have
19 changed their behaviors to obey the moral teachings of their faith by abandoning
20 same-sex relationships in favor of a celibate life. Multiple organizations exist made
21 up of individuals who have experienced one of these paths as their own story, and
22 who affirm that their lives are happier and more fulfilled as a result.

23 148. It is often asserted that “conversion therapy” or other forms of “sexual
24 orientation change efforts” (or “SOCE”) are severely harmful. In fact, there is no
25 meaningful evidence that conversational counseling with willing clients to explore
26 possibilities of change in unwanted same-sex attractions is harmful to most or even
27

1 many participants. On the contrary, in a major 2009 report based on a review of
2 many studies, a task force of the American Psychological Association concluded:

3 a) “Although the recent studies do not provide valid causal
4 evidence of the efficacy of SOCE or of its harm, some recent
5 studies document that there are people who perceive that they
6 have been harmed through SOCE... just as other recent
7 studies document that there are people who perceive that they
8 have benefited from it. . . . We conclude that there is a dearth
9 of scientifically sound research on the safety of SOCE. Early
10 and recent research studies provide no clear indication of the
11 prevalence of harmful outcomes among people who have
12 undergone efforts to change their sexual orientation or the
13 frequency of occurrence of harm because no study to date of
14 adequate scientific rigor has been explicitly designed to do so.
15 Thus, we cannot conclude how likely it is that harm will occur
16 from SOCE.” (42) b) “[I]t is still unclear which techniques or
17 methods may or may not be harmful.” (91)

18 149. Writing in 2021, a group of proponents of “SOCE” bans affirmed that
19 the pertinent research base remains sparse up to the present, providing an
20 insufficient basis on which to make confident judgments about SOCE. As they
21 wrote, “There is limited SOGIECE [sexual orientation and gender identity and
22 expression change efforts]-related research—a critical knowledge gap . . . Rigorous
23 research syntheses to support or refine legislative proposals related to SOCIECE
24 are not available at this time.” David Kinitz et al., *The Scope and Nature of Sexual
25 Orientation and Gender Identity and Expression Change Efforts: A Systematic
26 Review Protocol*, 10 SYSTEMATIC REVIEWS, 3 (2021).

27 150. Specifically with respect to willing participants who are motivated at
least in part by religious beliefs and goals, a six year longitudinal study concluded
that “The attempt to change sexual orientation did not appear to be harmful on
average for these participants. The only statistically significant trends that
emerged...indicated improving psychological symptoms.” Stanton Jones & Mark

1 Yarhouse, *A longitudinal study of attempted religiously mediated sexual orientation*
2 *change*, 37 J. OF SEX & MARITAL THERAPY, 404, 424 (2011).

3 151. It is also frequently asserted—despite the extensive evidence that
4 change in the components of sexual orientation is not only possible but frequent—
5 that counseling to assist an individual toward desired change is never effective.
6 Again, the available science does not support this assertion.

7 152. The same 2009 APA Task Force report acknowledged that “There are
8 no studies of adequate scientific rigor to conclude whether or not recent SOCE do or
9 do not work to change a person’s sexual orientation.” (120) More specifically:

10 “We found that nonaversive and recent approaches to SOCE
11 have not been rigorously evaluated. Given the limited amount
12 of methodologically sound research, we cannot draw a
13 conclusion regarding whether recent forms of SOCE are or are
14 not effective.” (43)

15 153. Plaintiff uses only a “nonaversive,” conversational method of
16 counseling.

17 154. In fact, authors from a variety of perspectives acknowledge that there
18 is evidence that voluntary counseling is effective for at least some individuals who
19 are highly motivated to change sexual attractions and behaviors.

20 155. The 2009 APA Task Force report stated:

21 a) “Former participants in SOCE reported diverse evaluations
22 of their experiences: Some individuals perceived that they had
23 benefited from SOCE, . . . [These] individuals reported that
24 SOCE was helpful—for example, it helped them live in a
25 manner consistent with their faith. Some individuals described
26 finding a sense of community through religious SOCE and
27 valued having others with whom they could identify.” (3) b)
“For instance, participants reporting beneficial effects in some
studies perceived changes to their sexuality, such as in their
sexual orientation, gender identity, sexual behavior, [and]
sexual orientation identity....” (49)

1 156. The longitudinal study of religiously motivated nonaversive therapy
2 conducted by Jones and Yarhouse found that about half of participants reported
3 progress towards their desired goal, with 23% of study participants reporting
4 substantial reduction in homosexual attraction and substantial increase in
5 heterosexual attraction and functioning, while an additional 30% of participants
6 reported that same-sex attraction remained present only incidentally or in a way
7 that did not seem to bring about distress.

8 157. A 2010 study surveyed 117 men who participated in some form of
9 secular or religious counseling or support group activities designed to reduce same-
10 sex attraction. Of these, some were single and some were in heterosexual
11 marriages. 88% were motivated at least in part by what they perceived as conflict
12 between their same-sex desires and conduct and the teachings of their faith. Within
13 the whole study group, responses indicated a “large effect” in decrease of same-sex
14 attractions and behavior, and also a “large effect” in increase of heterosexual
15 attraction and behavior. Elan Karten & Jay Wade, *Sexual orientation change efforts*
16 *in men: a client perspective*, JOURNAL OF MEN’S STUDIES, Vol. 18 No. 1, 84 (2010).

17 158. Over the years, Plaintiff Tingley has had multiple clients, including
18 minor clients, who experienced unwanted same-sex attraction and desired Mr.
19 Tingley’s help in reducing those attractions so that they could enter into
20 heterosexual romantic relationships and live the family lives which they longed for,
21 and also so that they could live in a manner consistent with the moral teachings of
22 their Christian faith.

23 159. For example, in recent years Plaintiff counseled an older teen whose
24 parents first brought him to Plaintiff. Over time, this client has himself sought
25 Plaintiff’s counsel on a number of topics including attraction to pornography and
26 unwanted same-sex attractions.

27

1 160. Like many young people, this individual first fell into a pattern of
2 repeated access to online pornography. In time, he encountered online pornography
3 depicting same-sex conduct, and believes that this pornography stirred up same-sex
4 attractions in himself that he did not previously experience and would not
5 otherwise have experienced.

6 161. The client has a personal Christian faith, and desires to live his life in
7 accordance with what he understands to be the teachings of his faith. He is of the
8 opinion that he will flourish—spiritually, emotionally and in relationships—through
9 obedience to the teachings of his faith. He believes that his faith in God is a
10 personal priority over sexual attractions, and that God has determined his identity
11 according to what is revealed in the Bible rather than his own desires and
12 perceptions.

13 162. In that context, the client has sought Plaintiff’s counsel to achieve a
14 personal goal of reducing his same-sex attractions and strengthening his sexual
15 attraction to women.

16 163. Plaintiff never promises clients that he will be able to solve the
17 problems they bring to him, and he has not done so for this individual. However, he
18 provides sympathetic counseling that is respectful of the client’s faith and his
19 personal goals and desires. Through ordinary techniques of counseling including
20 caring listening and questions to help the client understand himself and his
21 personal history, Plaintiff supports this client as he works toward the change he
22 desires to see in his own life. And indeed this particular client feels that he has
23 made, and is making progress towards his goals.

24 164. This particular client’s experience is not unique. Over the years Mr.
25 Tingley has worked with several minors—both male and female—who have
26 revealed similar thoughts and circumstances, and have sought his help in reducing
27

1 same-sex attractions and developing their sense of sexual attraction to the opposite
2 sex.

3 165. Some former clients who sought Plaintiff's counseling aid on this topic
4 as minors achieved their goals, and as adults are now living stable and happy lives
5 in heterosexual marriages.

6 166. Mr. Tingley currently works with and will continue to work with
7 clients to these ends, and based on his many years of experience, he expects that he
8 will continue to engage with minor clients with similar goals in future practice.

9 E. Plaintiff's counseling relating to sexual "behaviors"

10 167. From time to time, Plaintiff also works with minor teens who have
11 expressed a desire to desist from ongoing sexual behaviors which they consider
12 harmful to themselves and inconsistent with their religious beliefs about sexual
13 morality.

14 168. Several minor clients have sought Plaintiff's help to break out of a
15 pattern of frequent viewing of pornography for sexual gratification. For example,
16 Plaintiff recently worked with a minor who came for counseling after his mother
17 had initially sought help for him. The client had become obsessed with watching
18 pornography, and despite the efforts of the mother to restrict access to computers
19 and the internet, the client would still find ways to get online and view
20 pornography.

21 169. The client came from a Christian home and attended church. During
22 discussions with the Plaintiff, the client said that he did not like the fact that he
23 was so drawn to pornography, and personally expressed the belief that it was wrong
24 to look at pornography. He further expressed feeling out of control in his viewing of
25 pornography, and affirmed that he wanted to stop. Plaintiff worked with the client
26 towards a goal of ending his regular viewing of pornography, with the client making
27 good progress toward that end during the time that they spent together.

1 170. Plaintiff has supported many other clients in similar circumstances
2 who have sought to stop viewing pornography after expressing a wish to change this
3 behavior that they perceive to be wrong and unhealthy for them to engage in.

4 171. Plaintiff has also worked with clients who have wanted to cease
5 consensual sexual activity with others of the opposite sex. One example occurred
6 with a teenage client who had initially come to the Plaintiff to address academic
7 difficulties at school. The client was a Christian, involved with his church youth
8 group and with church mission trips to serve other communities. After several
9 counseling sessions with the Plaintiff, the client raised concerns about the way in
10 which he viewed girls, and in particular his relationship with his girlfriend.

11 172. The client believed that it was not right for him to be sexually involved
12 with his girlfriend, and felt that his thoughts and behaviors were in conflict with his
13 faith and morals. He expressed frustration that he repeatedly fell into conduct that
14 he believed was wrong and harmful to both himself and his girlfriend, and
15 expressed a desire to align his sexual thoughts and actions with his faith. The client
16 worked with the Plaintiff to that end, as part of a wider effort on the part of the
17 client to become a more healthy and stable individual. Over time, the Plaintiff
18 observed the client moving to a much happier place, with better self-esteem and
19 drive, as the client addressed these behaviors that he believed to be wrong and
20 harmful.

21 173. Similar scenarios frequently arise in Mr. Tingley's practice, and he
22 works with his clients toward goals that enable them to live happier, stabler and
23 more fulfilled lives. Based on his experience and his understanding of adolescents
24 and teens, Plaintiff expects that minor clients will continue to seek his counseling
25 assistance to change sexual behaviors that they believe are harmful and
26 inconsistent with their personal goals and religious convictions.

1 174. No client has ever filed any complaint against Plaintiff relating to any
2 counseling that Plaintiff has provided, related to any issue of gender identity,
3 sexual attraction, sexual behaviors, or otherwise.

4 F. The impact of the Counseling Censorship Law on the Plaintiff's
5 practice and clients

6 175. For professional, religious, and human reasons, Mr. Tingley desires to
7 continue to support current and future clients who seek his help with issues
8 relating to gender identity, sexual attractions, and sexual behaviors.

9 176. The Counseling Censorship Law seeks to prevent Plaintiff from
10 providing counsel in these areas that his clients desire, that is consistent with their
11 own religious beliefs and with Plaintiff's, and that is consistent with Plaintiff's
12 professional judgment as to what path will lead his clients into healthy, fulfilled,
13 and stable lives over the long term.

14 177. If Plaintiff provides such counsel, the Counseling Censorship Law
15 threatens him with harassment, investigation, and severe penalties potentially
16 including the loss of his license and his livelihood. He fears the credible and
17 substantial risk of being subjected to enforcement proceedings under the Counseling
18 Censorship Law for each client that raises these issues with him.

19 178. While at present Plaintiff continues to provide such counsel to clients
20 who request it, Plaintiff must and does experience a substantial and reasonable fear
21 that hostile activists will maliciously and dishonestly present themselves as clients
22 in an effort to entrap him and accuse him of violating the Counseling Censorship
23 Law. Similarly, even in the case of a client who seeks Plaintiff's assistance in good
24 faith, Plaintiff must and does reasonably fear that some other individual—even an
25 unrelated individual—will learn of the nature of such counseling and file a
26 complaint against Plaintiff, or even initiate a third-party enforcement action as
27 authorized by the Counseling Censorship Law.

1 179. In practice, this has meant that conversations with clients on matters
2 of gender, gender expression, sexual orientation, sexual behaviors, or sexual or
3 romantic attractions—particularly at the outset of conversations with a new client,
4 or when these issues are first raised by an existing client—are inevitably more
5 guarded and cautious than would otherwise be the case.

6 180. Plaintiff is not able to freely and without fear speak what he believes
7 to be true, and his client is therefore denied the right to receive open and
8 uninhibited thoughts from his or her chosen counselor. This chilling is inimical to a
9 healthy counseling relationship, which must be built on openness and trust between
10 client and counselor.

11 181. In fact, the vagueness surrounding the terms and definitions involved
12 in the Counseling Censorship Law mean that Plaintiff must fear that almost *any*
13 exploratory discussions he has with his clients on matters of gender, gender
14 expression, sexual orientation, sexual behaviors, or sexual or romantic attractions
15 could later be accused as violations of the Counseling Censorship Law, casting a
16 chill over all such conversations. Since these are very common matters of concern
17 for troubled teens, this chill has a grave impact on both Plaintiff and his clients.

18 182. The prospect of merely going through an investigative process if
19 accused of a violation of the Counseling Censorship Law—regardless of whether a
20 violation is ultimately shown—causes Plaintiff to fear these exploratory discussions,
21 particularly with the likelihood that such a process would be accompanied by hostile
22 and uninformed publicity.

23 183. Not only does the Counseling Censorship Law chill discussions that
24 Plaintiff has with his clients, but he also is chilled from more actively publicizing
25 the fact that he offers to counsel minors on these issues, as he would otherwise
26 desire to do. Specifically, Plaintiff would advertise on his practice website that he
27 offers counsel on sexual orientation and gender identity issues to adolescents, but is

1 currently chilled from doing so because of the explicit prohibitions of the Counseling
2 Censorship Law and the prospect of enforcement proceedings being brought against
3 him.

4 184. On information and belief, this chilling effect is intentional on the part
5 of the State of Washington because of its clear disapproval of the content of
6 Plaintiff's speech, and the religious beliefs underlying that speech.

7 185. In fact, for Plaintiff to be in compliance with the Counseling
8 Censorship Law, not only must he actively censor his own speech, but the Law
9 compels him to counsel and speak to his clients on the premise that seeking to
10 reduce same-sex attraction, and achieving comfort with their biological sex *could*
11 *not* be successful, and would instead harm their physical and psychological well-
12 being. Not only are these viewpoints directly contrary to the beliefs of Mr. Tingley
13 and those of many of his clients, but they are also contradicted by science and by the
14 experience of many of his clients.

15 186. If Plaintiff—and other license holders in the State of Washington—are
16 successfully barred from working with their clients on matters of gender, gender
17 expression, sexual orientation, sexual behaviors, or sexual or romantic attractions
18 by the Counseling Censorship Law, then those clients are effectively denied access
19 to ideas that they wish to hear, and to counseling that is consistent with their own
20 personal faith, life goals, and motivations. Parents of affected minor clients are
21 likewise deprived of their right to hear such ideas, and to direct the upbringing of
22 their children.

23 187. Likewise, when Plaintiff—and other license holders in the State of
24 Washington—are caused by fear of the Counseling Censorship Law and loss of their
25 livelihoods to self-censor even in part the messages, ideas, encouragement, and
26 support that they would otherwise offer their clients, then those clients are
27 effectively denied full and unfettered access to ideas that they wish to hear, and to

1 counseling that is consistent with their own personal faith, life goals, and
2 motivations. Parents of affected minor clients are likewise deprived of their right to
3 hear such ideas, and to direct the upbringing of their children.

4 **COUNT I**

5 For Denial of Free Speech Rights of Mr. Tingley
6 That Are Guaranteed by the First Amendment

7 188. Plaintiff incorporates all paragraphs above by reference.

8 189. By purporting to censor what Plaintiff may or may not say in the
9 course of his professional counseling work, the Counseling Censorship Law violates
10 Plaintiff's First Amendment rights.

11 190. The Counseling Censorship Law intrudes the censoring hand of
12 government into one of the most private and sensitive spaces—the counseling room
13 where an individual talks with his chosen counselor about his most personal
14 longings, troubles, concerns, and personal goals.

15 191. Plaintiff's right of free speech protected by the First Amendment
16 includes the right to speak freely with his clients about the problems, questions,
17 and goals that they bring to him. It includes the right to speak the ideas,
18 suggestions, and advice that Plaintiff believes to be true and helpful. And this right
19 to speak freely and honestly is fully protected even if the majority of the
20 Washington State legislature disapprove of the client's chosen goals, and disagree
21 with Plaintiff's views and advice. Indeed, the central role of the First Amendment is
22 to protect the right of individuals to speak beliefs and views that the government
23 disapproves of.

24 192. The Counseling Censorship Law is not a neutral "time, place or
25 manner" regulation. Instead, it censors the conversations that a counselor and
26
27

1 client may engage in based on the content of that speech, and based on its
2 viewpoint.

3 193. This is evident from the fact that determining whether a counselor’s or
4 therapist’s speech violates the Counseling Censorship Law will necessarily require
5 an inquiry into both the content and the viewpoint of that speech. The Law
6 purports to outlaw and punish only certain speech relating to specifically listed
7 categories of content, including “sexual orientation or gender identity,” change to
8 “behaviors or gender expressions,” and efforts to “eliminate or reduce romantic
9 attractions or feelings towards individuals of the same sex.”

10 194. As to these topics, the Counseling Censorship Law prohibits only
11 speech promoting a certain viewpoint concerning human sexuality, identity,
12 morality, and indeed free will: that is, the viewpoint that change in an individual’s
13 gender identity or sexual orientation to align with their natural reproductive
14 biology is possible, and may be a legitimate and desirable goal for some individuals.

15 195. The Law is not viewpoint neutral because it prohibits “efforts to . . .
16 eliminate or reduce sexual or romantic attractions or feelings toward individuals of
17 the same sex,” but does not prohibit efforts to reduce sexual or romantic attractions
18 toward a member of the opposite sex, nor does it prohibit efforts to increase
19 attractions toward a member of the same sex.

20 196. The Law is not viewpoint neutral because it permits counseling that
21 reflects “acceptance” and “facilitation” of any sort of “exploration and development”
22 of gender identity or sexual attractions or behaviors—except “change” to “sexual
23 orientation or gender identity.” Meanwhile, it prohibits counseling that does not
24 insist on “accepting” a client’s undesired feelings and instead seeks to assist that
25 client toward his chosen goal of changing feelings relating to gender identity or
26 sexual attractions.

1 197. Therefore, far from being viewpoint and content neutral, the
2 Counseling Censorship Law actively aims to suppress the dissemination of ideas
3 and information about human sexuality and the human capacity for change in this
4 area that are unpopular with and disapproved by the government of the State of
5 Washington.

6 198. The Counseling Censorship Law also seeks to compel speech, by
7 demanding that counselors and therapists speak to clients on the premise that
8 seeking to align an individual's sense of gender identity with his or her biological
9 sex, or seeking to align their sexual attractions and relationships with their body's
10 natural reproductive capabilities, is not possible or desirable, and will necessarily
11 harm them, regardless of their own life goals and religious beliefs. This necessarily
12 alters the content of speech for therapists who disagree with the viewpoint of the
13 government on these matters.

14 199. The Counseling Censorship Law does not adopt the least restrictive
15 means to pursue a compelling government interest.

16 200. The government has no cognizable interest at all—let alone a
17 compelling interest—in preventing citizens from hearing ideas that those citizens
18 wish to hear from their chosen counselor or therapist.

19 201. The government has no cognizable interest at all—let alone a
20 compelling interest—in preventing the dissemination of ideas that the government
21 believes are false, offensive, misguided, or even hurtful.

22 202. The Counseling Censorship Law is overbroad rather than narrowly
23 tailored. Assuming that there are particular physical or pharmaceutical practices
24 that the state may legitimately regulate to safeguard the physical and psychological
25 well-being of a minor, the Counseling Censorship Law makes no attempt at all to
26 identify those practices and target its prohibitions against them. As the large
27 preponderance of mental health counselors engage solely in speech, a substantial

1 number of the Counseling Censorship Law’s applications are unconstitutional
2 judged in relation to what any possible legitimate application might be.

3 203. For these reasons, the Counseling Censorship Law is unconstitutional
4 as a violation of the free speech rights of Plaintiff Brian Tingley as well as all other
5 “license holders.”

6 204. This ongoing deprivation of constitutional rights constitutes
7 irreparable injury.

8 205. Wherefore, Plaintiff Brian Tingley respectfully requests that the Court
9 grant declaratory and injunctive relief against the Counseling Censorship Law
10 pursuant to 28 U.S.C. §§ 20201 and 2202, as set forth in the Prayer for Relief.

11 **COUNT II**

12 For Denial of Free Speech Rights of the Clients of Mr. Tingley
13 That Are Guaranteed by the First Amendment

14 206. The First Amendment not only protects the right of each individual to
15 speak, but also to *hear* desired information and ideas, free from government
16 censorship. This includes ideas that depart from conventional wisdom, and ideas
17 that the government believes are false, offensive, misguided, or even hurtful.

18 207. By prohibiting counselors and other “license holders” from talking to
19 minor clients with a view toward helping them achieve their personal goals of
20 changing their feelings of gender identity to align with their biological sex, or
21 reducing same-sex attraction or increasing opposite-sex attraction, the Counseling
22 Censorship Law violates those clients’ First Amendment right to hear speech that
23 they and their parents desire them to hear.

24 208. For the reasons set forth above (¶¶ 192-197), this infringement of the
25 First Amendment rights of counseling clients including Plaintiff’s minor clients is
26 neither content neutral nor viewpoint neutral.

1 209. For the reasons set forth above (¶ 199-202), this infringement of the
2 First Amendment rights of counseling clients including Plaintiff’s minor clients is
3 not narrowly tailored to serve a compelling governmental interest.

4 210. Counselors including Plaintiff have standing to assert and seek redress
5 for the First Amendment rights of their clients that are violated by enforcement of
6 the Counseling Censorship Law, and also by the chilling effect that the very
7 existence of that Law has on free and open communications between these clients
8 and their chosen counselors.

9 211. Counselors, including Plaintiff, enter into an extremely close and
10 intimate relationship with clients who seek their assistance to pursue personal
11 goals relating to the sensitive and important topics of sexual attractions, behaviors,
12 and orientation—a relationship in which openness and candor is crucial.

13 212. Many clients feel that their discussions with their chosen counselor
14 about sexual attractions, behaviors, and orientation involve the most intimate,
15 difficult, important, and embarrassing topics in their lives. Because of this, it is
16 extremely difficult or even impossible as an emotional and social matter for these
17 clients to step forward to protect their own constitutional rights to engage in the
18 conversations with their counselor that they desire.

19 213. Further, because the Counseling Censorship Law on its face does not
20 penalize *receiving* counsel of any sort, clients are not themselves subject to any
21 threat of enforcement under the Law, so they risk being denied their right to receive
22 desired counseling while at the same time being denied any forum in which to
23 assert and protect that right.

24 214. The violation of the protected free speech rights of counseling clients,
25 including minor clients of Plaintiff, constitutes irreparable injury.

1 right, in that because of this vagueness and the unbounded discretion that it affords
2 to those authorized to bring enforcement actions, counselors engaging with a client
3 who raises concerns relating to gender identity, same-sex attractions, or sexual
4 behaviors must be all the more fearful that they will be accused of violating the law.
5 As a result, consciously or unconsciously, counselors including Plaintiff inevitably
6 engage in a degree of self-censorship that infringes the freedom of discussion of both
7 counselor and client.

8 220. The Counseling Censorship Law is unconstitutionally vague because it
9 provides no standards or guidelines defining the line between speech that
10 permissibly seeks to “facilitat[e]” a client’s “development” of his or her gender
11 identity or sexual orientation, and speech that unlawfully seeks to “change” that
12 person’s gender identity or sexual orientation.

13 221. Given that “development” necessarily involves “change,” the purported
14 distinction is incoherent, and thus leaves those authorized to bring enforcement
15 actions free to do so based on their personal predilections, or for discriminatory
16 purposes including disapproval of the beliefs, viewpoint, or messages of a particular
17 counselor.

18 222. The prohibition on seeking to “change an individual’s . . . gender
19 identity” also fails to provide adequate standards or guidelines to govern the actions
20 of those authorized to bring enforcement actions because the term “gender identity”
21 is undefined in the law and is vague.

22 223. This vagueness is made worse rather than resolved by consulting
23 Washington State governmental position statements and publications in the field.
24 The Washington State Human Rights Commission “Guide to Sexual Orientation
25 and Gender Identity” published in 2014 asserts that “gender expression or identity”
26 “as defined in the law” means “having *or being perceived as having* a gender
27 identity, self-image, appearance, behavior, or expression . . .” (emphasis added).

1 According to this meandering definition, an effort to “change” “gender identity”
 2 could include assisting a client to pursue her goal of changing gender-related
 3 aspects of her dress, or even of changing how other people *perceive* her gender
 4 identity.

5 224. “Gender identity” has no clearer definition in the wider world. As noted
 6 above, in a 2016 rule interpreting Section 1556 of the Patient Protection and
 7 Affordable Care Act, the Department of Health and Human Services defined
 8 “gender identity” as “an individual’s internal sense of gender, which may be male,
 9 female, neither, or a combination of male and female, and which may be different
 10 from an individual’s sex assigned at birth.” *Nondiscrimination in Health Programs*
 11 *and Activities*, 81 Fed. Reg. 31,376 (May 18, 2016) at 31,384.

12 225. A publication sponsored by the ACLU, Human Rights Campaign, and
 13 National Education Association asserts that gender identity encompasses any
 14 “deeply-felt sense of being male, female, both or neither,” and can include a “gender
 15 spectrum” “encompassing a wide range of identities and expressions.” *Schools in*
 16 *Transition: A Guide for Supporting Transgender Students in K-12 Schools*, at 6-7.

17 226. The National Center for Lesbian Rights contends that “Gender is
 18 comprised of a person’s physical and genetic traits, their own sense of gender
 19 identity and their gender expression” and similarly asserts that gender identity “is
 20 better understood as a spectrum.” That source goes on to say that an individual may
 21 have an “internal sense of self as male, female, both or neither,” and that “each
 22 person is in the best position to define their own place on the gender spectrum.”¹⁴
 23 Indeed, the medical text *Principles of Transgender Medicine and Surgery*, declares
 24
 25

26 ¹⁴ Asaf Orr et al., National Center for Lesbian Rights, *Schools in Transition: A Guide for Supporting*
 27 *Transgender Students in K-12 Schools* 5, 6 (2015), <https://www.nclrights.org/wp-content/uploads/2015/08/Schools-in-Transition-2015-Online.pdf> (last visited April 29, 2021).

1 that “Gender identity can be conceptualized as a continuum, a Mobius, or
2 patchwork.”¹⁵

3 227. An individual who is unhappy with or uncertain about his or her
4 “sense of being male, female, both or neither,” or who wishes to evaluate and “define
5 their own place on the gender spectrum,” or who does not wish to live life with an
6 identity as amorphous as a Mobius strip or a “patchwork,” may well wish the aid of
7 a professional counselor or therapist. But what conversation will comprise
8 permissible “development” of that individual’s place on that disorienting Mobius
9 strip, and what will be condemned as an unlawful effort to “change” the individual’s
10 “gender identity,” is unknowable.

11 228. Because the Counseling Censorship Law fails to define “gender
12 identity,” and that term has no consistent definition in the wider law or medical
13 science, the Counseling Censorship Law leaves those authorized to bring
14 enforcement actions free to do so based on their personal predilections, or for
15 discriminatory purposes including disapproval of the beliefs, viewpoint, or messages
16 of a particular counselor.

17 229. The prohibition on seeking to “change an individual’s sexual
18 orientation” also fails to provide adequate standards or guidelines to govern the
19 actions of those authorized to bring enforcement actions, because the term “sexual
20 orientation” is undefined in the Law and is vague.

21 230. There is no definition of the term in the Counseling Censorship Law
22 itself. The Washington State Human Rights Commission elsewhere states that “As
23 defined in the law, ‘sexual orientation’ means heterosexuality, homosexuality,
24 bisexuality, *and gender expression or identity*,” bringing into the term “sexual
25

26 _____
27 ¹⁵ *Principles of Transgender Medicine and Surgery* 43 (Randi Ettner, Stan Monstrey & Eli Coleman
eds., 2nd ed. 2016).

1 orientation” all the vagueness and ambiguity that is embedded in the term “gender
2 identity.”

3 231. There is equally no agreement in the scientific literature as to the
4 definition of “sexual orientation,” or to what extent “orientations” may overlap or
5 blend from one to another. The APA Handbook of Sexuality and Psychology
6 cautions that “Sexual orientation is usually considered a multi-dimensional
7 construct” in which “aspects of sexual orientation . . . are not necessarily
8 concordant.” (556). Diamond and Rosky (2016) warn that “it is important to note
9 that sexual orientation is not easy to define or measure,” and “is a multifaceted
10 phenomenon” which cannot be simplified to mere “sexual attractions,” but instead
11 incorporates (among other components) “sexual attractions, . . . sexual behavior,
12 and sexual identity,” while “identity and behavior are structured by social context,
13 social constraints, and social opportunities.” (3) This, say Diamond and Rosky,
14 “obviously poses a problem for research on the causes of sexual orientation.” (3) It
15 also poses a severe problem for a counselor, therapist, or client who wishes to know
16 what type of counseling or therapeutic goals might be condemned as seeking to
17 change “sexual orientation.”

18 232. Because the Counseling Censorship Law fails to define “sexual
19 orientation,” and that term has no consistent definition in the wider law or medical
20 science, the Counseling Censorship Law leaves those authorized to bring
21 enforcement actions free to do so based on their personal predilections, or for
22 discriminatory purposes including disapproval of the beliefs, viewpoint, or messages
23 of a particular counselor.

24 233. The Counseling Censorship Law is further impermissibly vague
25 because it prohibits any “regime that *seeks* to change . . .” sexual orientation or
26 gender identity. The Law fails to provide any standards or guidelines as to whether
27 this refers to the subjective intent of the client, or that of the counselor, again

1 leaving unfettered discretion on this critical question to any person authorized to
2 bring an enforcement action, and inviting discriminatory enforcement.

3 234. Indeed, a client’s personal intention in raising a subject relating to
4 sexuality may or may not be known to the counselor, and may change from one
5 meeting to the next. Consequently, a counselor might face sanctions on the basis of
6 the shifting subjective thoughts and goals of his client that are beyond the
7 counselor’s knowledge.

8 235. The Counseling Censorship Law further fails to provide adequate
9 standards or guidelines to govern the actions of those authorized to bring
10 enforcement actions because it provides no definitions of terms “gender
11 expressions”, “identity exploration”, and “identity development,” and provides no
12 information at all as to what “behaviors” a therapist may or may not help a client
13 attempt to change.

14 236. In the absence of any clarity on these terms, almost any counseling
15 conversation that relates to gender, intimate relationships, or sexuality could be
16 accused of seeking to “change . . . sexual orientation or gender identity.” Thus, the
17 failure of the Counseling Censorship Law to define these terms additionally leaves
18 those authorized to bring enforcement actions free to do so based on their personal
19 predilections, or for discriminatory purposes including disapproval of the beliefs,
20 viewpoint, or messages of a particular counselor.

21 237. Meanwhile, the sanctions faced by therapists for violating the
22 Counseling Censorship Law are severe, ranging up to the revocation of their
23 licenses and the loss of their livelihoods.

24 238. For these reasons, the Counseling Censorship Law is so vague on its
25 face that it deprives counselors and other “license holders” of Due Process rights
26 protected by the Fourteenth Amendment.
27

1 239. The deprivation of these rights constitutes irreparable injury.

2 240. Wherefore, Plaintiff respectfully requests that the Court grant
3 declaratory and injunctive relief against the Counseling Censorship Law pursuant
4 to 28 U.S.C. §§ 20201 and 2202, as set forth in the Prayer for Relief.

5 **COUNT IV**

6 For Denial of Free Exercise Rights of Mr. Tingley
7 That Are Guaranteed by the First Amendment

8 241. Plaintiff incorporates all paragraphs above by reference.

9 242. Mr. Tingley's rights of free exercise protected by the First Amendment
10 include the right to use his professional skills to assist his clients to live in
11 accordance with their own religious beliefs, and equally to speak in the course of his
12 professional work in a manner that is consistent with his own religious beliefs.

13 243. The Counseling Censorship Law is premised on the belief that
14 volitional change away from transgender identification, or away from same-sex
15 attractions, is not possible or desirable, and that any attempt to make such a
16 change is harmful.

17 244. On the contrary, Plaintiff, like many adherents of Christianity and
18 other historic religions, believes based on his faith (as well as based on science) that
19 this "unchangeable" view of human nature is mistaken, that such change is
20 possible, that God can and does work profound changes in individuals who desire
21 and seek to change, and that change to a gender identity or sexual orientation
22 aligned with an individual's reproductive biology can and does increase well-being
23 at least in individuals who pursue this goal in obedience to their own religious
24 convictions.

25 245. Further, Plaintiff believes that as a Christian he has a religious
26 obligation to use his time and professional skills to help fellow Christians who seek
27

1 his assistance to live consistently with the teachings of their shared faith. For
2 clients who share his beliefs, he offers a safe harbor where they can be assured that
3 their Christian worldview will not be subject to doubt, or even hostility, that they
4 frequently experience in their daily lives.

5 246. As applied to Plaintiff, the Counseling Censorship Law substantially
6 burdens his religious beliefs by requiring him to practice and speak in a manner
7 that is contrary to his religious beliefs, prevents him from sharing his religious
8 beliefs about the possibility of change with his clients in the course of discussions,
9 and subjects him to a risk of severe sanctions for speaking to clients consistently
10 with his religious beliefs.

11 247. Because the Counseling Censorship Law was aimed against counseling
12 goals and speech which are well known to be primarily associated with counselors
13 and therapists of faith, the Law is not neutral or generally applicable.

14 248. The Counseling Censorship Law is also not neutral or generally
15 applicable because it imposes a viewpoint-based restriction on speech, directed
16 against a viewpoint which is well known to be primarily associated with individuals
17 of faith.

18 249. The Counseling Censorship Law does not represent the least
19 restrictive means of furthering a compelling state interest as it is both overbroad
20 and underinclusive.

21 250. By depriving Plaintiff of the right to practice his religious beliefs by
22 speaking to clients on topics of gender identity and sexual attractions and change in
23 a manner consistent with the teachings of his faith and that of his clients, the
24 Counseling Censorship Law denies Plaintiff his rights of free exercise guaranteed
25 by the First Amendment.

26 251. The deprivation of these rights constitutes irreparable injury.

27

1 against a viewpoint which is well known to be primarily associated with individuals
2 of faith.

3 259. The Counseling Censorship Law does not represent the least
4 restrictive means of furthering a compelling state interest as it is both overbroad
5 and underinclusive.

6 260. Accordingly, the Counseling Censorship Law denies Plaintiff's
7 Christian clients their rights to free exercise guaranteed by the First Amendment.

8 261. The deprivation of these rights constitutes irreparable injury.

9 262. Plaintiff has standing to assert and seek redress for the First
10 Amendment rights of his clients that are violated by the enforcement of the
11 Counseling Censorship Law, including his clients' free exercise rights.

12 263. Wherefore, Plaintiff respectfully requests that the Court grant
13 declaratory and injunctive relief against the Counseling Censorship Law pursuant
14 to 28 U.S.C. §§ 20201 and 2202, as set forth in the Prayer for Relief.

15 **PRAYER FOR RELIEF**

16 Plaintiff respectfully requests that this Court enter judgment against
17 Defendants and grant the following relief:

18 (A) A declaration that—both facially and as applied—the Counseling
19 Censorship Law violates the First Amendment right to free speech of Plaintiff Mr.
20 Tingley and of his clients who seek his professional assistance to achieve comfort with
21 a gender identity congruent with the client's biological sex, or to reduce unwanted
22 same-sex attraction and/or develop or increase opposite-sex attractions, or to change
23 sexual behaviors of any sort;

24 (B) A declaration that—both facially and as applied—the Counseling
25 Censorship Law violates the free exercise rights of Plaintiff Mr. Tingley and of his
26 clients who seek his professional assistance to achieve comfort with a gender identity
27 congruent with the client's biological sex, or to reduce unwanted same-sex attraction

1 and/or develop or increase opposite-sex attractions, or to change sexual behaviors of
2 any sort;

3 (C) A declaration that, because it is so vague that it does not provide fixed
4 legal standards as to what is prohibited and what is not, the Counseling Censorship
5 Law facially violates the Due Process rights of Mr. Tingley protected by the
6 Fourteenth Amendment.

7 (D) That this Court enter a preliminary injunction and permanent
8 injunction barring all enforcement of the Counseling Censorship Law;

9 (E) That this Court award Plaintiff costs and expenses of this action,
10 including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988;

11 (F) That this Court issue the requested injunctive relief without a condition
12 of bond or other security being required of Plaintiff;

13 (G) That this Court grant any other relief that it deems equitable and just
14 in the circumstances; and

15 (H) That this Court retain jurisdiction over this matter for the purpose of
16 enforcing its orders.

17
18 Respectfully submitted this 13th day of May, 2021.

19
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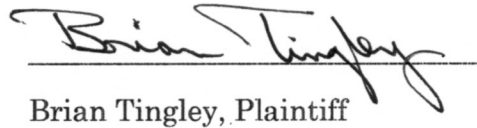
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Attorneys for Plaintiff

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VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint, and the factual allegations thereof, and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 12th day of May, 2021.


Brian Tingley, Plaintiff