



# ISSUE ANALYSIS

## Protect Client and Therapist Freedom of Choice Regarding Sexual Orientation Change Efforts

*Peter Sprigg*

At this writing, two states (California and New Jersey) have enacted legislation which forbids licensed professional counselors in the state to “engage in sexual orientation change efforts with a person under 18 years of age.” In 2014 Washington state considered a ban for the third straight year, and similar bills have now been introduced in several other states including Florida, Massachusetts, Minnesota, New York, Ohio, Pennsylvania, and Virginia. In addition, U.S. Rep. Jackie Speier (D-CA) has introduced a non-binding resolution at the federal level, H.Con.Res. 69, expressing support for such bans.<sup>1</sup>

The American Psychological Association (APA) and some other professional groups have been critical of “sexual reorientation therapy” or “sexual orientation change efforts” (often abbreviated “SOCE”). Such groups are not immune to political and ideological bias, particularly on the issue of homosexuality. Nevertheless, even the APA’s statements on the subject of sexual reorientation therapy do not support restricting such therapies by law.

**Q: Are people born gay?**

*A: No research has ever proven that a homosexual orientation is determined at birth.*

The three studies in the early 1990’s which were hailed by the media as providing evidence for a “gay gene” (or for an innate and biological cause for homosexuality) have long since been discredited by the inability of other researchers to replicate those results.<sup>2</sup>

In fact, the American Psychological Association itself declared in their most recent statement on this question that: “There is no consensus among scientists about the exact reasons that an individual develops a heterosexual, bisexual, gay, or lesbian orientation. ... Many think that nature and nurture both play complex roles...”<sup>3</sup>

If “nurture” plays *any* role in the development of homosexuality, then it cannot be said categorically that “people are born gay.” Researchers from Columbia and Yale found that evidence supports “the hypothesis that less gendered socialization in early childhood and preadolescence shapes subsequent same-sex romantic preferences.”<sup>4</sup>

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**Q: Can someone's sexual orientation change over time?**

*A: Yes – and such changes are especially common among young people.*

There is abundant evidence that sexual orientation can be fluid rather than fixed, and that evidence is particularly strong with respect to young people – the very people whose freedom to seek change is taken away by such a law. Ritch Savin-Williams, who is the nation's leading expert on homosexual teenagers, wrote that in one major study, "[O]f the . . . boys who indicated that they had exclusive same-sex romantic attraction, only 11 percent reported exclusive same-sex attraction one year later . . ." <sup>5</sup> Some measure of change in sexual orientation is not only possible, but it is the *norm* for adolescents with same-sex attractions.

**Q: Can "sexual reorientation therapy" or other "sexual orientation change efforts" (SOCE) be effective in helping people to change their sexual orientation?**

*A: Research, clinical experience, and personal testimonies all give evidence that SOCE can help people to change.*

There are many psychiatrists, psychologists, counselors and therapists who have reported success in treating clients for unwanted same-sex attractions. Much of this research and clinical experience has been reported in the peer-reviewed scholarly literature for decades.<sup>6</sup> Even the APA acknowledges<sup>7</sup> that "there are people who perceive that they have benefited from" SOCE.<sup>8</sup>

Nicholas A. Cummings was chief psychologist for Kaiser Permanente for twenty years, and served a term as *President* of the American Psychological Association. Cummings is not a social conservative who opposes homosexuality. He wrote in *USA Today* in 2013, "Gays and lesbians have the right to be affirmed in their homosexuality." However, he added, "contending that all same-sex attraction is immutable is a distortion of reality." During his years of practice, Cummings wrote, "Of the patients I oversaw who sought to change their orientation, hundreds were successful."<sup>9</sup>

**Q: Do sexual orientation change efforts threaten the well-being of clients?**

*A: The American Psychological Association has admitted that there is no "valid causal evidence" of harm.*

Here is an excerpt of what an often-cited 2009 APA task force *actually* said [emphasis added]:

*We conclude that there is a dearth of scientifically sound research on the safety of SOCE. Early and recent research studies provide no clear evidence of the prevalence of harmful outcomes among people who have undergone efforts to change their sexual orientation or the frequency of the occurrence of harm because no study to date of adequate scientific rigor has been explicitly designed to do so. Thus, we cannot conclude how likely it is that harm will occur from SOCE. However, studies from both periods indicate that attempts to change sexual orientation may cause or exacerbate distress and poor mental health in some individuals . . .*<sup>10</sup>

One cannot claim there is scientific proof that SOCE is harmful, given the numerous qualifying statements above: “a dearth of scientifically sound research;” “no clear evidence;” “no study to date of adequate scientific rigor;” “we cannot conclude how likely it is.” Saying that SOCE “may” cause distress amounts to mere speculation.

At another point, the APA task force said this:

Although the recent studies do *not provide valid causal evidence of the efficacy of SOCE or of its harm*, some recent studies document that there are people who *perceive* that they have been harmed through SOCE.

In other words, the same factor that causes people to question the efficacy of SOCE— a lack of “valid causal evidence” —also applies to the claims of harm resulting from such therapy. To say that “there are people who perceive that they have been harmed through SOCE” suggests that the evidence of harm is largely anecdotal. Yet advocates of therapy bans dismiss similar anecdotal evidence (as well as clinical and research evidence) of the effectiveness and benefits of SOCE.

**Q: Are these laws needed to prevent extreme forms of therapy that *could* be harmful?**

*A: There is virtually no evidence that the more extreme forms of sexual reorientation therapy often alleged are being practiced today anywhere in the United States.*

Advocates of therapy bans inevitably trot out horror stories about extreme forms of therapy, such as electro-shock therapy; “aversion” treatments (which involve inflicting physical pain or discomfort in association with homosexual arousal); and camps or residential programs for youth. There is only one problem— *there is no evidence that a single practitioner of SOCE is using these methods today.*

In the absence of evidence that these methods (some of which may have been tried decades ago) are being used today, at least one witness before a New Jersey legislative hearing simply fabricated a story of having been sent to a residential camp for reorientation and subjected to extreme forms of therapy. When the story was investigated,<sup>11</sup> it turned out to be drawn from the plot of a movie<sup>12</sup> starring noted drag queen RuPaul.

The prohibitions enacted in California and New Jersey, and proposed elsewhere, are *not* limited to so-called “extreme” forms of therapy. Instead, they ban any and every effort to change the sexual orientation of minors, even when it is conducted through the simplest of therapy, using talk alone.

**Q: Is there any precedent for legal prohibitions of any form of “talk therapy?”**

*A: No. No advocate of a SOCE ban has yet presented a single example of specific form of talk therapy being prohibited by law solely because of the client-chosen goal which the therapy seeks to achieve.*

Indeed, it is shocking that some state officials are willing to invade the privacy of the counselor-client relationship on the basis of such flimsy evidence of (possible, occasional) harm.

**Q: Should parents or other adults be able to force “gay” kids to “convert” to heterosexuality against their will?**

*A: While parents do have a right to control the upbringing of their children, sexual reorientation therapy exists for the benefit of youth or adults who experience unwanted same-sex sexual attractions.*

A key to the success of any sexual orientation change efforts is always the client’s *motivation* to change. Few, if any, sexual reorientation therapists would accept a client of any age who is happy with a “gay” identity and then try to “change” that person—even at a parent’s request.

The laws against sexual orientation change efforts are not limited to *involuntary* efforts. They absolutely prohibit *any* such efforts with minors—even if the young person does not want to experience same-sex attractions, does not self-identify as “gay,” and wants and requests the therapy.

**Q: Are the laws against SOCE neutral regarding content and viewpoint?**

*A: No. These laws allow a therapist to encourage a client with same-sex attractions to embrace a homosexual identity; they do not allow a therapist to help such a client achieve a heterosexual identity.*

Laws regulating therapy related to sexuality for minors might be considered “neutral” if they were to forbid therapists from encouraging or helping with the acceptance or rejection of *any* type of sexual feelings; from encouraging or facilitating adoption or rejection of *any* type of sexual conduct; or from encouraging or facilitating the adoption of any particular sexual identity. However, that is not the case with the SOCE bans, which allow therapy that is affirming of the existing manifestations of sexual orientation, but forbid helping a client to resist, overcome, or change those existing manifestations (attractions, behaviors, or self-identification)—again, even if that is what the client wants and requests.

**Q: Are legislative bans on sexual orientation change efforts constitutional?**

*A: A strong argument can be made that such laws violate the First Amendment guarantee of freedom of speech.*

The laws already enacted in California and New Jersey have been challenged in federal court by plaintiffs who are being represented by the legal advocacy group Liberty Counsel.

In a December 2012 decision, U.S. District Court Judge William B. Shubb granted a preliminary injunction against enforcement of the California law, SB 1172. Shubb declared, “Because SB 1172 would restrict the content of speech and prohibit the expression of particular viewpoints it is subject to strict scrutiny review.” Such a

standard of review requires that the law be “justified by a compelling government interest” and be “narrowly drawn to serve that interest.” Judge Shubb concluded that “evidence that SOCE ‘may’ cause harm to minors based on questionable and scientifically incomplete studies that may not have included minors is unlikely to satisfy the demands of strict scrutiny.”<sup>13</sup>

A different District Court in California upheld the law,<sup>14</sup> however, as did a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit, ruling in August 2013 that the law targeted “professional conduct” rather than “speech.”<sup>15</sup> In January 2014, a majority of judges on the Ninth Circuit denied a request for rehearing of the case by the full court, but three other judges sharply dissented. Judge Diarmuid O’Scannlain wrote:

The State of California, in the statute at issue here, has prohibited licensed professionals from saying certain words to their clients. By labeling such speech as “conduct,” the panel’s opinion has entirely exempted such regulation from the First Amendment. In so doing, the panel contravenes recent Supreme Court precedent, ignores established free speech doctrine, misreads our cases, and thus isolates from First Amendment scrutiny California’s prohibition—in the guise of a professional regulation—of politically unpopular expression.<sup>16</sup>

On February 6, 2014, Liberty Counsel appealed on behalf of its plaintiffs to the U.S. Supreme Court.<sup>17</sup>

**Q: Do bans of sexual orientation change efforts infringe on religious liberty?**

*A: Yes – because they make it more difficult for some people to receive counseling that will help them to live in a way consistent with the teachings of their faith.*

The free exercise of religion, guaranteed by the First Amendment to the Constitution, includes the right to believe, teach, and act upon the belief that certain forms of conduct, including sexual conduct, are contrary to the will of God. Some who hold such beliefs regarding homosexual conduct—but who nevertheless experience same-sex sexual attractions—may see sexual reorientation therapy as a way of helping them to live more comfortably in a way that is consistent with the teachings of their faith.

Although the judicial decisions thus far handed down on constitutional challenges to SOCE bans have addressed only free speech claims, claims based on religious freedom also have merit.

### **Conclusion**

Laws banning sexual orientation change efforts for minors take freedom away from therapists, from parents, *and from young people desiring help*. The evidence does not support such bans, and they therefore represent an assault upon both truth and freedom.

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## Notes:

- <sup>1</sup> "Bill Text 113th Congress (2013-2014) H.CON.RES.69.IH," The Library of Congress THOMAS, accessed on March 20, <http://thomas.loc.gov/cgi-bin/query/z?c113:H.CON.RES.69>.
- <sup>2</sup> Peter Sprigg and Timothy Dailey, eds., *Getting It Straight: What the Research Shows about Homosexuality*, (Washington, D.C.: Family Research Council, 2004), accessed on March 20, 2014, <http://downloads.frc.org/EF/EF08L41.pdf>.
- <sup>3</sup> "Answers to your questions: For a better understanding of sexual orientation and homosexuality," American Psychological Association, accessed March 19, 2014, <http://www.apa.org/topics/lgbt/orientation.pdf>.
- <sup>4</sup> Peter S. Bearman and Hannah Brückner, "Opposite-sex twins and adolescent same-sex attraction," *American Journal of Sociology*, 107 (5) (2002): 1179-1205, accessed on March 20, 2014, <http://www.jstor.org/discover/10.1086/341906?uid=3739936&uid=2&uid=4&uid=3739256&sid=21103811034373>.
- <sup>5</sup> Ritch C. Savin-Williams, "Who's Gay? Does It Matter?," *Current Directions in Psychological Science*, 15 (2006): 140-44. Accessed on March 20, 2014, <http://cdp.sagepub.com/content/15/1/40.short>.
- <sup>6</sup> A comprehensive summary of this research, based on "600 reports of clinicians, researchers, and former clients," can be found in: James E. Phelan, Neil Whitehead, Philip M. Sutton, "What Research Shows: NARTH's response to the APA Claims on Homosexuality," *Journal of Human Sexuality* Vol. 1 (2009), 9-39, accessed on March 20, 2014, [http://www.unav.es/icf/main/top/diciembre09/Narth\\_What-research-shows-homosexuality.pdf](http://www.unav.es/icf/main/top/diciembre09/Narth_What-research-shows-homosexuality.pdf).
- <sup>7</sup> "Report of the American Psychological Association Task Force on the Appropriate Therapeutic Responses to Sexual Orientation," American Psychological Association, accessed March 19, 2014, <http://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>.
- <sup>8</sup> Some examples can be found in: Bob Davies with Lela Gilbert, *Portraits of Freedom: 14 People Who Came Out of Homosexuality* (Downers Grove, Ill.: InterVarsity Press, 2001).
- <sup>9</sup> Nicholas A. Cummings, "Sexual reorientation therapy not unethical: Column," *USA Today*, July 30, 2013, accessed on March 19, 2014, <http://www.usatoday.com/story/opinion/2013/07/30/sexual-reorientation-therapy-not-unethical-column/2601159/>.
- <sup>10</sup> "Report of the American Psychological Association Task Force on the Appropriate Therapeutic Responses to Sexual Orientation," American Psychological Association, accessed March 19, 2014, <http://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>.
- <sup>11</sup> Christopher Doyle, "Transgendered 'Woman' Lies about Therapy 'Torture,'" *World Net Daily*, March 21, 2013, accessed on March 20, 2014, <http://www.wnd.com/2013/03/transgendered-woman-lies-about-therapy-torture/>.
- <sup>12</sup> Wikipedia contributors, "But I'm a Cheerleader," *Wikipedia, The Free Encyclopedia*, accessed March 20, 2014, [http://en.wikipedia.org/wiki/But\\_I%27m\\_a\\_Cheerleader](http://en.wikipedia.org/wiki/But_I%27m_a_Cheerleader).
- <sup>13</sup> *Welch v. Brown*, 907 F.Supp. 2d 1102 (E.D.Cal. 2012).
- <sup>14</sup> *Pickup v. Brown*, 2012 U.S. Dist. LEXIS 172034 (E.D. Cal., Dec 4, 2012).
- <sup>15</sup> *Pickup v. Brown*, 740 F 3d 1208, (9<sup>th</sup> Cir 2014).
- <sup>16</sup> *Pickup v. Brown*, 740 F 3d 1208, (9<sup>th</sup> Cir 2014) (O'Scannlain, J. 1215 dissenting from denial of rehearing en banc).
- <sup>17</sup> "Liberty Counsel Petitions Supreme Court on Change Therapy Ban," Liberty Counsel, accessed March 20, 2014, <http://www.lc.org/index.cfm?PID=14100&PRID=1404>.