

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

**Wyatt Bury, LLC; Ballpark
Investments LLC d/b/a Hope and
Healing Counseling; Wyatt Bury;
Pamela Eisenreich; and State of
Missouri *ex rel.* Missouri Attorney
General Andrew Bailey,**

Plaintiffs,

v.

**City of Kansas City, Missouri and
Jackson County, Missouri,**

Defendants.

Case No. 4:25-cv-00084

Verified Complaint

Demand for Jury Trial

Introduction

Children and adults today are struggling with record levels of loneliness, hopelessness, and other mental-health issues. Those struggling often turn to licensed counselors who share their values and understand their goals. But Kansas City and Jackson County recently passed ordinances that ban purely consensual conversations—pure speech—about gender identity and sexual orientation. These ordinances not only require counselors to parrot these governments' preferred views on sexual ethics; they also ban different views. That violates the First Amendment. Government bureaucrats should not insert themselves into private counseling conversations, much less censor and redirect the exploration of truth on some of the most contentious issues of our day.

Plaintiffs are the State of Missouri and Christian licensed counselors who practice in the City and County. The Counselors help children, parents, adults, and couples navigate some of life's hardest issues. They regularly receive requests from parents to help minors confused about their gender identity and sexual orientation. The Counselors want to explore these topics freely with their clients. Sometimes, the minors ask for help identifying with their sex or redirecting their sexual desires toward the opposite sex.

But the City (K.C. Ord. § 50-234) and the County (Jackson Cnty. Ord. § 5575) censor these private conversations through their Counseling Ordinances. These ordinances prohibit the Counselors from helping minors achieve comfort between their gender identity and sex and reduce unwanted same-sex attraction. At the same time, they permit and encourage counselors who assist children in achieving the opposite goals. Thus, a teenage girl who struggles with her gender identity could obtain counseling encouraging her to remove her breasts to appear like a man. But she could not get counseling to help her pursue a self-selected goal of living consistent

with her sex. The Counselor's freedom to speak thus depends entirely on the content and message of their speech.

The City's Public Accommodation Ordinance (K.C. Ord. § 38-113) both compels *and* restricts speech on gender identity and sexual orientation. It requires the Counselors to provide counseling services to adults and children who wish to affirm views about sex and gender that conflict with the Counselors' religious beliefs. Practically, the Public Accommodation Ordinance forbids referrals for counseling when the counseling originally requested would otherwise violate the Counselors' religious beliefs. The Public Accommodation Ordinance even prevents the Counselors from following policies and practices consistent with their religious beliefs on human identity and sexuality and from explaining their reasons for offering only counseling tracking these beliefs.

All three of these Ordinances impose severe penalties. The City and County may impose fines between \$500 and \$1,000 each time a Counselor assists a minor with his or her goal of following a particular sexual ethic. K.C. Ord. §§ 50-234, 1-17; Jackson Cnty. Ord. §§ 5575, 5520. Under the Public Accommodation Ordinance, the City also may force the Counselors to pay damages and attorney's fees, and can lock them in jail for 180 days if they counsel consistent with their faith. K.C. Ord. §§ 38-35, 38-101(a), 38-206

The Counselors face an immediate threat. Counselor Eisenreich currently counsels minors struggling with gender confusion and unwanted same-sex attraction. Sometimes she helps her clients achieve their goals to change. Other times, she steers clear of critical conversations to avoid violating the Counseling Ordinances. The Counselors also regularly refer to other counselors adult and minor prospective clients who have beliefs about sexual orientation and gender identity inconsistent with the Counselors' religious beliefs. The Counselors also repeatedly chill their own

speech about sexuality and gender identity and operate their practices under constant threat of punishment.

But they shouldn't have to. The U.S. Constitution protects the freedom to speak and to hear—even in the counseling office and even when the message spoken is one that (though historically widespread) may now be disfavored by some governments. Government-mandated speech is especially egregious in the counseling office because the counseling relationship hinges on complete trust and transparency. Otherwise, governments could impose their chosen orthodoxy in thought, belief, and speech upon these intimate conversations. In the end, the First and Fourteenth Amendments leave the choice of what to say and to hear with the people—not the government. Our country is better off when people can express different views and pursue different goals, even when the government disagrees. The ordinances target speech, not conduct. For these reasons, this Court should declare the three Ordinances unconstitutional insofar as they prohibit pure speech and should preliminarily and permanently enjoin Jackson County and Kansas City from enforcing them as well as granting the additional relief requested below.

Jurisdiction and Venue

1. This civil-rights action raises federal questions under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

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

3. This Court has authority to award the requested (1) declaratory relief under 28 U.S.C. § 2201–02 and Fed. R. Civ. P. 57; (2) injunctive relief under 28 U.S.C. § 1343 and Fed. R. Civ. P. 65; (3) the requested damages under 28 U.S.C. § 1343; and (4) costs and attorneys' fees under 42 U.S.C. § 1988.

4. Venue is proper here under 28 U.S.C. § 1391(b) because the events and omissions giving rise to the claims substantially occur within the Western District of

Missouri; the effects of the challenged ordinances are felt here; Defendants can and do perform official duties here; and Defendants reside here.

Plaintiffs

5. The State of Missouri is a sovereign State of the United States of America.

6. Andrew Bailey is the 44th Attorney General of the State of Missouri.

7. Attorney General Bailey is authorized to bring actions on behalf of Missouri that are “necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary.” Mo. Rev. Stat. § 27.060.

8. The State of Missouri, on the relation of the Attorney General, brings this action to put an end to Jackson County’s and Kansas City’s campaigns to stifle protected speech with which those local governments disagree.

9. Missouri, through its Attorney General, has the authority to bring this action because this suit alleges that the County and City have, are, and will keep engaging in suppressing protected speech with which they disagree, which is activity in which the State has an interest under Mo. Rev. Stat. § 27.060.

10. Missouri “has a quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982).

11. As the U.S. Supreme Court has “long recognized[,] a State’s interests in the health and well-being of its residents extend beyond mere physical interests to economic and commercial interests.” *Id.* at 609.

12. Here, Missouri is particularly concerned about the Ordinances suppressing speech in the context of minors with gender dysphoria. As the four-year,

400-page Cass Report from the United Kingdom's National Health Service makes clear, transgender identity in minors is caused at least in part by social circumstances. There is also substantial reason to believe that social transition and pharmacological interventions *cause* transgender identity in minors.

13. Censoring counselors and other speakers, as the ordinances do, harms minors by blocking the speech that would rectify the problems caused by these previous interventions. As even pro-transition activists like the World Professional Association for Transgender Health have acknowledged, this kind of speech can help to resolve gender dysphoria because through this speech many individuals can integrate their gender identity with their sex and avoid the need to undergo surgeries or pharmacological interventions.

14. Missouri sues to vindicate its interest in securing its residents from the harmful effects of the County's and City's actions, as federal laws like the First Amendment "create interests that a State will obviously wish to have accrue to its residents." *Alfred L. Snapp*, 458 U.S. at 608.

15. Therefore, Missouri "ha[s] an interest, independent of the benefits that might accrue to any particular individual, in assuring that the benefits of the federal system are not denied to its general population." *Id.*; see also *People by Vacco v. Mid Hudson Med. Grp., P.C.*, 877 F. Supp. 143, 146 (S.D.N.Y. 1995).

16. The First Amendment, incorporated through the Fourteenth Amendment, creates benefits and alleviates hardships for all by providing for freedom of speech. Thus, Missouri seeks to vindicate its quasi-sovereign interest in ensuring its residents are included in the benefits that flow from, and hardships alleviated by, the First Amendment.

17. There are a substantial number of persons who engage in counseling in Missouri. On information and belief, there were approximately 847 counselors and 1,288 provisional counselors licensed in Missouri. Further, the Counseling

Ordinances are not limited to counselors but also apply to psychologists (1,878 licensed in Missouri), provisional psychologists (42 licensed in Missouri), social workers (10,962 licensed in Missouri), psychiatrists (1,851 licensed in Missouri), therapists (570 licensed in Missouri), provisional therapists (50 licensed in Missouri), behavior analysts (1,185 licensed in Missouri), provisional behavioral analysts (113 licensed in Missouri), physicians (28,762 M.D.s and 5,182 D.O.s licensed in Missouri), and other licensed professionals covered by Chapters 334 and 337 of the Missouri Revised Statutes, including assistant physicians, midwives, anesthesiologist assistants, physical therapists, physical therapist assistants, athletic trainers, and respiratory care therapists. Jackson Cnty. Ord. § 5575.1.d, .2; K.C. Ord. § 50-234(b)(4), (c).

18. Missouri citizens who are counselors, provisional counselors, psychologists, provisional psychologists, social workers, psychiatrists, therapists, provisional therapists, behavior analysts, provisional behavior analysts, physicians, and other licensed professionals under chapters 334 and 337 of the Revised Statutes of Missouri, and who are similarly situated to the Counselor Plaintiffs in this case, are similarly affected by the ordinances challenged in this case. *See infra*.

19. Missouri also has a sovereign interest in this case, for two reasons.

20. First, Missouri statutes ban drugs and surgery for minors that push them to live inconsistent with their sex through transition procedures. Mo. Rev. Stat. § 191.1720.

21. For that reason, Missouri has an interest in ensuring that counselors have the freedom to discuss gender dysphoria with their minor clients to help those clients navigate their gender identity without resorting to experimental drugs and surgery.

22. The Counseling Ordinances prevent minors from speaking with counselors to help these minors become more comfortable with their sex by aligning their identity with their sex.

23. This leaves minors in Kansas City and Jackson County who are experiencing gender dysphoria and who are seeking help to resolve that gender dysphoria in a way that aligns their identity with their sex without an option to seek counseling from counselors who could help the minor clients pursue the outcome the minor clients seek. That is contrary to the purpose of Missouri's law, which is intended to help these minors.

24. Thus, the Kansas City and Jackson County ordinances harm Missouri's sovereign interest in their law favoring private conversations with professionals that can help minors experiencing gender dysphoria.

25. Second, Missouri has a sovereign interest in this case because it has passed statutes creating a licensing regime for counselors, psychiatrists, psychologists, therapists, social workers, doctors, and others in Chapters 334 and 337 of the Missouri Revised Statutes.

26. Missouri has a sovereign interest in determining the requirements for these professions.

27. When Kansas City and Jackson County pass ordinances like the ones here that set additional requirements or prohibitions for professions regulated by the State (especially if those requirements violate the law), the State of Missouri has a sovereign interest in challenging those additional requirements or prohibitions.

28. Here, Kansas City's and Jackson County's requirements and prohibitions on counselors, psychiatrists, psychologists, therapists, social workers, doctors, and others in Chapters 334 and 337 of the Missouri Revised Statutes violate these providers First and Fourteenth Amendment rights.

29. Thus, Missouri has a sovereign interest in challenging Kansas City's and Jackson County's requirements and prohibitions.

30. Wyatt Bury is a Licensed Professional Counselor.

31. He is the sole owner, member, manager, and employee of Wyatt Bury, LLC, a limited liability company organized under Missouri law. He operates his professional counseling practice through this company.

32. Plaintiff Pamela Eisenreich is a Licensed Professional Counselor.

33. She is one of two owners, members, and managers of Ballpark Investments LLC, a limited liability company organized under Missouri law, which does business as Hope and Healing Counseling. She operates her professional counseling practice through this company, and she has complete, full, and final authority to adopt policies and practices related to licensed professional counseling.

34. The Counselors are licensed by the State of Missouri.

35. The Counselors practice and do business within the geographical boundaries of Kansas City.

36. Bury practices and does business also within the geographical boundaries of Jackson County.

Defendants

37. The City is a charter city with the authority to enforce the Counseling Ordinance and Public Accommodation Ordinance. Mo. Rev. Stat. §§ 82.010, 82.300(1); K.C. Charter § 102; K.C. Ord. § 38-206(b).

38. The City investigates, enforces, and prosecutes violations of these ordinances through the City Attorney, the Civil Rights and Equal Opportunity Department, and the Human Rights Commission. K.C. Charter § 407(1), (3); K.C. Ord. §§ 2-301(6), §§ 38-21(2), (4), (6), 38-23(a)–(e), 38-25(d), 38-27, 38-31, 38-43(e), (k), (l), (o).

39. The County is a home-rule chartered county with the authority to “be sued” and to enforce the Counseling Ordinance. Jackson Cnty. Charter Art. I §§ 1, 3–5.

40. The County investigates, enforces, and prosecutes the ordinance through the County Executive, the County Counselor, and the County Prosecutor. Mo. Rev. Stat. §§ 56.070(1), 56.640(1); Jackson Cnty. Charter Arts. I §§ 1, 3–5, III § 5, V § 8; Jackson Cnty. Ord. §§ 1805, 1809.

Factual Background

Wyatt Bury counsels clients through his practice, Wyatt Bury LLC.

41. Bury is a Christian.

42. Through Wyatt Bury LLC, he provides counseling for children, adults, couples, and families on a wide range of issues, including depression, anxiety, relationships, trauma, and others.¹

43. Based on Bury’s religious beliefs and specific expertise, he also offers integrated Christian counseling.

44. Through this counseling, Bury combines his professional training and expertise with his Christian beliefs to provide counseling that integrates scientific observation and research with biblical principles, respects the authority of the Bible, expects God to intervene in individuals’ lives, and acknowledges that Christian communities offer a source of personal transformation.

45. Bury is also a Certified Life Coaching Practitioner. Bury provides Christian life coaching where he helps individuals, couples, and groups work towards transforming their lives to align with a Christian worldview by praying, uniting their

¹ This complaint will refer to Bury and Wyatt Bury LLC collectively as “Bury.”

beliefs, desires, and emotions with God's design for humanity, and otherwise leading a life consistent with the Bible's teachings.

Pamela Eisenreich counsels clients through Hope and Healing Counseling.

46. Eisenreich is a Christian.

47. Through Hope and Healing Counseling, Eisenreich provides counseling to minors, adults, and couples on various issues, including grief and loss, abuse recovery, cognitive behavioral therapy, sexual abuse, anger management, addictions, co-dependency, anxiety, post-traumatic stress, and marriage.²

48. Over the years and presently, she has counseled minor and adult clients who identify as gay, lesbian, non-binary, transgender, pansexual; who present with other sexual orientations or identify as a sex other than their sex; or who experience distress relating to their gender identity and sexual orientation.

The Counselors provide counseling consistent with their religious beliefs.

49. The Counselors counsel consistent with their religious beliefs.

50. Those religious beliefs shape how they view the world, approach counseling, view healthy and meaningful relationships and lifestyles, and believe their clients will overcome challenges to lead fulfilling lives.

51. The Counselors' religious beliefs include that God created the world and everything in it, that each person has inherent value and dignity, that sexual relationships should be reserved for marriage between one man and one woman, that sex is a biological reality that cannot be chosen or changed, and that living inconsistent with these principles is harmful.

52. While the Counselors hold these beliefs, they do not impose their Christian faith on their clients or require their clients to share their faith.

² This complaint will refer to Eisenreich and Hope and Healing Counseling collectively as "Eisenreich."

53. They provide counseling to Christian and non-Christian clients.
54. Regardless of the clients' religious beliefs, the Counselors approach how they provide their counseling services consistently.
55. The Counselors meet with prospective clients to discuss the clients' goals and desires for the counseling.
56. The prospective clients voluntarily set their own goals and consent to the Counselors' counseling throughout the counseling relationship.
57. The Counselors have never and would never provide counseling to a client who did not give informed consent or where the counseling was provided involuntarily.
58. If the clients decide to move forward, the Counselors schedule an initial meeting.
59. Most of the time, the Counselors communicate with their clients either during their first meeting or before that meeting occurs about whether the clients would like to integrate faith with their counseling.
60. Many of the Counselors' clients choose to do so and request the Counselors' services because they share the Counselors' religious beliefs.
61. Those clients often desire to meet their goals with a counselor who understands their faith convictions, relates to those convictions, realizes the fundamentally important role that faith can play in transforming lives, and can help them align their actions and feelings with their faith to accomplish their goals.
62. The Counselors' clients often share the Counselors' beliefs about sexuality and gender identity and may request that the Counselors work with them to help them conform their identity, sexuality, and sense of self to their religious beliefs.

63. The Counselors then engage with those clients in a way that is explicitly guided by mutual faith convictions and the client's desire to live a life of integrity within their faith.

64. The Counselors also have seen clients who decline to integrate faith and counseling or do not share their religious beliefs.

65. In those circumstances, the Counselors provide their counseling services without explicitly referencing their faith or imposing their views.

66. The Counselors provide counseling by listening, talking with their clients, leading them in exercises, and asking probing questions to aid the clients' self-discovery.

67. The Counselors create a safe environment for each client to engage in self-exploration by developing a personal relationship with him or her.

68. The Counselors form relationships with their clients to help them reflect on their identity and beliefs, identify personal goals that may not have been immediately clear to them, and share sensitive and intimate details.

69. Once that relationship is formed, the Counselors work collaboratively with their clients to accomplish the clients' objectives.

70. Although the Counselors' counsel in a collaborative manner, their clients rely on them to guide the conversations and expect them to offer advice, guidance, or suggestions about how to address the clients' struggles.

71. The goal of the Counselors' approaches is always to facilitate speech, encourage conversations, enable their client to consider or approach their struggles in a different way, produce self-healing, and prompt the clients to discover and share additional insights with the Counselors.

72. Given their expertise, the Counselors counsel minors, which involves close and ongoing interactions with the minor and his or her parents.

73. Although the parents' wishes may overlap with their children's, the Counselors' approach is to support the minor clients to achieve their own self-selected goals through their own personal exploration and development.

74. While in most cases the minors will initially attend on their parents' prompting, the Counselors will only continue to see them as clients if the minors are willing to work with the Counselors and participate voluntarily.

75. If an irreconcilable conflict over the counseling arises between the parent and the minor client (for example, the parents want their child to attend counseling, but the child no longer consents to the counseling), the Counselors will terminate counseling services with the minor.

76. For these reasons and others, the Counselors have a close, ongoing, and personal relationship with their clients and their clients' parents. No conflict of interest exists between the Counselors and their clients and their clients' parents, so long as the parents seek the same goals as the client.

77. Eisenreich has provided counseling to minors who express concern or confusion about gender identity, unwanted same-sex attraction, and other unwanted sexual behaviors, and who have been open to or desire to change, eliminate, or reduce their attractions, perceived identities, and related behaviors.

78. Eisenreich has also provided counseling to minors who identify as homosexual, bisexual, or transgender but who do not express an interest in exploring those topics, in which case Eisenreich addresses the other struggles the minor is facing in their lives and wants to resolve.

79. Whenever Eisenreich has a client who is willing to or interested in exploring their gender identity and that topic comes up, she works with that client to harmonize their gender identity to be consistent with their sex and to encourage, affirm, and support that client to live and act consistent with their sex.

80. The Counselors also provide pre-marital, marital, and couples counseling to adults consistent with their beliefs that marriage is the union of one man and one woman and that marriage is a gift from God.

81. The Counselors believe that by counseling their clients in these ways, they strive to improve their clients' lives.

The Counselors cannot provide counseling contrary to their religious beliefs.

82. The Counselors' religious beliefs not only inspire what they say—those beliefs also inform what they cannot say.

83. The Counselors only accept requests for counseling that are consistent with their religious beliefs and professional expertise and cannot provide counseling in a manner that violates their religious beliefs.

84. The Counselors do not provide marital or relationship counseling that sanctions sexual activity outside of marriage between one man and one woman (including the use of pornography) or encourages the pursuit of same-sex marriage or same-sex romantic relationships.

85. The Counselors likewise do not promote or encourage clients' attempts to act or identify contrary to their sex, such as attempts to social transition or to use drugs and procedures to alter their bodies to appear like the opposite sex.

86. The Counselors do not provide the counseling described in paragraphs 84–85 because providing such counseling would promote activities, behaviors, and identities contrary to their beliefs and express messages contradicting what the Counselors want to and do promote elsewhere.

87. For this reason, it is the Counselors' policy and practice to offer and provide pre-marital, marital, and relationship counseling that affirms marriage between a man and a woman, and to offer and provide counseling on gender identity that encourages clients to identify consistent with their sex.

88. The Counselors' policy and practice is to decline any counseling requests that would contradict these beliefs.

89. Likewise, while the Counselors have a pattern and practice of referring to their clients with pronouns consistent with their sex (he/him pronouns for male clients and she/her pronouns for female clients), the Counselors would not use pronouns inconsistent with their clients' sex because doing so would violate their beliefs that God created humans as either male or female, that sex cannot be changed, and that they must be truthful in their communications with their clients.

90. Whenever the Counselors receive a request that they cannot fulfill because of their religious beliefs or because the request asks for counseling beyond their competence, they generally try to refer that request to another counselor, or, in the case of pronouns, using first names or working with the client on an appropriate and respectful but honest accommodation.

91. The Counselors' policy and practice of offering counseling consistent with their religious beliefs and declining requests that violate those beliefs are decisions that are never about the person requesting those services, but are instead based on an objection to promoting, encouraging, or supporting ideas that violate their beliefs.

92. The Counselors gladly serve clients regardless of their personal characteristics, including those who identify as LGBT.

93. For example, Bury would and Eisenreich does provide counseling to clients who identify as LGBT to assist them with trauma, abuse, depression, substance abuse, anxiety, and other issues.

94. When evaluating whether a counseling request is consistent with their religious beliefs and competence, the Counselors' pattern and practice is to consider the content and subject matter of the requested counseling and whether that content

or subject matter would require them to affirm, promote, or support a message or idea they oppose, not to consider the identity of the person who requests the counseling.

Sexuality and gender identity are topics of intense international debate.

95. The Counselors have followed the debate in society and within the counseling profession about the definition of marriage, sexual orientation, and gender identity, and how to address these topics.

96. Based on the Counselors' experiences within their practices and their observations of media reports, professional studies, and other sources of information, the Counselors believe that there are increasing numbers of young people struggling with questions of gender identity and sexual orientation and of parents seeking help for their children struggling with these questions.

97. Some young people wish to explore whether it is possible to alter their confusion over their gender identity, to achieve comfort and live consistent with their sex, to avoid the lifetime consequences associated with acting contrary to one's sex, to alter their same-sex attraction, and to live consistent with the belief that marriage is the union of one man and one woman.

98. There is an ongoing debate within the medical field and society about how to best treat children who identify as a gender contrary to their sex or experience gender dysphoria (an incongruence between their gender and sex).³

99. Minors' gender identity, sexual orientation, and sexual behavior can and sometimes do change over time.

100. The harms of physically altering one's body to appear as the opposite sex include sterilization, lifelong medical hormonal therapy, increased risk of heart attacks, lung and liver failure, and other permanent damage.

³ *E.g.*, Pamela Paul, *As Kids, they thought they were trans. They no longer do.* (Feb. 2, 2024), <https://www.nytimes.com/2024/02/02/opinion/transgender-children-gender-dysphoria.html>.

101. For example, some individuals who complete surgery to stop their natural biological development exhibited a rate of completed suicide 19 times higher than the control group, suicide attempts at a rate 7.6 times higher, and hospitalization for any psychiatric condition at a rate 4.2 times higher.

102. Psychotherapy has been overshadowed by a polarized debate on “conversion practices.” An independent policy review commissioned by the English National Health Service has noted the urgent and unmet need for mental health services to help those struggling with gender confusion.⁴ Dr. Hilary Cass submitted her final report and made recommendations to NHS England in her role as the Chair of the Independent Review of gender identity services for children and young people.

103. This report recognized that methods like talk therapy, where young people can explore their confusion, can “help alleviate their distress,” and that “[i]t is harmful to equate this approach to conversion therapy as it may prevent young people from getting the emotional support they deserve.”⁵ Indeed, recent studies show that some minors who desire change and seek counseling “are placed at a much lower suicidal risk.”⁶ This shows that when minors have the opportunity to discuss their confusion, it helps them work through their issues without turning to practices like self-harm.

104. Gender identity is not fixed for life. The vast majority of children experiencing gender dysphoria who receive therapeutic support but do not socially transition cease to want to transition by puberty. Additionally, the vast majority of pre-pubertal children who suffer from gender dysphoria will become comfortable with

⁴ Dr. Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People: Final Report* 13 (April 2024).

⁵ *Id.*

⁶ D. Paul Sullins, *Sexual Orientation Change Efforts Do Not Increase Suicide: Correcting a False Research Narrative*, 51 *Archives of Sexual Behavior* 3377 (Sept. 2022).

a gender identity congruent with their sex by young adulthood, if they are not encouraged as children to identify contrary to their sex.

105. In fact, up to 80–95% of children experiencing gender dysphoria will desist by the time they reach adulthood.

106. By contrast, children who socially transition are more likely to proceed toward a medical pathway. That can lead children to life-altering—and lifelong—interventions, including puberty blockers, cross-sex hormones, and surgeries.

107. Counseling a minor to identify as a sex other than their biological sex is a form of social transitioning.

108. Countries around the world are recognizing the harms of socially and medically transitioning children to identify contrary to their sex.

109. A recent report publicized that there is no reliable evidence that “social transition,” such as using pronouns, restrooms, or dressing as the opposite sex, improves mental health for children. Worse still, evidence suggests social transition harms children by increasing their odds of persisting in a transgender identity, of taking hormones to interfere with normal development, and even of undergoing experimental surgery.⁷ In fact, the English National Health Service study shows that the research on youth transgenderism is “an area of remarkably weak evidence.”⁸

110. Denmark has limited children’s access to puberty blockers, hormones, and surgeries because of the “medical and ethical uncertainties of providing minors with profound, life-altering interventions [with] very limited understanding of the

⁷ Cass *supra* n. 4.; see Ruth Hall, et al., *Impact of social transition in relation to gender for children and adolescents: a systematic review*, 109 *Archive Disease Childhood* (April 9, 2024).

⁸ Cass *supra* n. 4.

epidemiological shift in the population presenting for care, the growing rates of detransition, and the profound uncertainty about long-term outcomes.”⁹

111. Alberta, Canada announced new policies and guidelines that also ban most children’s access to puberty blockers, hormones, and surgeries.¹⁰

112. England ordered the world’s largest gender-identity clinic to close after an independent review found that systematic failures placed children at risk of harm.¹¹

113. Increasingly, men and women who transitioned to present as a gender identity contrary to their sex have publicly spoken out regretting their choice, reclaimed a gender identity consistent with their sex (known as “detransitioning”), and filed medical malpractice lawsuits against medical organizations and providers involved with their transition.¹²

114. Closer to home, a clinic in Missouri that used drugs and procedures to alter children’s natural biological development is under intense scrutiny for misleading the public and failing to provide sufficient information to children and their parents about harmful effects of these procedures.¹³

⁹ *Denmark Joins the List of Countries That Have Sharply Restricted Youth Gender Transitions*, SEGM (Aug. 17, 2023), <https://perma.cc/D9XL-73YK>.

¹⁰ *A List of Alberta’s New Policies on Gender and Sexuality*, The Canadian Free Press (Jan. 31, 2023), <https://bit.ly/3CSMWJb>.

¹¹ Jasmine Andersson and Andre Rhoden-Paul, *NHS to close Tavistock child gender identity clinic*, BBC (July 28, 2022), <https://www.bbc.com/news/uk-62335665>.

¹² See Complaint, *Ayala v. American Academy of Pediatrics*, PC-2023-05428 (Oct. 23, 2023), <https://bit.ly/42GY1rq>; Jesse Singal, *When Children Say They’re Trans*, The Atlantic, July/August 2018, <https://bit.ly/3CHx7Fe>.

¹³ See Reed Affidavit, https://ago.mo.gov/wp-content/uploads/2-07-2023-reed-affidavit-signed.pdf?sfvrsn=6a64d339_2; Jamie Reed, *I Thought I was Saving Trans Kids. Now I’m blowing the Whistle*, The Free Press (Feb. 9, 2023), <https://www.thefp.com/p/i-thought-i-was-saving-trans-kids>.

115. Recognizing these harms, Missouri recently passed the SAFE Act to prohibit health-care providers from providing drugs or procedures to minors to alter their bodies to reflect their perceived gender identity. *See* Mo. Rev. Stat. § 191.1720.

116. A circuit court in Missouri recently upheld the Act, after holding a nine day trial and concluding that there is “an almost total lack of consensus as to the medical ethics of gender dysphoria treatment,” that “the credible evidence shows that a vast majority of children who are diagnosed with gender dysphoria outgrow the condition,” and that “there is a substantial medical dispute about the causes and treatments of gender dysphoria” which “has become more fractured in the last year, with even more medical authorities questioning the evidence for these interventions.” *Noe v. Parson*, Cole County Circuit Court Case No. 23AC-CC04530, Judgment, Nov. 24, 2024, Pages 2–3, <https://bit.ly/4hMwf0Z>.

117. In recent years, twenty-six states have banned or restricted medical transitions for minors.¹⁴

118. But governments like the City and County take a different position on gender identity and sexuality, supporting efforts to alter children’s bodies to reflect their perceived gender identity and promote same-sex attraction.

¹⁴ *See* Ala. Code § 26-26-4; Ariz. Rev. Stat. § 32-3230; Ark. Code § 20-9-1502; Fla. Admin. Code r. 64B8-9.019; Ga. Code § 31-7-3.5; Idaho Code § 18-1506C; Ind. Code § 25-1-22-13; Iowa Code § 147.164; Ky. Rev. Stat. § 311.372; La. Stat. § 40:1098.2; Miss. Code §§ 41-141-1–9; Mo. Rev. Stat. § 191.1720; Mont. Stat. §§ 50-4-1001–06; Neb. Rev. Stat. § 72-7301–07; N.C. Gen. Stat. §§ 90-21.150-54; N.D. Cent. Code. § 12.1-36.1-02; N.H. Rev. Stat. § 332-M:1–5; Ohio Rev. Code §§ 3129.01-06; Okla. Stat. tit. 63, § 2607.1; S.C. Code § 44-42-320; S.D. Codified Laws §§ 34-24-33–38; Tenn. Code § 68-33-101; Tex. Health & Safety Code §§ 161.701–06; Utah Code § 58-68-502(1)(g); W. Va. Code § 30-3-20; Wyo. Stat. § 35-4-1001; *see also* Amy Harmon, *These 26 States have Restricted Gender-Transition Treatments for Minors Since 2021*, *New York Times* (Dec. 4, 2024), <https://bit.ly/3CQ8NAX>.

119. For example, as Missouri considered the SAFE Act, the City passed Resolution Number 230385, declaring itself to be a “Safe Haven for Gender-Affirming Healthcare through adoption of a Gender-Affirming Healthcare Policy.”

120. During consideration of the resolution, the City’s Chief Medical Officer explained that the City considers adult and minor counseling to be a type of “gender-affirming medical care.”¹⁵

121. Councilwoman Andrea Bough co-sponsored the resolution and explained that it “protect[s] the sanctity of a family, an individual, and their ability to make decisions with their physician it leaves that decision with that child and their parents What this does is to say to our community that ... we support the decisions that you are going to be making in private with your physicians.”¹⁶

122. She later noted that “it is not an issue politicians should be in, it should be an issue that is saved for families, their physicians, and a decision that politicians should not make.”¹⁷

123. Councilman Eric Bunch co-supported the resolution because “these types of decisions should be things that are ... decided upon by the parents in consultation with medical professionals ... who specialize in this ... and that’s what this resolution is attempting to do, is to say that this should be the domain of parents, their children, and their doctors ... what we’re saying here is we’re not the experts. We’re ceding this decision over to parents to consult with the experts.”¹⁸

124. As the Counselors observed similar trends on gender identity and sexual orientation within the City and County and elsewhere, they became aware of the

¹⁵ Transportation, Infrastructure and Operations Committee at 45:03–45:53 (May 10, 2023), <https://bit.ly/3Q8DzrS>.

¹⁶ Council Legislative Session at 21:25–22:15 (May 11, 2023), <https://bit.ly/4jRzJB1>.

¹⁷ Transportation, Infrastructure and Operations Committee at 59:49–57 (May 10, 2023), <https://bit.ly/3Q8DzrS>.

¹⁸ *Id.* at 56:21–57:12.

City's and County's ordinances that regulated and restricted their ability to counsel consistent with their religious beliefs. The Counselors also became aware of counselors and other professionals who were being threatened with severe penalties under similar ordinances and laws.¹⁹

125. The Counselors realized that they face a credible threat and substantial risk that they will be investigated and prosecuted under these ordinances for counseling according to their religious beliefs.

The Counseling Ordinances apply to the Counselors.

126. The City passed its Counseling Ordinance on November 14, 2019. A true and correct copy of this ordinance is attached as Exhibit 1.

127. The County passed its Counseling Ordinance on April 3, 2023. A true and correct copy of this ordinance is attached as Exhibit 2.

128. The City's and County's Counseling Ordinances are similar and prohibit any "provider" from engaging in what those governments describe as "conversion therapy or reparative therapy" with a minor. K.C. Ord. § 50-234(b)(4), (c); Jackson Cnty. Ord. § 5575.1(d), .2.

129. "Conversion Therapy or Reparative Therapy" is broadly defined well beyond conduct to include pure speech: "any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender" but does not "include

¹⁹ For general reports on these trends, see, e.g., Makenzie Koch, *Jackson County unanimously passes conversion therapy ban*, Fox 4 (Apr. 3, 2023), <https://bit.ly/3ErxiFc>; *Kansas City bans gay conversion therapy*, AP News (Nov. 14, 2019), <https://bit.ly/42GWMZi>; Drew Mikkelsen, *Pierce County counselor appealing federal court ruling on conversion therapy*, K5 (Oct. 15, 2021), <https://bit.ly/4hsb6cu>; Casey Leins, *States that have banned conversion therapy*, U.S. News (Apr. 11, 2019), <https://bit.ly/42LRmfv>.

counseling that provides support and assistance to a person undergoing gender transition, or counseling that provides acceptance, support and understanding of a person or facilitates a person’s coping, social support, and development, ... *as long as such counseling does not seek to change sexual orientation or gender identity.*” K.C. Ord. § 50-234(b)(1) (emphasis added); Jackson Cnty. Ord. § 5575.1(a).

130. The County also defines conversion therapy to be “any therapeutic intervention imposed with the intent of promoting a particular sexual orientation and/or gender as a preferred outcome.” Jackson Cnty. Ord. § 5575.1(a).

131. “Provider” means “any licensed medical or mental health professional including, but not limited to, licensed professional counselors, licensed psychologists, licensed clinical social workers, provisional licensed professional counselors, provisional and temporary licensed psychologists, licensed and provisional licensed marital and family therapists, psychiatrists, certified substance abuse counselors, certified school counselors, behavior analysts, and any professional licensed under chapters 334 and 337 of the Revised Statutes of Missouri.” K.C. Ord. § 50-234(b)(4); Jackson Cnty. Ord. § 5575.1(d).

132. The City and County intend to enforce the Counseling Ordinances and created robust enforcement mechanisms through the City Attorney, the County Executive, the County Counselor, and the County Prosecutor.

133. For example, County Legislator Manny Abarca IV (who sponsored the County’s Counseling Ordinance) explained that the County “spent a lot of time on the process for” individuals to “submit the violations for a penalty to be levied” and “worked with the prosecutor and the sheriff to make sure there is a process in place for individuals to actually submit their violation.”²⁰

²⁰ Steve Kraske & Claudia Brancart, *Jackson County Legislature may vote to ban anti-gay ‘conversion therapy’ on minors*, KCUR 89.3 at 4:05–4:10, 4:32–38 (Mar. 27, 2023, at 4:24PM), <https://bit.ly/412vMCi>.

134. Upon a violation, a provider may be liable for a fine between \$500 and \$1,000 per violation. K.C. Ord. § 50-234(b)(2) (incorporating K.C. Ord. § 1-17(a), which imposes fines of up to \$500); Jackson Cnty. Ord. § 5575.3 (incorporating Jackson County Ordinance § 5520, which imposes fines of up to \$1,000).

135. The Counseling Ordinances apply to the Counselors because they are licensed counselors, receive compensation for their services, and they practice within the City's limits and within the County's limits for Bury.

136. In fact, the County Ordinance does not even require compensation in order for it to apply. Jackson Cnty. Ord. § 5575.1(d).

137. The Counseling Ordinances regulate the Counselors' "therapy" or "practice or treatment" of providing counseling to minors on the topics of gender identity and sexual orientation. K.C. Ord. § 50-234(b)(1); Jackson Cnty. Ord. § 5575.1(a).

138. The Counseling Ordinances make no distinction between therapy, practices, and treatments that involve only conversations, and those that use physically intrusive or aversive techniques to alter gender identity or sexual orientation.

139. The Counselors do not engage in aversive techniques, nor are they aware of any other counselor who engages in such practices with clients seeking to reduce or eliminate their unwanted same-sex attractions, behaviors, or identity.

140. The City and County claim the authority to regulate all therapy, practices, and treatments within their geographic boundaries by labeling all such therapy, practices, treatments, and speech as "conduct," regardless of whether it only involves speech.

141. For example, the City Attorney testified at a committee hearing that the City’s Counseling Ordinance regulates “the delivery of a particular medical procedure to a minor ... if that is done in exchange for compensation of services.”²¹

142. The City Attorney then reiterated that the City’s Counseling Ordinance only regulates “particular professional conduct.”

143. “At the end of the day,” the City Attorney repeated, “we are regulating conduct on the part of a professional here.”

144. Other jurisdictions, including Washington, Colorado, St. Louis, Missouri, Michigan, Minnesota, Ohio, Wisconsin, and local governments in Florida claim their ordinances and laws like the Counseling Ordinances regulate conduct, even when the specific counseling at issue involves nothing but speech, conversations, and discussions.²²

145. For example, St. Louis interprets its ordinance to regulate “*medical treatment* ... even if performed *entirely* through speech” because such treatment “constitute[s] professional conduct subject to reasonable regulation in accordance with prevailing medical standards, without implicating the First Amendment.”²³

146. The Counseling Ordinances also use vague, overly broad, and arbitrary terms and phrases like “change,” “eliminate or reduce,” “sexual romantic attractions or feelings,” “preferred outcome,” “facilitate,” “development,” “behaviors,” “enduring

²¹ Finance, Governance and Public Safety Comm. at 1:06:30–1:07:36 (Nov. 6, 2019), https://kansascity.granicus.com/player/clip/11657?view_id=62&redirect=true&h=c1a0924ae4f6402be60c54e87f0182f0.

²² State Resp’ts Br. in Opp., *Tingley v. Ferguson*, 2023 WL 4457103, at *1 (22-942) (filed July 5, 2023); Appellees’ Reply Br., *Chiles v. Salazar*, 2023 WL 4132777 (22-1445 & 23-1002) (filed June 16, 2023); Appellee, Cnty. of Palm Beach, Fl.’s, Br., *Otto v. City of Boca Raton*, 2019 WL 2451113 (19-10604-A) (filed June 10, 2019). See Br. of Amicus Curiae Born Perfect in Supp. of Appellee’s Petition for Rehearing En Banc, 2020 WL 8182320 (19-10604) (filed Dec. 18, 2020).

²³ Br. of Amicus Curiae Born Perfect in Supp. of Appellee’s Petition for Rehearing En Banc, *Otto v. City of Boca Raton*, 2020 WL 8182320 (19-10604) (Dec. 18, 2020).

physical, romantic, and/or emotional attraction,” “sexual preference or practice,” and others, and rely on vague, expansive, and arbitrary definitions for “sexual orientation” and “gender identity.” K.C. Ord. § 50-234(b); Jackson Cnty. Ord. § 5575.1(a)–(e).

147. The City and County only regulate counseling conversations in this way because they disagree with certain content and viewpoints regarding gender identity and sexual orientation, and they seek to impose their favored views.

148. The City and County also knew that their Counseling Ordinances would exclusively affect providers with views on gender identity and sexual orientation similar to the Counselors’ views.

149. For example, County Legislator Abarca IV defined “conversion therapy” as a therapy “that is typically produced by religious organizations that can be an array of many different things.”²⁴

150. He recognized that the primary opposition to the County’s Counseling Ordinance came from “a segment of the Baptist church.”

151. He also explained that “you’re typically seeing religious or religious adjacent organizations doing these practices.”

152. For these reasons, the County rejected a proposed amendment that protected the First Amendment free speech and free exercise rights of providers. Proposed Diversity, Equity & Inclusion Floor Amendment III, Mar. 20, 2023.

153. As Legislator Abarca revealed, the legislature discussed “the religious component being added as an exemption, and ultimately we felt that to have the most impact we [should] leave that out because we’re talking about a clinic practice ... and

²⁴ Up to Date, *Jackson County legislature may vote to ban anti-gay ‘conversion therapy’ on minors*, NPR, at 2:00–10, 3:00–36, 5:32–6:24 (March 17, 2023), <https://www.kcur.org/podcast/up-to-date/2023-03-17/jackson-county-legislature-may-vote-to-ban-anti-gay-conversion-therapy-on-minors>.

I give ode to [the County Prosecutor who] said the reality that the church can do whatever they want however they want is just not true.”²⁵

154. The Counseling Ordinances exempt unlicensed counselors and other providers licensed under state law. Mo. Rev. Stat. §§ 334.010(4), 337.505(2), (6), (9); K.C. Ord. § 50-234(b)(4); Cnty. Ord. § 5575.1(d).

155. The City Attorney testified at a committee hearing that “there are a number of unlicensed therapists, religious leaders, folks who may engage in therapeutic or other types of treatments that folks are free to bring their minors to. This law doesn’t invade the purview of that.”²⁶

156. The City’s Counseling Ordinance exempts counselors from speaking about “conversion therapy” or “gender or sexual orientation conversion publicly and privately, including to their minors in forms other than therapy” and exempts conversion therapy provided without compensation. K.C. Ord. § 50-234(c), (2).

157. The City or County passed the Counseling Ordinances with no evidence that any minor in their jurisdiction has been harmed by talk-therapy that sought to change gender identity or sexual orientation.

158. The City and County held public hearings on the Counseling Ordinances on November 6, 2019, and March 16, 2023, respectively.

159. No witness testified about being harmed by voluntary talk therapy seeking to change their gender identity or sexual orientation as a minor in the City or County, as opposed to other forms of involuntary, aversive, and physically intrusive techniques not practiced by the Counselors.

²⁵ *Id.* at 6:24.

²⁶ Finance, Governance & Public Safety Comm. at 1:07:55–08:09 (Nov. 6, 2019), https://kansascity.granicus.com/player/clip/11657?view_id=62&redirect=true&h=c1a0924ae4f6402be60c54e87f0182f0.

160. But several witnesses testified to the personal benefits of how talk therapy and pursuing their faith helped them change their gender identity or sexual orientation to allow them to lead more fulfilling lives.²⁷

161. One witness said his decision to seek this help was the “best decision [he had] ever made;” a second witness said it had allowed her to live a life of “purpose, joy, and freedom”; and a third witness who had identified as gay and transgender as a teenager testified about how his interactions with other Christians and his faith helped him to overcome thoughts of suicide and drug addiction.

The Counseling Ordinances burden the Counselors’ practice and restrict their speech.

162. The Counselors have engaged in talk-therapy counseling that violates the Counseling Ordinances, intentionally censored their speech to avoid violating these ordinances, or intentionally refrained from speech regulated by the ordinances to avoid liability.

163. For example, Eisenreich has worked with minors who have expressed discomfort with their sex, struggles related to their gender identity, and feelings of unwanted same-sex attractions, and Eisenreich has raised these issues where the nature of the counseling required her to do so.

164. Some of these minor clients expressed a desire or willingness to address gender identity, sexual orientation, or their unwanted sex-same attractions and to change, reduce, or eliminate their gender identity or sexual orientation.

165. In one instance, Eisenreich counseled a minor girl who identified as a male.

166. The client’s parent sought Eisenreich specifically because she is a Christian counselor, asked Eisenreich to discuss the girl’s gender identity with her,

²⁷ *Id.* at 1:56:58–2:04:44.

and desired that Eisenreich discuss the girl's feelings about gender identity from a faith-based perspective.

167. The girl consented to Eisenreich's counseling, became a client, and voluntarily attended the counseling sessions for about a year.

168. The client asked Eisenreich to refer to the client using masculine pronouns.

169. Eisenreich explained that counseling depended on mutual respect, which meant that she would respect the client's views but not endorse them, and asked the client to respect Eisenreich's views even if the client disagreed.

170. Eisenreich explained her belief that God designed the client as a biological girl and that sex cannot be changed.

171. For that reason, Eisenreich declined to refer to the client using masculine pronouns in an effort to change the client's gender identity.

172. Likewise, whenever the topic of gender identity came up during their sessions, Eisenreich listened to her client and encouraged her about God's design for biological sex.

173. During the counseling relationship, Eisenreich and the client discussed the client's family situation and other complicated relational dynamics contributing to the client's distress.

174. Eventually, that counseling relationship ended.

175. In another instance, Eisenreich counseled a minor boy who experienced gender confusion and felt same-sex attracted.

176. The boy's parent encouraged him to receive counseling, the boy agreed, and Eisenreich provided counseling with the boy's consent.

177. During the counseling sessions, Eisenreich spoke with the client about his self-esteem and other issues.

178. Eisenreich explored how these issues contributed to the boy's sexuality and gender identity.

179. Eisenreich explored these topics in an effort to change, reduce, and eliminate the boy's desires for same-sex relationships and behaviors. Eisenreich sought to alleviate the boy's stress by helping him identify consistently with his sex so that he could one day pursue a marriage relationship with a woman.

180. In another instance, Eisenreich began counseling a minor boy who identified as a girl.

181. One of the boy's parents requested that Eisenreich provide a letter diagnosing the boy with gender dysphoria so that he could begin medical procedures at a local hospital to alter his body to appear like the opposite sex.

182. Eisenreich declined because she hoped the boy's expressed gender identity would be changed, reduced, or eliminated in violation of the City's Counseling Ordinance as interpreted by the City.

183. In another instance, Eisenreich began counseling a minor client who identified as a lesbian and expressed a desire to have a girlfriend.

184. The girl's parents asked Eisenreich to provide the counseling because they were concerned about the girl's sexual behaviors and wanted counseling from someone who shared their religious beliefs.

185. The girl consented to counseling and voluntarily attended.

186. Eisenreich and the client formed a trusting relationship where the client felt comfortable exploring the reasons for her same-sex attractions.

187. Eisenreich asked questions about and discussed the reasons why the client believed she was same-sex attracted.

188. Eisenreich asked these questions and discussed this topic because she desired to change, reduce, and eliminate the girl's sexual orientation based on her perceptions that the girl was identifying as lesbian for self-destructive reasons.

189. After Eisenreich addressed other sources of stress and anxiety in the client's life, the client explained that she no longer identified as a lesbian, expressed a desire to have a boyfriend, and presented as much more satisfied with her life.

190. Eisenreich realized that through her counseling, she had changed the client's sexual orientation and reduced the client's same-sex attraction in violation of the City's Counseling Ordinance as interpreted by the City.

191. In addition, Eisenreich has changed, reduced, or eliminated other forms of sexual behaviors, including the use of pornography and sexual activities with the opposite sex.

192. Oftentimes, these minors are motivated to change because they share Eisenreich's religious beliefs about sexuality, understand that sexual activity is only intended for opposite-sex marriage, and believe that they can lead more fulfilling lives if they align their sexual behavior with their religious beliefs.

193. Eisenreich has also intentionally refrained from engaging in certain topics on gender identity and sexual orientation when counseling minors to avoid liability under the City's Counseling Ordinance.

194. Eisenreich has likewise intentionally refrained from certain speech with minors to avoid liability under the City's Counseling Ordinance.

195. When Eisenreich feels comfortable that the client and the clients' parents will not file a complaint against her under the City's Counseling Ordinance, she will accept those clients who would like to work on these sensitive issues.

196. If she feels that a client may file a complaint against her under the City's Counseling Ordinance, she will refer the client to another counselor.

197. For example, Eisenreich counseled an eleven-year-old girl with her consent who identified as a boy and wanted to use a boy's name.

198. During their sessions, Eisenreich believed that the client's self-asserted gender identity came from relational issues with her parents and a feeling that her mother wished she was a boy rather than a girl.

199. But rather than discussing gender identity with the girl directly, which Eisenreich believed was the real source of tension, Eisenreich asked questions about self-esteem generally to avoid violating the City's Counseling Ordinance.

200. Doing so hampered Eisenreich's ability to help the client address what Eisenreich believed was the source of the client's conflict and stress.

201. Eisenreich also accepted a request from a parent asking her to counsel the parent's twelve-year-old daughter struggling with gender identity.

202. The girl attended the counseling session voluntarily and with consent.

203. During the first session, Eisenreich tried to explore the reasons for the client's gender dysphoria, but the client was resistant to discussing that topic.

204. Eisenreich therefore referred the client to another counselor after one session because it became clear to her that she could not counsel the client without violating the City's Counseling Ordinance.

205. But for the ordinance, Eisenreich would have more intentionally dug into the issues of gender identity with the client.

206. Eisenreich has also been limited in what she can say when vetting clients on the phone before she agreed to take them on as clients.

207. In one instance, Eisenreich was contacted by the parents of a minor child who struggled with gender identity. The parents sought help for their minor with these developing feelings. When discussing the issue, Eisenreich was limited in what she could say and what questions she could ask to avoid violating the Counseling Ordinance. But for the Counseling Ordinance, she would have asked the parents when these feelings started, how the feelings started, and to give more information

by expanding on the feelings their child was experiencing. But Eisenreich refrained from asking these questions to avoid violating the Counseling Ordinance.

208. Eisenreich has also declined requests to counsel minors on topics of gender identity, sexual behavior, or sexual orientation to avoid liability under the City's Counseling Ordinance.

209. For example, Eisenreich regularly receives requests from parents asking her to provide counseling for their minor children to address and change, reduce, and eliminate their same-sex attractions or gender identity.

210. Eisenreich received approximately ten such requests in the last year or so.

211. Whenever Eisenreich receives such a direct request or an intake call from a parent whose minor child is struggling with sexual orientation or gender identity, she typically refers the client to avoid violating the City's Counseling Ordinance.

212. Eisenreich knows that she could be risking her career if she decides to counsel minors who are struggling with their gender identity and sexual orientation and want to work through it. When she receives requests from clients' parents to work with their children, she typically informs the parents that she may be limited in how she can help because of the City's Counseling Ordinance.

213. Likewise, Bury currently sees minors struggling with anxiety, trauma, and other mental-health issues.

214. Bury would like to grow his practice to counsel more minors.

215. But Bury has refrained from growing his counseling practice as to minors and has specifically declined requests to provide counseling to minors because of the restrictions placed upon him by the Counseling Ordinances.

216. For example, Bury made his practice harder to find on online search engines because he did not want potential clients calling him to address issues with minors that could violate the Counseling Ordinances.

217. Several parents have contacted Bury since the Counseling Ordinances were passed and have asked him to counsel their minor children with respect to the minor's sexual behaviors.

218. The parents asked Bury to counsel their children because they shared his religious beliefs and sought a counselor whose beliefs aligned with theirs.

219. Bury received a call from a parent who was seeking help for her child who had been expelled from school for engaging in inappropriate sexual behavior.

220. The parent questioned whether the child was experiencing same-sex attraction or confusion about his gender identity and asked Bury whether he would be able to change, reduce, or eliminate these issues with the child.

221. Bury knew that he could not address the child's sexual behavior as requested without violating the Counseling Ordinances.

222. Bury therefore referred this prospective client to another counselor.

223. Bury also referred a minor client whose mother sought help for her child who was struggling with feeling like a different sex from the child's biological sex.

224. Bury referred the client because he knew that if he agreed to counsel this client, he could not help the minor client change, reduce, or eliminate the feelings of gender dysphoria without violating the Counseling Ordinances.

225. Bury also received counseling requests from a parent whose child was engaging in inappropriate sexual behaviors and another parent asking him to counsel his son who identified as gay and who had presented with mental-health issues.

226. The parents asked whether Bury would help their child change, reduce, or eliminate those behaviors and attractions.

227. Bury referred the requests to avoid violating the Counseling Ordinances because he realized that counseling these minors could involve changing, reducing, or eliminating these sexual attractions and behaviors.

228. Likewise, because of the vague, overbroad, and arbitrary terms used in the Counseling Ordinances, the Counselors must often guess whether their counseling violates the Counseling Ordinances when they discuss a minor's confusion, anxiety, conflict, or stress about their gender identity, unwanted same-sex attractions, sexual behaviors including pornography, inappropriate opposite-sex relationships with other minors, or inappropriate sexual relationships with adults.

229. Because of the vague, overbroad, and arbitrary terms used in the Counseling Ordinances, the Counselors must often guess whether requests from parents and their minor children may cause them to provide counseling that violates the Counseling Ordinances.

230. Based on the Counselors' conversations with parents who requested the Counselors' services and based on their experiences and conversations with other parents who have hired the Counselors in the past, each Counselor would have been retained by at least one of the parents listed in 208–227 if the Counselor had not been forced to refer the prospective clients to another counselor.

231. Typically, the Counselors see minor clients for multiple sessions and charge between \$125–200 for each session.

232. Therefore, the Counseling Ordinances have caused each of the Counselors to lose compensation.

233. The Counselors desire to continue to work with minors and expect that they will continue to receive requests to counsel minors experiencing confusion over their gender and same-sex attraction.

234. But the prospect of going through an investigative process for allegedly violating the Counseling Ordinances causes the Counselors to reasonably chill their

speech and fear prosecution because of the substantial risk of prosecution and the severe penalties they might face.

235. By regulating the Counselors' speech in these ways, the Counseling Ordinances prevent them from counseling consistent with their religious beliefs about gender and sexuality, prevent them from offering counseling that in their professional judgment is most likely to lead their minor clients to live healthy, stable, and fulfilling lives, and restrict their speech on those topics with minors.

236. Many parents and minors specifically request the Counselors' services because they share the Counselors' religious beliefs on gender and sexuality and desire counseling that aligns with those beliefs.

237. When the Counselors are forced to refer parents and prospective minor clients to other counselors, they often refer them to counselors who practice outside of the City and County and who often do not share the Counselors' religious beliefs (because counselors who share the Counselors' beliefs are likewise unwilling to take on such referrals in the Counselors' experience).

238. The Counseling Ordinances therefore deprive parents and children of their ability to receive information, counseling, and guidance from a licensed counselor who agrees with their religious beliefs about sexuality and gender. The Counseling Ordinances also effectively deny them access to ideas that they wish to hear and to counseling consistent with the minor client's personally chosen faith, life goals, and motivations.

The City's Public Accommodation Ordinance threatens the Counselors' freedom to speak consistent with their religious beliefs on gender and sexuality.

239. The Counselors are also subject to and regulated by the City's Public Accommodation Ordinance.

240. A true and correct copy of the City's Public Accommodation Ordinance is attached as Exhibit 3.

241. The Counselors and their practices are public accommodations and public accommodations owners subject to the City's Public Accommodation Ordinance because they serve clients in the City and offer and hold out their services to the general public for a fee.

242. The Counselors advertise their services on online directories, which allows anyone from the public to request counseling and receive and accept requests for their services through referrals from organizations, churches, and clients.

243. The Counselors each have a unique website for their practices which include a contact page so that anyone from the public may contact them to schedule an appointment.

244. The Public Accommodation Ordinance prohibits "unlawful discriminatory practices" by places of public accommodations through two clauses: The Accommodation Clause and the Publication Clause.

245. The Accommodation Clause makes it unlawful for public accommodations or their "owner[s]" or "agent[s]" "to refuse, [to] withhold from, or [to] deny to any person" any service provided to the public or "to discriminate against any person" in providing those services "on account of religion, ... sexual orientation or gender identity." K.C. Ord. § 38-113(a).

246. The City interprets the Accommodation Clause to require public accommodations to provide the "same services to members of the public without regard to customers' ... sexual orientation" or gender identity. *See* Br. of Local Govt's and Mayors as Amicus Curiae in Supp. of Respts, *303 Creative LLC v. Elenis*, No. 21-476, 2022 WL 3598265, *22-23; Br. of Cnty. of Santa Clara, et al., as Amicus Curiae in Supp. of Respts, *Masterpiece Cakeshop Ltd v. Colo. C.R. Comm'n*, No. 16-111 (Oct. 30, 2017), 2017 WL 5127319, *2-3, *17.

247. Counselors are thus forced into a lose-lose situation. They cannot counsel according to what they understand to be true. And they cannot decline a client

based on the ground that they would be required to say something they believe to be false.

248. The Accommodation Clause likewise prohibits some policies or practices even if the public accommodation does not withhold, refuse, or deny a service because any person can file a complaint alleging an unlawful discriminatory practice based on an injury “that is about to occur.” K.C. Ord. § 38-1(a)(4).

249. The City interprets the Accommodation Clause to regulate “commercial conduct.” *303 Creative*, 2022 WL 3598265, *22–23, *25; *Masterpiece*, 2017 WL 5127319, *17.

250. The City interprets the Counselors’ practice of providing counseling services to the public as “conduct” and claims authority to regulate their practice even when their services use only speech, conversations, and discussions with their clients, similar to how other jurisdictions claim that laws or ordinances regulating professional counseling only regulate conduct, but yet apply to speech.

251. The Accommodation Clause regulates the Counselors’ policies and counseling practices in three ways.

252. *First*, the Accommodation Clause requires the Counselors to offer and provide same-sex marital and relationship counseling because the Counselors already offer and provide counseling about marriages and relationships between one man and one woman.

253. *Second*, the Accommodation Clause requires the Counselors to offer and provide counseling that encourages clients to speak, act, and identify contrary to their sex because the Counselors offer and provide counseling that encourages clients to identify consistent with their sex.

254. *Third*, the Accommodation Clause requires the Counselors to refer to clients and prospective clients by using those persons’ self-selected pronouns, regardless of whether those pronouns reflect their sex, because the Counselors refer

to clients and prospective clients by using their pronouns when their pronouns align with their sex.

255. The Accommodation Clause requires the Counselors to affirm beliefs that violate their own deeply held religious convictions by promoting same-sex relationships and marriage, encouraging clients to identify with a sex that is inconsistent with their sex, and using pronouns inconsistent with a client's sex.

256. The City interprets its Accommodation Clause to compel the Counselors to offer these counseling services because the City considers it to be sexual-orientation or gender-identity discrimination to provide counseling services promoting only opposite-sex marriages and relationships, to provide counseling that encourages clients to adopt only a gender identity consistent with their sex, and to use pronouns only consistent with sex. *See 303 Creative*, 2022 WL 3598265, *22–23; *Masterpiece*, 2017 WL 5127319, *17–20.

257. The City considers the Counselors' policy and practice of providing counseling only consistent with their religious beliefs on pre-marital, marital, and relationship counseling on gender identity and on pronouns to be unlawful discriminatory practices based on gender identity and sexual orientation.

258. Other jurisdictions and entities interpret anti-discrimination laws and policies like the Accommodation Clause as the City interprets the ordinance.

259. For example, Missouri State University removed a counseling student from its counseling program after he explained how “he would counsel gay persons as individuals, but not as couples, because of his religious beliefs, but would refer the couple for counseling to other counselors he knew who did not share his religious views.” Answer to Pl.'s Amended Complaint ¶ 16, *Cash v. Missouri State Univ.*, 16-cv-03155-MDH, ECF No. 18 (W.D. Mo. July 5, 2016).

260. Many states and cities interpret laws like the Accommodation Clause to prohibit any differentiation in services provided by a public accommodation on account of topics related to sexual orientation or gender identity.²⁸

261. For example, New York interprets its public-accommodations law—which is substantially similar to the City’s Public Accommodation Ordinance—to compel businesses to use customers’ preferred pronouns and titles.²⁹

262. Meanwhile, the Publication Clause has two clauses.

²⁸ See N.Y. Div. of Hum. Rts., *Guidance on Protections from Gender Identity Discrimination under the N.Y. State Hum. Rts. Law 6–7* (2020), <https://on.ny.gov/3A3b7k3>; Wash. State Hum. Rts. Comm’n, *Sexual Orientation & Gender Identity Discrimination is Prohibited under Washington State Law 2*, <https://bit.ly/3p5JyA8>; Iowa C.R. Comm’n, *Sexual Orientation & Gender Identity 2* (2016), <https://bit.ly/3AMfOPm>; U.S. Equal Employment Opportunity Commission, *Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity* (2021), <https://bit.ly/3bo7fk8>; N.J. Div. on C.R., *5 Things You Should Know about Discrimination and Harassment in Public Accommodations Based on Gender Identity or Expression* (2021), <https://bit.ly/3QMwegz>; Colo. C.R. Comm’n Rules & Regs., 3 CCR 708–1, R. 81.6, <https://bit.ly/3An1nQq>; Cal. Civ. Code § 51; *Prescott v. Rady Children’s Hosp.-San Diego*, 265 F. Supp. 3d 1090, 1096–1100 (S.D. Cal. 2017) (interpreting California law to compel pronoun usage); Vermont Hum. Rts. Comm’n, *Sex, Sexual Orientation, and Gender Identity: A Guide to Vermont’s Anti-Discrimination Law for Employers and Employees*, <https://bit.ly/3WP2BgE>; Mass. Comm’n Against Discrimination Gender Identity Guidance (2016), <https://bit.ly/3ji9IRd>; N.Y. City Gender Identity/Gender Expression: Legal Enforcement Guidance, <https://bit.ly/3HLLr46>; *Doe v. City of New York*, 42 Misc. 3d 502, 504 (N.Y. Sup. Ct. 2013) (holding that failing to use pronouns violates state and local law); D.C. Mun. Regs. tit. 4, § 808; City and Cnty. of San Francisco Hum. Rts. Comm’n, *Compliance Guidelines to Prohibit Identity Discrimination* (2003), <https://bit.ly/40lNfDu>; Cambridge, Mass. Hum. Rts. Comm’n *Gender Identity & The Law: Public Accommodations Training*, <https://bit.ly/3JB2P86>. Cf. Complaint, *Jackson v. Fort Osage R-1 School Disc.*, 23-cv-00193-BCW (W.D. Mo. Mar. 21, 2023) (alleging Title VII sex-discrimination for allegedly treating student teacher differently for identifying as non-binary).

²⁹ N.Y. Div. of Hum. Rts., *Guidance on Protections from Gender Identity Discrimination under the New York State Hum. Rts. Law 6–7* (2020), available at <https://on.ny.gov/3A3b7k3>; N.Y. Exec. L. § 296(2)(a).

263. The Publication Clause's Denial Clause makes it unlawful for public accommodations "to publish, circulate, or display any written or printed communication, notice or advertisement to the effect that any of the accommodations or the facilities of such place of accommodation will be refused, withheld from or denied to any person" because of a person's gender identity, sexual orientation, and other characteristics. K.C. Ord. § 38-113(a).

264. The Publication Clause's Unwelcome Clause makes it unlawful for public accommodations "to publish, circulate or display any written or printed communication, notice or advertisement to the effect that ... the patronage or custom of any person described in this section is unwelcome or objectionable or not acceptable to such place" because of a person's gender identity, sexual orientation, and other characteristics. K.C. Ord. § 38-113(a).

265. The City never defines "unwelcome," "objectionable," or "not acceptable."

266. One local government used a similarly worded ordinance to punish a restaurant for posting admittedly political speech on the topic of gender identity, claiming that the sign caused "negative secondary effects" and "constitute[d] fighting words." A true and correct copy of the relevant complaint and brief filed by the local government is attached as Exhibit 4.

267. Another jurisdiction used a similarly worded ordinance to punish an Orthodox retail shop for posting a sign encouraging modesty because it made "women, non-Jews and the non-religious ... feel uncomfortable and unwelcome," Philip Messing, Hearing for Orthodox Jewish Shops' 'Modesty' Rules, N.Y. Post (Sept. 30, 2013, 12:46 AM), <https://perma.cc/G9XP-WRF3>.

268. The terms "unwelcome," "objectionable," or "not acceptable" are overbroad, vague, and provide no guiding standards for enforcement officials.

269. Although the Public Accommodation Ordinance restricts without exemptions the Counselors' freedom to speak and operate their practices according to their religious beliefs, the City provides many other exemptions.

270. For example, the Public Accommodation Ordinance exempts some lodgings and private clubs with less than 250 members; the City's employment ordinance does not apply to employers with less than six employees or to religious institutions; and the City's housing ordinance does not apply to certain dwellings or religious institutions. K.C. Ord. §§ 38-1(a)(13), (23)(a), (g); 38-113(b)(1)–(2); 38-103(c); 38-105(g)–(h).

The City enforces its Public Accommodation Ordinance through aggressive mechanisms and penalties.

271. The City actively enforces its Public Accommodation Ordinance.

272. The City accepts complaints against public accommodations from “any person claiming injury, ... including persons who believe they will be injured by an unlawful discriminatory practice that is about to occur,” associations, organizations, City officials, and the City. *See* K.C. Ord. §§ 38-1(a)(4), 21, 32-21(4), 38-23(a)(1), 38-111(a)(3), 38-206(b).

273. The City makes it easy for persons to file complaints by posting the discrimination complaint form on its website and receiving complaints via phone calls. *See* Civil Rights & Equal Opportunity, *File a Discrimination Complaint*, <https://www.kcmo.gov/city-hall/departments/human-relations>.

274. The City's officials receive and investigate complaints, determine whether probable cause exists to find that an unlawful discriminatory practice occurred, have the power to “eliminate the unlawful discriminatory practice,” and refer complaints where probable cause exists for prosecution. K.C. Ord. § 38-23.

275. The City Attorney prosecutes these complaints. K.C. Ord. § 38-23(e).

276. Penalties for violating the Public Accommodation Ordinance include fines of up to \$500, imprisonment for up to 180 days, loss of business license in the City, damages, attorney's fees, and costs. K.C. Ord. §§ 38-35, 38-101(a), 38-206.

The City's Public Accommodation Ordinance imposes overwhelming and ongoing burdens on the Counselors' ability to operate their practices consistent with their beliefs.

277. The Public Accommodation Ordinance has and continues to impose significant pressures and burdens on the Counselors, how they operate their counseling practices, and how they communicate about their practices.

278. The Accommodation Clause affects the Counselors' messages on sexuality and gender identity by forcing them to promote activities, sexual ethics, and a view of self that violate their religious beliefs.

279. The Accommodation Clause does so by forcing the Counselors to express messages about sexuality, relationships, and gender identity that contradict those beliefs because the clause requires the Counselors to encourage same-sex marriage or relationships, to encourage clients to identify as a gender identity other than their biological sex, and to use pronouns inconsistent with biological sex.

280. This compulsion undercuts the messages the Counselors express elsewhere, promoting their religious beliefs about sexuality and gender identity. It also harms their reputation among the public and their clients and adversely affects their ability to share biblical truths about marriage and gender identity with others.

281. The Counselors want to follow their policy and practice of providing counseling services consistent with their religious beliefs on sexuality and gender identity, but the Accommodation Clause makes this illegal.

282. For example, the Counselors desire to continue to follow their pattern and practice of only providing marital or relationship counseling in the context of

promoting marriage and healthy romantic relationships between one man and one woman.

283. The Counselors desire to continue to follow their pattern and practice of referring to their clients with pronouns consistent with their sex (he/him pronouns for male clients and she/her pronouns for female clients), and to refrain from referring to clients with pronouns inconsistent with their sex.

284. The Counselors also desire to continue to follow their pattern and practice of promoting and encouraging only a gender identity consistent with a client's sex, and to refrain from promoting or encouraging a clients' attempts to act or identify contrary to their sex, such as attempts to social transition or to use drugs and procedures to alter their bodies to appear like the opposite sex.

285. The Accommodation Clause makes the Counselors' pattern and practice listed in paragraphs 281–284 illegal.

286. The Counselors risk being penalized under the Accommodation Clause every day that they follow these policies and practices.

287. The Accommodation Clause also prohibits the Counselors from referring current or prospective clients to other counselors when those clients desire counseling that promotes same-sex relationships or efforts to identify contrary to their sex, or that requests the use of pronouns inconsistent with their sex.

288. And the Counselors have been asked for such counseling.

289. For example, Eisenreich received a request from a same-sex couple asking her to counsel them through some issues that were impacting their relationship.

290. Eisenreich declined the request because she knew she could not promote, encourage, or affirm a relationship that contradicted her beliefs about God's purpose and design for marriage.

291. Likewise, Eisenreich received and declined a request to refer to a client using the client's self-selected pronouns that did not align with the client's sex. *Supra* ¶¶ 168–171.

292. Eisenreich also received a request from a mother who wanted Eisenreich's help to counsel her seventeen-year-old's gender-insecurity struggles.

293. The Public Accommodation Ordinance hinders the Counselors' ability to operate their practices consistent with their beliefs in other ways as well.

294. The Counselors want to ask prospective clients questions sufficient to learn whether they are seeking counseling services that would require them to violate their beliefs about sexuality and gender identity so that the Counselors can be honest with them and inform them about the counseling services they provide.

295. But the Accommodation and Publication Clauses forbid the Counselors from asking these questions and have forced them to refer prospective clients seeking their services to other counselors when the initial inquiry suggested that the client may have sought counseling that violated the Counselors' beliefs.

296. The Accommodation and Publication Clauses have hindered the Counselors' ability to counsel adults struggling with gender or sexuality issues.

297. For example, Eisenreich has counseled several individuals who were living with same-sex attraction. In counseling with these individuals, Eisenreich advised them to take some time away from engaging in same-sex relationships and to instead spend time in self-reflection to understand who they are.

298. But in the process of counseling some clients who identified as LGBT, Eisenreich was limited in what questions she could ask in the initial inquiry that could have shown her whether she would have to violate her religious beliefs in conducting counseling with these individuals.

299. Likewise, Eisenreich has recently begun counseling a couple who requested that she help their minor son who wishes to begin identifying as a girl.

When Eisenreich conducted the initial intake call, she was limited in what questions she could ask the couple about what they sought in counseling, due to the restrictions from the Accommodation and Publication Clauses.

300. There have been several parents who sought out Eisenreich's counseling services to counsel their children, but she did not counsel all those parents. She informed the parents that she was limited in counseling minors directly about these issues due to the Accommodation and Publication Clauses. By referring prospective clients to other counselors—clients that the Counselors might have taken on if they had been authorized to ask additional questions—the Counselors have lost business because of the City's Public Accommodation Ordinance.

301. Bury has lost business by having to refer several clients to counselors outside of the City to avoid violating the City's Public Accommodation Ordinance.

302. For example, Bury referred out a potential client that originated from a phone call from the minor's mother. The mother requested Bury's help with a possible sexual assault of which her children were victims.

303. When Bury referred the mother, he did not know if the situation involved any issue with gender identity because he declined to fully investigate the factual situation with additional questions for fear of violating the Public Accommodation Ordinance.

304. The Publication Clause has also prohibited and continues to prohibit Eisenreich and Bury from posting statements on their practice's websites explaining their religious reasons for why they only provide counseling services consistent with their religious beliefs and explaining those beliefs.

305. A true and correct copy of the statement Eisenreich desires to post is attached as Exhibit 5.

306. A true and correct copy of the statement Bury desires to post is attached as Exhibit 6.

307. The Counselors want to post these statements to explain their services and beliefs because they are religiously motivated to be transparent and honest with clients, potential clients, and the public.

308. The Counselors desire to post these statements to inform the public and prospective clients about their areas of professional expertise and competency.

309. It is common for counselors to be specific about their areas of practice, expertise, and personal training, and to inform the public about these things.

310. The Counselors also want to make statements materially similar to those in Exhibits 5–6 directly to prospective clients when asked to explain their services.

311. But if the Counselors posted their desired statements (Exhibits 5–6), or materially similar statements on their website or made materially similar statements to prospective clients, they would violate the Publication Clause.

312. The Counselors have not and will not post their desired statements (Exhibit 5–6) or materially similar statements on their website or make materially similar statements directly to prospective clients because of the Publication Clause.

313. By preventing the Counselors from effectively communicating about the counseling services they provide, the Accommodations and Publication Clauses have caused and continue to cause them to decline requests for counseling services that they may otherwise accept if they were allowed to ask certain questions and to suffer reputational harm by preventing them from clearly and honestly communicating their religious beliefs to prospective clients and the public.

314. The Publication Clause imposes additional restrictions and burdens.

315. For example, Bury currently posts a statement on his Christian Life Coaching website explaining his religiously motivated approach to life coaching.

316. A true and correct copy of Bury's statement is attached as Exhibit 7.

317. The statement explains that although Bury gladly provides his Christian Life Coaching to any client, the coaching is specifically directed at helping clients “achieve their goals related to their Christian Life.”

318. Some—including people who are agnostic, atheist, or share different views—find Christian statements on professional websites to be offensive.³⁰

319. By posting this statement, Bury faces a substantial risk that he is violating the Publication Clause because the post may be interpreted as refusing, withholding, or denying his coaching services to some patrons because of religious beliefs or because the statement makes them feel “unwelcome,” “objectionable,” or “not acceptable.”

320. Bury therefore faces a substantial risk of prosecution each day he keeps the statement posted.

321. If not for the Accommodations and Publication Clauses, the Counselors would immediately initiate activities motivated by their religious beliefs.

322. For example, the Counselors would begin asking prospective clients questions sufficient to determine whether those prospective clients are seeking counseling services that might violate the Counselors’ beliefs on sexuality and gender identity.

323. The threat of going through the City’s burdensome investigative process based on alleged violation of the Public Accommodation Ordinance likewise causes the Counselors to refrain from their desired activities.

³⁰ See Michael McCarthy, *God May Forgive Ads That Offend, but Customers Probably Won’t*, <https://bit.ly/4arJbXb> (claiming that companies that use religion in their advertisements offend groups of consumers).

The Counseling Ordinances and the City's Public Accommodation Ordinance disproportionately burden the Counselors' practice compared to other counselors.

324. Although the Counseling and the Public Accommodation Ordinances prohibit the Counselors from speaking and operating their counseling practices consistent with their religious beliefs on sexuality and gender identity, the Ordinances allow other licensed counselors to speak and operate according to their different views on sexuality and gender identity.

325. This distinction in treatment depends on the particular view that a counselor holds and expresses about human sexuality and gender identity.

326. Many counselors in the City and County provide counseling that addresses same-sex marriages and relationships, promotes the view that sex can be changed, encourages clients to act and identify contrary to their sex, and refers to clients using pronouns and titles that differ from the client's sex.

327. For example, there are 82 licensed professionals listed on the LGBT-Affirming Therapist Guild's website who have the stated goal "to make affirming culturally competent healthcare available for all sexual and gender minorities based on the premise that queer and heterosexual identities are equally valid."³¹

328. The Transgender Institute located within the City and County also promotes and advocates for the viewpoint that sex is chosen and can be changed, and advocates for social transitions and medical procedures to alter people's bodies to reflect their perceived identity.

329. There are also over 400 mental-health professionals listed on psychologytoday.com who address issues related to sexual orientation and gender identity in the City.³²

³¹ Queer-Affirming Therapist Guild, <https://lgbtguild.com/>.

³² Psychology Today, *LGBTQ+ Affirming Therapists in Kansas City, MO*, <https://bit.ly/3WTn6f7>.

330. The City and County also recognize that hospitals in Kansas City already offer mental-health services “to children and their families as they navigate the process of gender identity development.” *See* Exs. 1–2.

331. But the Counseling Ordinances and the Public Accommodation Ordinance impose increased burdens on the Counselors not placed on these other counselors. This gives an advantage to the other counselors practicing in the same geographical region as the Counselors and makes it easier for these other counselors to adopt policies, promote ideas, and tailor their websites consistent with their beliefs so they can attract their desired clients.

332. For example, the Counseling Ordinances and the Public Accommodation Ordinance force the Counselors to violate their religious beliefs about sexuality and gender while not imposing this same violation on other counselors whose beliefs differ from the Counselors.

333. Accordingly, the Counseling Ordinances and the Public Accommodation Ordinance place the Counselors at a competitive disadvantage and place competitive burdens on them because of their religious faith, their viewpoint and desire to express that viewpoint, and their refusal to speak the government’s message.

Legal Allegations

334. The challenged ordinances violate Plaintiffs’ constitutional rights and chill and deter Plaintiffs from exercising their constitutional rights.

335. As a direct and proximate result of Defendants’ violations of the Counselors’ constitutional rights and those of similarly situated citizens in Missouri, Plaintiffs have suffered and will suffer ongoing irreparable harm and economic injury (including lost business), entitling them to declaratory and injunctive relief and entitling the Counselors to compensatory and nominal damages.

336. The Counselors do not have an adequate monetary or legal remedy for the loss of their constitutional rights. Nor does the State have an adequate monetary or legal remedy for this injury to its sovereign and parens patriae interests.

First Cause of Action

The Counseling Ordinances Violate the First Amendment's Free Speech and
Assembly Clauses: Freedom of Speech, Press, and Assembly

337. Plaintiffs repeat and reallege all preceding allegations.

338. The Counselors' desired speech in their counseling and counseling practice is a form of protected speech, publication, and assembly, and the Counselors and other similarly situated Missouri citizens communicate and publish their speech to the public.

339. The reception of information through counseling by the Counselors' minor clients and their minor clients' parents is a form of protected speech and assembly. The same is true for other similarly situated Missouri citizens.

340. The Counseling Ordinances facially and as-applied restrict speech based on content and viewpoint by prohibiting the Counselors and other licensed professionals who are Missouri citizens from proclaiming only certain content and viewpoints; by applying to speech based solely on its content; by authorizing counseling that supports only one viewpoint of gender identity and sexual orientation; by forcing the Counselors and other licensed professionals who are Missouri citizens to endorse and promote only one viewpoint of gender identity and sexual orientation; by forcing the Counselors and other licensed professionals who are Missouri citizens to chill their speech on the topics of gender identity and sexual orientation; and by depriving the Counselors and other licensed professionals who are Missouri citizens of the opportunity to assemble and form desirable associations.

341. The Counseling Ordinances also restrict speech of the Counselors' clients (as well as speech of similarly situated Missouri citizens who are clients),

including their minor clients and their minor clients' parents, based on content and viewpoint by restricting parents' and minors' access to information based on its content; by authorizing them to receive information articulating only one viewpoint of gender identity and sexual orientation; by depriving them of licensed counseling offering alternative viewpoints of gender identity and sexual orientation, including those consistent with the parents' and minors' religious beliefs; and by depriving them of the opportunity to assemble and form desirable associations.

342. Many minor clients request the Counselors' help through counseling because they feel that their discussions with the Counselors involve the most intimate, difficult, important, and embarrassing topics in their lives, which makes it extremely difficult or even impossible for these clients and their parents to bring suit to protect their own constitutional rights.

343. The Counselors' clients and their clients' parents (as well as the clients and clients' parents of similarly situated Missouri citizens) are not themselves subject to penalties under the Counseling Ordinances and risk being denied their right to receive information without any forum in which to assert and protect that right.

344. The Counseling Ordinances are unconstitutionally vague on their face and allow Defendants unbridled discretion to evaluate speech and then discriminate based on content and viewpoint in determining whether to apply the ordinances.

345. The Counseling Ordinances are facially overbroad because a substantial number of their applications are unconstitutional insofar as they regulate protected speech judged in relation to any otherwise legitimate sweep.

346. The Counselors have not and will not engage in certain protected speech because of the Counseling Ordinances. The Counseling Ordinances also prevent other, similarly situated Missouri citizens from engaging in certain protected speech.

347. The Counseling Ordinances are not sufficiently tailored to serve any legitimate or compelling interest as applied to the Counselors' and similarly situated

Missouri citizens' free-speech, free-assembly, or free-press rights, or the free-speech or free-assembly rights of their minor clients and clients' parents.

348. Accordingly, as applied to the Counselors, similarly situated Missouri citizens, their clients, and their clients' parents, the Counseling Ordinances violate the First Amendment's protections for free speech, free press, and free assembly.

349. Accordingly, the Counseling Ordinances facially violate the First Amendment's protections for free speech.

Second Cause of Action

The Public Accommodation Ordinance Violates the First Amendment's Free Speech and Assembly Clauses: Freedom of Speech, Press, and Assembly

350. Plaintiffs repeat and reallege each of the allegations in paragraphs 1–336 of this Complaint.

351. The Counselors' desired speech in their counseling and counseling practice is a form of protected speech, publication and press, and assembly. The same is true for the desired speech of similarly situated Missouri citizens who engage in counseling.

352. The Public Accommodation Ordinance compels speech the Counselors object to; forbids them from adopting and following certain policies, patterns, and practices; and regulates their speech, assembly, and publication based on content and viewpoint. The Public Accommodation Ordinance affects similarly situated Missouri citizens in the same way.

353. The Public Accommodation Ordinance forces the Counselors to speak messages they object to by requiring them to offer and provide same-sex marital and relationship counseling because the Counselors offer and provide counseling about marriages and relationships between one man and one woman; to offer and provide counseling that encourages clients to speak, act, and identify contrary to their sex because the Counselors offer and provide counseling that encourages clients to

identify consistent with their sex; and to refer to clients and prospective clients by using those persons' self-selected pronouns, regardless of whether their pronouns reflect their sex because the Counselors refer to clients and prospective clients by using their pronouns when their pronouns align with their sex. The Public Accommodation Ordinance affects similarly situated Missouri citizens in the same way.

354. The Public Accommodation Ordinance conditions the Counselors' ability to offer counseling services and to counsel according to their beliefs about marriage, sexuality, and gender identity on the requirement that the Counselors also offer counseling services promoting views on those topics that contradict their beliefs, including counseling that supports same-sex marriages, same-sex relationships, and the idea that one's sex can be chosen or changed. The Public Accommodation Ordinance affects similarly situated Missouri citizens in the same way.

355. The Publication Clause is a content- and viewpoint-based regulation that bans, chills, and burdens the Counselors' desired speech (and publication of that speech) on their websites, social media sites, other written materials, and directly to prospective clients. The Publication Clause affects similarly situated Missouri citizens in the same way.

356. The Publication Clause's Unwelcome Clause is vague and grants Defendants unbridled discretion to evaluate speech and then discriminate based on content and viewpoint in determining whether to apply the Unwelcome Clause.

357. The Publication Clause's Unwelcome Clause is also facially unconstitutional because it is vague, is overbroad, grants unbridled discretion, and is a content-based and viewpoint-based regulation that bans, chills, and burdens speech, assembly, and publication of speech.

358. The Counselors have not and will not engage in certain protected speech because of the Public Accommodation Ordinance. The Public Accommodation Ordinance affects similarly situated Missouri citizens in the same way.

359. The Public Accommodation Ordinance is not sufficiently tailored to serve any legitimate or compelling interest as applied to the Counselors' free-speech, free-press, or free-assembly. The same is true as applied to similarly situated Missouri citizens.

360. Accordingly, as applied to the Counselors and similarly situated Missouri citizens, the Public Accommodation Ordinance violates the First Amendment's protections for free speech, free press, and free assembly.

361. Accordingly, the Publication Clause's Unwelcome Clause facially violates the First Amendment's protections for free speech, free press, and free assembly.

Third Cause of Action

The Counseling Ordinances Violate the First Amendment's Free Exercise Clause: Lack of Neutrality and General Applicability and Individualized Exemptions

362. Plaintiffs repeat and reallege each of the allegations in paragraphs 1–336 of this Complaint.

363. The Counselors exercise their religion under the First Amendment when they operate their counseling practices, adopt and follow written and unwritten policies and practices consistent with their religious beliefs, and provide counseling. The same is true regarding similarly situated Missouri citizens.

364. The Counseling Ordinances substantially burden the Counselors' sincerely held religious beliefs by requiring them either to operate their counseling practices in ways that violate their religious beliefs or to close their practices, by stopping them from being honest with prospective clients by barring them from stating what counseling services they will not provide due to their religious beliefs,

by preventing them from counseling consistent with their religious beliefs about gender identity and sexual orientation, and by preventing their religiously motivated speech. The Counseling Ordinances affect similarly situated Missouri citizens in the same way.

365. The Counseling Ordinances are not neutral towards the Counselors' religious beliefs because the ordinances do not force nonreligious counselors or counselors with favored religious views to choose between these same options when faced with requests to provide counseling on topics with which they disagree, or to refrain from speaking. The Counseling Ordinances affect similarly situated Missouri citizens in the same way.

366. The Counseling Ordinances impermissibly prefer secular and certain religious views over other religious views and impermissibly treat comparable secular activities more favorably than the Counselors' religious exercise by allowing those who own and operate counseling practices to express beliefs in favor of same-sex attractions or gender identity but not allowing the Counselors to express contrary religious beliefs. The Counseling Ordinances affect similarly situated Missouri citizens in the same way.

367. The Counseling Ordinances are not facially or operationally neutral or generally applicable because they contain categorical exemptions without exempting the Counselors, and target ideas and motivations well known to be primarily associated with and advanced by people of particular religious beliefs because of those beliefs. The Counseling Ordinances affect similarly situated Missouri citizens in the same way.

368. The Counseling Ordinances are also hostile towards religion, target and show favoritism towards certain non-religious and religious beliefs, and impose special disabilities on the Counselors due to their religious beliefs. The Counseling Ordinances affect similarly situated Missouri citizens in the same way.

369. The Counseling Ordinances violate the Counselors' free-exercise rights under the hybrid-rights doctrine because they implicate free-exercise rights in conjunction with other constitutional protections, including free speech, assembly, and press. The Counseling Ordinances affect similarly situated Missouri citizens in the same way.

370. The Counseling Ordinances impose severe coercive pressure on the Counselors to change or violate their religious beliefs and to stop operating their business according to their religious beliefs. The Counseling Ordinances affect similarly situated Missouri citizens in the same way.

371. The Counselors have not and will not engage in certain religiously-motivated activities because of the Counseling Ordinances and, if not for the Counseling Ordinances, the Counselors would immediately begin those activities. The Counseling Ordinances likewise stifle other, similarly situated Missouri citizens in the same way.

372. The Counseling Ordinances are not sufficiently tailored to serve any legitimate or compelling interest as applied to Plaintiffs' free-exercise rights.

373. Accordingly, as applied to the Counselors and other similarly situated Missouri citizens, the Counseling Ordinances violate the First Amendment's protections to freely exercise religion.

Fourth Cause of Action

The Public Accommodation Ordinance Violates the First Amendment's Free Exercise Clause: Lack of Neutrality and General Applicability, Individualized Exemptions, and Compelled Participation

374. Plaintiffs repeat and reallege each of the allegations in paragraphs 1–336 of this Complaint.

375. The Counselors exercise their religion under the First Amendment when they operate their counseling practices, adopt and follow written and unwritten policies and practices consistent with their religious beliefs, honestly communicate

with clients and prospective clients about the counseling they can and cannot provide, counsel consistent with their religious beliefs, and provide counseling. The same is true for similarly situated Missouri Citizens.

376. The City's Public Accommodation Ordinance substantially burdens the Counselors' sincerely held religious beliefs by requiring them either to operate their counseling practices in ways that violate their religious beliefs or to close their practices; by preventing them from keeping and following written and unwritten policies and practices consistent with their religious views on marriage and gender identity; by stopping them from being honest with prospective clients by barring them from stating what counseling services they will not provide due to their religious beliefs; by preventing their religiously motivated speech; by compelling speech that they are religiously obligated to avoid; by preventing them from counseling consistent with their religious beliefs about gender identity and sexual orientation; by preventing their religiously motivated speech; and by forcing their participation in counseling activities prohibited by their religious beliefs. The City's Public Accommodation Ordinance affects similarly situated Missouri citizens in the same way.

377. The Public Accommodation Ordinance violates and substantially burdens the Counselors' religious exercise by requiring them to offer and provide same-sex marital and relationship counseling because the Counselors offer and provide counseling about marriages and relationships between one man and one woman; to offer and provide counseling that encourages clients to speak, act, and identity identify contrary to their sex because the Counselors offer and provide counseling that encourages clients to identify consistent with their sex; and to refer to clients and prospective clients by using those persons' self-selected pronouns, regardless of whether their pronouns reflect their sex, because the Counselors refer to clients and prospective clients by using pronouns when those pronouns align with

clients' sex. The Public Accommodation Ordinance affects similarly situated Missouri citizens in the same way.

378. The Public Accommodation Ordinance does not force nonreligious counselors or counselors with favored religious views to choose between these same options when faced with requests to provide counseling on topics with which they disagree or when they explain why they decline to provide certain forms of counseling.

379. The Public Accommodation Ordinance impermissibly prefers secular views over religious views and certain religious views over others and impermissibly treats comparable secular activities more favorably than the Counselors' and similarly situated Missouri citizens' religious exercise by allowing those who own and operate counseling practices to express beliefs in favor of same-sex attractions or gender identity but not allowing the Counselors and similarly situated Missouri citizens to express contrary religious beliefs.

380. The Public Accommodation Ordinance is not facially or operationally neutral or generally applicable because it contains categorical exemptions without exempting the Counselors and similarly situated Missouri citizens and targets ideas and motivations well known to be primarily associated with and advanced by people of particular religious beliefs for reasons of those beliefs.

381. The Public Accommodation Ordinance is hostile towards religion, targets and shows favoritism towards certain non-religious and religious beliefs, and imposes special disabilities on the Counselors due to their religious beliefs. The Public Accommodation Ordinance affects similarly situated Missouri citizens in the same way.

382. The Public Accommodation Ordinance violates the Counselors' free-exercise rights under the hybrid-rights doctrine because it implicates free-exercise rights and other constitutional protections, like the rights to free speech, assembly,

and press. The Public Accommodation Ordinance affects similarly situated Missouri citizens in the same way.

383. The Public Accommodation Ordinance imposes severe coercive pressure on the Counselors to change or violate their religious beliefs and to stop operating their business according to their religious beliefs. The Public Accommodation Ordinance affects similarly situated Missouri citizens in the same way.

384. The Counselors have not and will not engage in certain religiously motivated activities because of the Public Accommodation Ordinance, and, if not for this ordinance, the Counselors would immediately begin those activities. The Public Accommodation Ordinance stifles similarly situated Missouri citizens in the same way.

385. The Public Accommodation Ordinance is not sufficiently tailored to serve any legitimate or compelling interest as applied to the Counselors' or similarly situated Missouri citizens' free-exercise rights.

386. Accordingly, as applied to the Counselors, the Public Accommodation Ordinance violates the First Amendment's protections to freely exercise religion.

Fifth Cause of Action
The Counseling Ordinances Violate the Fourteenth Amendment's Due Process
Clause: Vagueness and Overbreadth

387. Plaintiffs repeat and reallege each of the allegations in paragraphs 1–336 of this Complaint.

388. The Counseling Ordinances use vague and overbroad terms that are subject to arbitrary enforcement based on Defendants' unbridled discretion such as “change,” “eliminate or reduce,” “sexual romantic attractions or feelings,” “preferred outcome,” “facilitate,” “development,” “behaviors,” “enduring physical, romantic, and/or emotional attraction,” “sexual preference or practice,” and others, and rely on vague and arbitrary definitions for “sexual orientation” and “gender identity.”

389. The Counseling Ordinances never define key terms used in the ordinances.

390. These terms are overbroad because they prohibit a substantial amount of protected speech and expressive activity relative to any legitimate sweep the Counseling Ordinances may have (if at all), the government lacks a compelling interest in restricting the speech and expressive activity prohibited by the Counseling Ordinances, and the Counseling Ordinances' restrictions are not narrowly tailored.

391. Plaintiffs, Defendants, and third parties of ordinary intelligence cannot know what conversations between the Counselors (or similarly situated Missouri citizens) and their clients might fall within any of the vague, overbroad, or discretionary terms or phrases used in the Counseling Ordinances and therefore cannot know what is prohibited by the Counseling Ordinances.

392. Defendants can use this vagueness, overbreadth, and accompanying unbridled discretion to apply the Counseling Ordinances in a way that discriminates against content, viewpoints, and actions Defendants disfavor.

393. Accordingly, facially and as applied to the Counselors, the Counseling Ordinances violate the Fourteenth Amendment's Due Process Clause.

Sixth Cause of Action
The Publication Clause Violates the Fourteenth Amendment's Due Process Clause:
Vagueness and Overbreadth

394. Plaintiffs repeat and reallege each of the allegations in paragraphs 1–336 of this Complaint.

395. The Publication Clause's Unwelcome Clause prohibits any place of public accommodation from “publish[ing], circulat[ing] or display[ing] any written communication, notice or advertisement to the effect that ... the patronage or custom of any person ... is unwelcome or objectionable or not acceptable to such place”

because of the person's sexual orientation, gender identity, and other characteristics. K.C. Ord. § 38-113(a).

396. These terms are overbroad because they prohibit speech that may cause a person to feel unwelcome, objectionable, or not acceptable, which includes a substantial amount of protected speech and expressive activity relative to any legitimate sweep the Unwelcome Clause may have (if at all).

397. The government lacks a compelling interest in restricting the speech and expressive activity prohibited by the Unwelcome Clause, and the Unwelcome Clause's restrictions are not narrowly tailored.

398. Plaintiffs, Defendant Kansas City, and third parties of ordinary intelligence cannot know what communications made on a public accommodation's website, made on a public accommodation's social media sites, made through mail, written anywhere, or made directly to prospective clients indicate a person's "patronage" at a place of public accommodation is "unwelcome, objectionable, not acceptable" and therefore cannot know what the Unwelcome Clause prohibits.

399. Defendant Kansas City can use this vagueness, overbreadth, and accompanying unbridled discretion to apply the Unwelcome Clause in a way that discriminates against content, viewpoints, and actions it disfavors.

400. Accordingly, facially and as applied to the Counselors, the Unwelcome Clause violates the Fourteenth Amendment's Due Process Clause.

Prayer for Relief

Plaintiffs respectfully request that this Court enter judgment against Defendants and provide the following relief:

1. A preliminary and permanent injunction to stop Defendants and any person acting in concert with them from:

- a. enforcing the Counseling Ordinances and the Public Accommodation Ordinance as applied to the constitutionally protected speech, assembly, due-process, free-press, and free-exercise rights by the Counselors and similarly situated speakers who are Missouri citizens;
- b. enforcing the Counseling Ordinances as applied to the Counselors' clients', the Counselors' clients' parents', and similarly situated Missouri citizens' constitutionally protected speech and assembly rights; and
- c. enforcing the Counseling Ordinances insofar as they prohibit speech and the Publication Clause's Unwelcome Clause facially.

2. A declaration that the Counseling Ordinances and the Public Accommodation Ordinance have and continue to violate the First and Fourteenth Amendment rights of the Counselors and similarly situated Missouri citizens to engage in speech, press, and religious exercise as applied to the constitutionally protected activities of the Counselors and similarly situated Missouri citizens.

3. A declaration that the Counseling Ordinances have and continue to violate the First and Fourteenth Amendment rights of the Counselors' and similarly situated Missouri citizens' clients and their parents to engage in speech and assembly as applied to their constitutionally protected activities.

4. A declaration that the Counseling Ordinances facially violate the First Amendment protections for speech insofar as they prohibit speech and the Fourteenth Amendment protections for due process.

5. A declaration that the Publication Clause's Unwelcome Clause facially violates the First Amendment protections for speech and press and the Fourteenth Amendment protections for due process.

6. A demand for jury trial on all issues so triable.

7. Nominal and compensatory damages to the Counselors.
8. Pre- and post-judgment interest if applicable.
9. That this Court adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy so that these declarations shall have the force and effect of a final judgment.
10. That this Court retain jurisdiction of this matter for the purpose of enforcing its orders.
11. That this Court award the Plaintiffs' costs and expenses in this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988.
12. That this Court issue the requested injunctive relief without a condition of bond or other security required of the Plaintiffs; and
13. That this Court grant any other relief that it deems equitable and just in the circumstances.

Respectfully submitted this 7th day of February, 2025.

By: s/Joshua M. Divine

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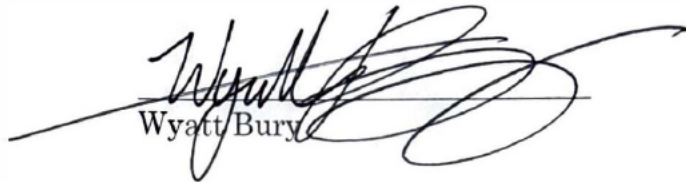
**Pending Admission Pro Hac Vice*

Attorneys for Plaintiffs

DECLARATION UNDER PENALTY OF PERJURY

I, Wyatt Bury, a citizen of the United States, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing allegations as they relate to me and my personal experiences are true and correct to the best of my knowledge, except for the matters stated on information and belief.

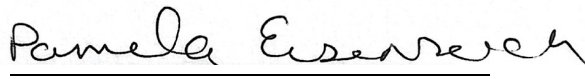
Executed this 6th day of February, 2025, at Kansas City, Missouri.


Wyatt Bury

DECLARATION UNDER PENALTY OF PERJURY

I, Pamela Eisenreich, a citizen of the United States and a resident of the State of Missouri, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing allegations as they relate to me and my personal experiences are true and correct to the best of my knowledge, except for the matters stated on information and belief.

Executed this 6th day of February, 2025, at Kansas City, Missouri.


Pamela Eisenreich
Pamela Eisenreich