

**THE PERNICIOUS MYTH OF CONVERSION THERAPY:
HOW LOVE IN ACTION PERPETRATED A FRAUD ON AMERICA**

Prepared by McDermott Will & Emery LLP on behalf of the
Mattachine Society of Washington, DC

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Executive Summary

The Mattachine Society of Washington, DC (“MSDC”) is a non-profit, non-partisan research and educational society that conducts original archival research at the National Archives, U.S. presidential libraries, the Library of Congress, the FOIA Library of the Federal Bureau of Investigation, the Stonewall National Museum and Archives, and other private and public repositories across the country.

The mission of the MSDC is to uncover the often-deleted political histories of lesbian, gay, bisexual and transgender (“LGBT”) Americans who faced persecution and discrimination at the hands of federal and state governments for nearly seventy years. The MSDC is dedicated to educating the public about this forgotten, deleted and untold history and, in turn, to achieving full civil equality for LGBT Americans through its “archive activism.”

Founded in 1961 by gay civil rights pioneer, Dr. Franklin Kameny (“Kameny”), the original MSDC was the first gay civil rights organization in Washington, DC. Today, the MSDC continues this important work at the direction of its officers, Charles Francis and Pate Felts, in partnership with its pro bono legal counsel, the international law firm of McDermott Will & Emery LLP (“McDermott” and collectively, the “team”).

For the past two years, the MSDC has focused on rescuing and preserving historic documents and information related to conversion therapy. Conversion therapy is the practice of trying to change a person’s sexual orientation or gender identity, primarily through psychological, spiritual, or religious means.

For decades, the scientific community has rejected conversion therapy and documented the significant harm that it can cause to its victims and their families. The American Psychological Association, the American Academy of Pediatrics, and the American Counseling Association, among others, put it bluntly: “[T]he idea that homosexuality is a mental disorder or that the emergence of same-sex attraction and orientation among some adolescents is in any way abnormal or mentally unhealthy has no support among any mainstream health and mental health professional organizations.”¹ Indeed, in its own opposition to conversion therapy, the American College of Physicians has pointed to research showing that “the practice may actually cause emotional or physical harm to LGBT individuals, particularly adolescents or young persons.”²

This white paper has its genesis in the story of one such young person, Garrard Conley. Conley is a young author, who burst onto the literary scene with *Boy Erased*, a memoir based on his experience in a conversion therapy program run by a faith-based ministry called Love In Action (“LIA” or the “Ministry”). In 2016, MSDC’s Pate Felts read *Boy Erased* and distributed it to the members of the entire team. In October of that year, the team met with Conley to learn about his story first-hand.

¹ Just the Facts Coalition, Am. Psychological Ass’n, *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel* 5 (2008), <https://www.apa.org/pi/lgbt/resources/just-the-facts.pdf>.

² Hillary Daniel & Renee Butkus, American College of Physicians, *Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper from the American College of Physicians*, *Annals of Internal Med.* (July 21, 2015), <http://annals.org/article.aspx?articleid=2292051>.

That meeting was the catalyst for the conversion therapy project undertaken by the MSDC. The project's objective was to uncover the story of LIA, the conversion therapy ministry that tormented Conley and hundreds of other young people between 1973 and 2008. In particular, the MSDC sought and located documents from 2005 when Tennessee state agencies attempted to regulate LIA, and materials from a lawsuit brought by the Alliance Defense Fund ("ADF")³ on behalf of LIA. Even more than a decade later, that lawsuit remains relevant to the struggle for LGBT equality and inclusion in the U.S., and elsewhere. It is a case that foreshadowed the questions being debated in courtrooms across America today: does the First Amendment shield private actors from state regulations that prevent the targeting and discrimination of LGBT Americans? And should it?

Section I examines how the medical establishment, federal, state, and local governments, and popular culture stigmatized homosexuality starting in the 1950s by labeling it a mental illness in need of treatment with a view toward a cure. This collective campaign created a culture of animus against LGBT Americans. And, this culture planted the seeds for the growth of faith-based ministries aimed at changing the sexual orientation and gender identities of LGBT individuals through a hodgepodge of teachings from the Bible, twelve-step programs, fire and brimstone depictions of God, junk science, and misconceptions of what it meant to be gay.

Section II discusses the rise of LIA and the events leading to its eventual demise. Here, the paper traces the origins of LIA and the state of Tennessee's investigations into the Ministry's practices. Ultimately, these investigations led to litigation against the state officials and agencies that tried to protect the young people who were participants in the Ministry by imposing reasonable regulations and oversight over LIA. This section relies heavily on statements obtained by the MSDC and McDermott during two interviews with the former Director of LIA, the Reverend John J. Smid ("Smid"). During those interviews, Smid explained how LIA developed into the new paradigm for conversion therapy and the ugly truth about the fraud it perpetrated on young people and their families, namely, its impotence to change sexual orientation.

Section III addresses the re-emergence of conversion therapy today. In particular, it outlines the threats posed by those working to roll-back the advances made by the broader LGBT Community over the last decade and the role that conversion therapy is playing in the larger debate over equality.

What makes this white paper unique is that it contains original documents located by the archive activists of the MSDC and litigation documents located by McDermott. Its Appendix includes a state-by-state chart demonstrating the status of conversion therapy laws and bans on such practices.

This paper is dedicated to the young people who survived conversion therapies, their families who rose to support and love them for who they are, and to the memory of those whose lives were lost during the fight to change them.

³ Now known as the Alliance Defending Freedom. See <https://www.adflegal.org/> (last visited Oct. 9, 2018).

I. THE ORIGINS OF CONVERSION THERAPY: HOW ANIMUS INFILTRATED THE MEDICAL COMMUNITY, FEDERAL GOVERNMENT AND POPULAR CULTURE AND LAID THE GROUNDWORK FOR FAITH-BASED MINISTRIES

A. *The Medical Community's Pathological Discourse Normalized Efforts to "Cure" Homosexuality*

The history of sexual orientation change efforts, also known as reparative or conversion therapy (collectively, "SOCE"), reveals the toxic effects such therapies have on individuals, their families, and even what it means to be gay. It is a history that started with junk science – attempts to "cure" homosexuality through barbaric psychiatric practices. Eventually, faith-based ministries picked up the practices, claiming that "God's miracles" would save homosexuals. Whether based in science or religion, however, what SOCE history shows more than anything is that conversion therapy is a fraud perpetrated on LGBT people and their families.

SOCE has its roots in the mid-19th century development of the science of sexuality.⁴ During this era, researchers searched for scientific methods to change an individual's sexual orientation.⁵ Despite the emergence of scholarship finding that homosexual orientation is a normal permutation of human sexuality, deeply ingrained heterosexist norms resulted in works characterizing "homosexual attractions and behaviors as abnormal or as an illness."⁶ Psychological immaturity and pathology were identified as the causes of homosexuality.⁷ The first attempts to "cure" homosexuality, therefore, focused on reversing the effects of pathogenic factors, such as genetic defects, flawed or excessive parenting, and lasting trauma from sexual abuse.⁸ At the time, the belief was that any or all of these factors thwarted maturity to adult heterosexuality. Early treatments for homosexuality tried to "repair" the damage done to the homosexual's psyche as the primary way to change the patient's sexual orientation.⁹

One way to change a homosexual's behavior, according to some early researchers, was to eliminate same-sex desires by reinforcing heterosexual behavior.¹⁰ Thus, the earliest forms of conversion therapy promoted the use of other-sex prostitutes, marriage to other-sex partners, orgasmic reconditioning, and various forms of aversion therapy including, triggering nausea, vomiting or paralysis and administering electroshock, chemical and deprivation therapies.¹¹ These types of psychotherapeutic treatments were extremely common.¹² So much so, in fact,

⁴ Judith M. Glassgold et al., Am. Psychological Ass'n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* 21 (2009), <https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>.

⁵ Nick Clair, *Chapter 835: "Gay Conversion Therapy" Ban: Protecting Children or Infringing Rights?*, 44 McGeorge L. Rev. 541, 550 (2013).

⁶ Glassgold et al., *supra* note 4.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*; Kenji Yoshino, *Covering*, 111 Yale L.J. 769, 788 (2002).

¹⁰ Timothy F. Murphy, *Redirecting Sexual Orientation: Techniques and Justifications*, 29 J. Sex Res. 501, 506 (1992).

¹¹ *Id.* at 502-06; Glassgold et al., *supra* note 4, at 22.

¹² Yoshino, *supra* note 9; Jason Cianciotto and Sean Cahill, Nat'l Gay and Lesbian Task Force Pol'y Inst., *Youth in the Crosshairs: The Third Wave of Ex-Gay* 60 (2006) (describing doctor attendance at a 1972 American Psychiatric

that Farrall Instrument Company of Grand Island, Nebraska (“Farrall”), designed, publicized, and sold a line of devices to assist in medical conversion treatments.¹³ (Exhibit 1). Marketed as “the world’s most advanced [collection] of behavior modification equipment for the treatment of compulsions, addictions, phobias and learning difficulties[,]” Farrall offered behavior modification devices such as the “Visually Keyed Shocker” which cost between \$600 and \$1400 per unit.¹⁴ The device was advertised as follows:

[F]ully automated system [that] uses standard 35MM slides for stimulus and neutral cues [S]timulus slides are shown to the patient intermixed with neutral slides. Shock is delivered with stimulus scenes but not with neutral scenes. In reinforcing heterosexual preference in latent male homosexuals, male slides give a shock [sometimes directly to the genitalia] while the stimulus relief slides of females do not give shock.¹⁵

Farrall also marketed these devices: the “Acoustic Keyer,” which recorded patients’ own accounts of their “deviant behavior” and administered shocks during portions that they found stimulating; the “Office Shocker,” which was meant for use in a medical professional’s office rather than in an institution; and the “Personal Shocker,” which allowed the patient to prevent relapses.¹⁶

According to the Farrall catalog, electroconvulsive reparative treatment was a proven technique to treat “child molesters, transvestites, exhibitionists, alcoholics, shop lifters and other people with similar problems[,]” including gay men and women.¹⁷ The Farrall catalog likewise reiterated the then-prevailing medical view that psychotherapy would have reparative effects on homosexuality.¹⁸ “Cognitive therapists attempted to change the thought patterns of gay men and lesbians by reframing desires, redirecting thoughts, or using hypnosis, with the goal of changing sexual arousal, behavior, and orientation.”¹⁹ Medical professionals believed in the efficacy of devices like those in the Farrall catalog and often used them on patients, thereby legitimizing one of the most appalling forms of conversion therapy, namely, electroshock treatments.²⁰

B. Government Persecution Further Fuels the Stigma of Homosexuality

The medical community was not alone in pathologizing homosexuality as a psychiatric or developmental disorder. The U.S. government fueled “a Lavender Scare—a fear that

Association conference “panel discussion on electroshock therapy as a form of conversion therapy treatment for gay men and lesbians.”).

¹³ Farrall Instrument Company, Catalog No. F72. March 26, 1973. Located by the MSDC in the archives of the One Institute at the USC libraries in Los Angeles, CA (Exhibit 1) [hereafter Farrall Catalog].

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* (“Considerable literature exists proving the value of of [sic] behavior modification techniques in treating sex variants using the patient’s phantasy as a stimulus. Researchers and therapists report the main cause of failure to treat some patients effectively is that the patients have difficulty in visualization of the phantasy image.”).

¹⁹ Glassgold et al., *supra* note 4, at 22.

²⁰ Farrall Catalog, *supra* note 13.

homosexuals posed a threat to national security and needed to be systematically removed from the federal government—[that] permeated 1950s popular culture.”²¹

In 1953, President Dwight D. Eisenhower signed Executive Order (“EO”) 10450, which “officially sanctioned the identification of homosexuality as a behavior threatening to national security” under the guise of setting standards for government employment, thus implementing FBI Director, J. Edgar Hoover’s Sex Deviate program.²² By formally declaring LGBT individuals “immoral and unsuitable” to hold governmental positions, the federal government justified investigating and firing employees suspected of being gay.²³ Not only did these purges destroy the careers and lives of thousands of LGBT Americans, but they also fostered and normalized public animus toward them.²⁴ EO 10450 functionally demoted homosexuals to second-class citizens and labeled any expression of same-sex affection as “sexual perversion,” placing it under an umbrella of “undesirable” behavior along with criminality and drug addiction.²⁵

In addition to being barred from federal employment, LGBT individuals ran the very real risk of being declared clinically insane and committed to psychiatric institutions.²⁶ By way of example, the same year Eisenhower signed EO 10450, Thomas H. Tattersall (“Tattersall”) was fired from his job with the Department of Commerce because of his sexual orientation.²⁷ Found guilty of the “crime of homosexuality,” Tattersall was committed to St. Elizabeths Hospital, the first federally-funded psychiatric hospital in Washington, DC.²⁸ While hospitalized at St. Elizabeths from 1955 to 1960, Tattersall received “repeated ‘insulin shock therapy’ sessions, a barbaric series of massive injections of insulin to induce comas over weeks.”²⁹ Tattersall’s tragic victimization as a gay man is but one uncovered story among countless tales of LGBT individuals similarly persecuted.³⁰

To the officials working at the U.S. Civil Service Commission (“CSC”), the forerunner of the Office for Personnel Management and branch of government tasked with carrying out the Sex Deviate Program, discrimination against LGBT Americans was not only acceptable and routine but officially sanctioned. Using Tattersall as an informant, the CSC, for instance, sought leads in investigations of other homosexual federal employees.³¹ (Exhibit 2). Agents serially

²¹ Michael G. Long, *Gay is Good, The Life and Letters of Gay Rights Pioneer Franklin Kameny* 10 (2014); see also Brief of the MSDC as Amicus Curiae in support of Petitioners, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

²² Long, *supra* note 21; Brief of the MSDC as Amicus Curiae in support of Petitioners, *supra* note 21.

²³ Long, *supra* note 21; Brief of the MSDC as Amicus Curiae in support of Petitioners, *supra* note 21; Charles Francis & Pate Felts, *Archive Activism: Vergangenheitsbewältigung!*, QED: A Journal in GLBTQ Worldmaking 28, 36 (2017).

²⁴ Francis & Felts, *supra* note 23, at 31.

²⁵ Long, *supra* note 21, at 11; Exec. Order No. 10450, 18 Fed. Reg. 2489 (April 27, 1953).

²⁶ Francis & Felts, *supra* note 23, at 28.

²⁷ *Id.*

²⁸ *Id.*; see also Andrew Giambrone, *LGBTQ People Suffered Traumatic Treatments at St. Elizabeths Hospital for the Mentally Ill*, Washington City Paper (May 31, 2018), <https://www.washingtoncitypaper.com/news/article/21007233/independent-scholars-uncover-the-traumatic-treatments-lgbtq-people-suffered-at-st-elizabeths>.

²⁹ Francis & Felts, *supra* note 23, at 28.

³⁰ *Id.* at 29.

³¹ *Id.* at 28-29.

interrogated Tattersall while he was “in a kind of zombie state” at St. Elizabeths, and the CSC recorded the names of the agents who conducted those interrogations. During one interrogation, Tattersall identified gay employees across more than twenty federal agencies.³²

C. *St. Elizabeths Hospital and Dr. Benjamin Karpman*

At the center of this government-sanctioned persecution of LGBT citizens was St. Elizabeths Hospital (“St. Elizabeths” or the “Hospital”), known as “The Government Hospital for the Insane.”³³ Established by an act of Congress in 1855, the federally-funded institution was the first of its kind in the United States.³⁴ According to its founder, Dorothea Dix, the Hospital’s mission was to provide “the most humane care and enlightened curative treatment of the insane of the Army and Navy of the United States and of the District of Columbia.”³⁵

By 1946 however, neither the Army nor the Navy sent its members to St. Elizabeths.³⁶ The number of *civilian* patients nonetheless continued to increase, and during its peak in the early 1950s, the Hospital housed over 7,200 patients.³⁷ Most troubling, under DC’s “sexual psychopath” law, LGBT individuals could be indefinitely committed to St. Elizabeths “simply for publicly expressing an interest in others of the same sex.”³⁸ While the law itself painted homosexuals as dangerous, mentally ill, and predisposed to commit crimes, their institutionalization at St. Elizabeths reinforced the government’s view that homosexuality was an illness that required a psychological cure. The Hospital was the “‘headwater’ of pseudoscientific theories about LGBTQ³⁹ people that combined the psychoanalytic teachings of Sigmund Freud with American homophobia [T]he ideas that St. Elizabeths’[sic] leaders generated were codified in pedagogical materials that cast queer identities as pathologies, bolstering the dominant narrative at the time.”⁴⁰

St. Elizabeths was also the scene of barbaric and physically invasive surgical procedures aimed at “curing” gay individuals. Dr. Walter Freeman, father of the “ice pick lobotomy,” or the transorbital lobotomy, performed numerous lobotomies on LGBT patients and others in an effort to cure mental illness.⁴¹ As part of the lobotomy procedure, “an instrument was inserted through

³² *Id.*; see also David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* 161 n.23 (2004); U.S. Civil Service Commission Memorandum, *United States Government Agents Who Utilized Thomas H. Tattersall as an informer in 1955*. Affidavit of Thomas Henry Tattersall, taken on April 7, 1955 by John J. Lavery Investigator (Exhibit 2); see also Giambrone, *supra* note 28.

³³ Frances M. McMillen & James S. Kane, *Institutional Memory: The Records of St. Elizabeths Hospital at the National Archives, Prologue* (2010), www.archives.gov/publications/prologue/2010/summer/institutional.html.

³⁴ *Id.*; Genny Beemyn, *A Queer Capital: A History of Gay Life in Washington D.C.* 135 n.19 (2014).

³⁵ Beemyn, *supra* note 34.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 134-135.

³⁹ Lesbian, Gay, Bisexual, Transgender and Queer or Questioning.

⁴⁰ Giambrone, *supra* note 28.

⁴¹ Tom Waidzunus, *The Straight Line: How the Fringe Science of Ex-Gay Therapy Reoriented Sexuality* 45 n.39 (2015).

the eye socket to detach the frontal lobe of the brain from the hypothalamus, believed to be the source of irrationality.”⁴²

Benjamin Karpman, M.D., a psychotherapist and senior forensic psychiatrist at St. Elizabeths for forty years (“Karpman”), critically contributed to pathologizing homosexuality as both an individual illness and a broader social issue. In a memorandum addressing the “ultimate scientific opinion with respect to homosexuality as a social problem,” Karpman begins with the premise that homosexuality poses an immediate danger to society, likening it to a contagious disease.⁴³ (Exhibit 3). Just as contagious diseases present the danger of transmission to third parties, for Karpman, homosexuality “involves the danger of ‘corrupting’ other individuals and the danger of interfering with their normal sexual development.”⁴⁴ Fueling these baseless claims was Karpman’s underlying belief that “[e]very human being is bisexual. Consequently every human being has a homosexual component.”⁴⁵ He concluded that there was a direct correlation between an individual’s psychosis and the degree to which his or her homosexual component was expressed.⁴⁶ For Karpman, homosexuality was an intrusion, which “[i]n many cases . . . is so mild and inconspicuous that it remains unnoticed; [but,] in many other cases it forms the nucleus of a severe psychoneurosis, or sometimes a psychosis.”⁴⁷

As such, Karpman believed that science must provide the means to either eradicate or cure homosexuality.⁴⁸ Karpman conceded that there was not yet a cure for homosexuality, but also acknowledged that

[c]hasing all of the homosexuals out of one city (even assuming such a thing were possible) would not solve the problems of homosexuality, any more than chasing all of the thieves out of one city would solve the problem of dishonesty If he cannot be eradicated, what is to be done with him? Psychiatry should take time out from discussing homosexuality as an individual ‘disease’ and offer a constructive plan for dealing with it as a social problem.⁴⁹

Despite his search for a cure, Karpman showed some degree of compassion for the plight of LGBT individuals. He believed that religion often aggravated societal animus toward homosexuality.⁵⁰ As noted in the Karpman Memo, “the fundamental religious objection to

⁴² Giambrone, *supra* note 28.

⁴³ Benjamin Karpman, Memorandum, *The ultimate scientific opinion with respect to homosexuality as a social problem*, c. 1954, The Benjamin Karpman Papers, Box 9, Folder 1, the Jean-Nickolaus Tretter Collection, the University of Minnesota [hereafter Karpman Memo].

⁴⁴ *Id.*

⁴⁵ Benjamin Karpman, *Various Paraphiliac Chapters: Section Two: Homosexuality* 11. The Benjamin Karpman Papers, Box 9, Folder 1, the Jean-Nikolaus Tretter Collection, the University of Minnesota [hereafter Karpman Chapter].

⁴⁶ *Id.* at 1, 8-9.

⁴⁷ *Id.* at 9.

⁴⁸ Karpman Memo, *supra* note 43.

⁴⁹ *Id.*

⁵⁰ Karpman Chapter, *supra* note 45, at 9 (“The current views of society with respect to homosexuality are derived from ancient religious sources which were not primarily concerned, as is popularly supposed, with abstract morals, but with the idea of nationalistic and institutional preservation. It is not the idea of immorality which is at the root of these ideas, but the idea of sterility. Homosexuality runs counter to the ancient command, ‘Be fruitful and multiply’

homosexuality is not that it is immoral, but that it is sterile The only ultimate concern of religious institutions is their own economic preservation. ‘Sin’ is simply their stock in trade; they can no more do without it than a grocer can do without canned soup.”⁵¹ According to Karpman, psychiatry was a necessary but not a sufficient condition for solving the problem of homosexuality.⁵² The cure, in Karpman’s opinion, required a combination of social factors for approaching homosexuality and corresponding laws in a “more reasonable, practical and humane” manner, lest this problem would persist indefinitely.⁵³ But the culture of animus toward homosexuals that had been created was already lodged in the mind of the public who was not yet ready to consider a shift in attitude.

While moderately sympathetic toward gay men and women, Karpman nevertheless made clear his belief that homosexuality was an illness requiring treatment and that certain aspects of being gay even rose to the level of criminality.⁵⁴ Karpman identified what he believed to be the overriding threat of homosexuality as “the seduction of the immature.”⁵⁵ Without any support, Karpman called this “seduction” “[t]he most serious homosexual crime” from which children required protection “from the homosexual approaches of those who would willfully interfere with [their] chances for complete heterosexual progress.”⁵⁶ Karpman did make a distinction for “a homosexual union entered into by two adults, whether they be men or women, by mutual consent, [which he stated] is no more ‘criminal’ than a heterosexual union [sic] so entered into by a man and a woman.”⁵⁷

Yet, Karpman’s limited acceptance of same-sex relationships does not, in any way, excuse his role as the figurehead of an institution as powerful as St. Elizabeths. During the 1950s, the U.S. government adopted a formal policy to identify and stigmatize LGBT Americans. St. Elizabeths, with the able assistance of Dr. Karpman, provided the medical support and legitimacy for the government’s venture—a venture that destroyed thousands of lives.

D. *The Pathology Model of Homosexuality Becomes Embedded in American Culture*

By the 1950s, the medical community had embraced a view that homosexuality was a treatable disorder, thereby endorsing a view of homosexuality that delegitimized the lives of LGBT individuals. This harmful perspective, validated both by medical experts and the government, was reinforced in popular culture. Hugh Hefner’s *Playboy* was started in 1953—the same year that EO 10450 became law—and it was initially an American men’s lifestyle and

(Genesis, 35:11). It is the same idea which today lies behind the extreme position of the Catholic Church with respect to birth control. The Church steadfastly disregards the problems of economics, sociology, health, and any other practical aspect of the situation, and bases on so-called Divine command a principle which is motivated solely by the aim of perpetuating and increasing an institution. For the same reason, the Church abhors the thought of homosexuality and places it in the foremost rank of mortal sins.”)

⁵¹ Karpman Memo, *supra* note 43.

⁵² Karpman Chapter, *supra* note 45, at 10.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 11.

entertainment magazine that helped to shape the sexual revolution of the 1960s.⁵⁸ During *Playboy*'s heyday, “perhaps no mass-circulation magazine in the United States devoted more space over a longer period of time to discussions about homosexuality.”⁵⁹ The 1960s marked an era when *Playboy* boasted over 4 million subscribers.⁶⁰

Its recurrent feature, “*Playboy* Forum,” provided an unexpected platform to debate and explore issues surrounding the psychology of homosexuality and conversion therapies.⁶¹ This Forum “created what may have been the country’s most influential arena for public discussion about homosexuality during this period.”⁶² Importantly, in April 1967, “*Playboy* Forum” published an article highlighting Dr. Gerald Davison and David Barlow’s “new therapeutic methods” for treating sexual deviance.⁶³ (Exhibit 4). Davison claimed to have successfully treated a male patient experiencing sadistic urges. The article asserts that psychotherapy and counterconditioning—the methods Davison used to treat the patient—similarly applied to “fetishism, homosexuality and transvestism.”⁶⁴ Davison’s “*Playboy* Therapy” purports to “reduce sexual sickness” by guiding patients to associate “erotic response with the attractive images of women in the pages of *Playboy* magazine, while pairing a strong negative stimulus with the sadism.”⁶⁵

By likening homosexuality to sexual sadism under the umbrella of “deviant sexual behavior,” the *Playboy* Forum furthered a false narrative. Specifically, the Davison case study claimed to be a “clinical substantiation of the point often made by Hefner in ‘The *Playboy* Philosophy,’ and re-emphasized in ‘Forum,’ that the best way of reducing sexual deviation in society is to place significantly greater emphasis on healthy heterosexuality.”⁶⁶ Publication of this purportedly scientific therapy in a popular publication such as *Playboy* further promulgated a fundamentally erroneous understanding of homosexuality. Though early conceptions of conversion therapy differ from forms recognizable today, modern forms of SOCE nevertheless perpetuate the same irrational understanding of homosexuality based on the faulty premise that it is a psychological condition or mental illness requiring treatment with a view toward curing those afflicted so they may lead happy, productive *heteronormative* lives.

Over the years, *Playboy* also published a series of letters expressing the counterpoints to reports such as Davison’s and others, including a letter from Kameny, who explained that:

There is no valid scientific evidence to show that homosexuality is a sickness, illness, neurosis or pathology of any kind Homosexuality is not intrinsically inferior to heterosexuality; it is not a second-best condition. The problems of the homosexual stem from discrimination by the heterosexual majority and are much

⁵⁸ *Playboy*, Wikipedia, <https://en.wikipedia.org/wiki/Playboy> (last visited Oct. 9, 2018).

⁵⁹ Marc Stein, *Sexual Injustice: Supreme Court Decisions from Griswold to Roe* 246 (2010).

⁶⁰ Elon Green, *When Playboy Went Mainstream*, Time (Nov. 12, 2014), <http://time.com/3547122/playboy-hugh-hefner-1967/>.

⁶¹ Stein, *supra* note 59.

⁶² *Id.*

⁶³ *The Playboy Forum: Playboy Therapy*, *Playboy*, Apr. 1967 (Exhibit 4).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

more likely to be employment problems than emotional problems. There is no valid ethical reason for a person to subject himself to conditioning therapy other than submission to societal prejudice. Such submission is immoral, of course, because prejudice is immoral. . . .

Barlow and his professional colleagues would be of greater service to the harassed homosexual minority if they ceased to reinforce the negative value judgments of society and instead, adopted a positive approach in which therapy for a homosexual would consist of instilling in him a sense of confident self-acceptance so he could say with pride, “Gay is good.”⁶⁷

By 1976, Davison had repudiated his prior views on homosexuality.⁶⁸

E. *The Role of the Medical Community in Reversing the Stigma of Homosexuality*

For many years, the medical community played a significant role in reinforcing the social stigma associated with homosexuality that was created by the heterosexual majority. Throughout the 1960s and 1970s, mental health professionals often believed that homosexuality was unnatural, and somehow deviant.⁶⁹ Causational theories emphasizing abnormality steered the psychiatric and psychological view of homosexuality toward one of mental illness.⁷⁰ By defining “homosexuality” as a mental disorder and placing it on par with other mental illnesses in a publication as important as the *Diagnostic and Statistical Manual of Mental Disorders* (“DSM”), the American Psychiatric Association (“APA”) was complicit in perpetuating heterosexism.⁷¹ In fact, both the first and second editions of the DSM, published in 1952 and 1968, respectively, categorized homosexuality as a mental illness.⁷²

It is ironic that there was such widespread acceptance of the pathology model of homosexuality in a professional community so heavily focused on science and data. There has never been credible evidence that homosexuality is pathological.⁷³ This model nonetheless became increasingly rooted in the mental health field prior to 1973. But there was disagreement in the various fields of mental health, even before the APA eliminated homosexuality from the DSM, such that some researchers conducted scientific studies to affirmatively prove that

⁶⁷ *The Playboy Forum: Gay is Good*, Playboy, Mar. 1969, at 46–48 (Exhibit 4).

⁶⁸ See Gerald C. Davison, *Homosexuality: The Ethical Challenge*, 44 J. Consulting & Clinical Psychology 157 (1976).

⁶⁹ Glassgold et al., *supra* note 4, at 22.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Franklin Kameny, *How It All Started*, 13 J. Gay & Lesb. Ment. Health 76, 76-77 (2009) (“Shabby, shoddy, sleazy, pseudo-science masquerading as science; moral, cultural, and religious value judgments cloaked in the language of science without any of the substance of science; assumptions plugged in at one end and drawn out unexamined and unchanged at the other end.”); Jack Drescher, *I’m Your Handyman: A History of Reparative Therapies*, 5 J. Gay & Lesb. Psychotherapy 5, 17 (2002) (“Psychoanalytic theorists traditionally couched their moral condemnations of homosexuality within scientific and pseudo-scientific metaphors.”); Elizabeth J. Levy, *Animus in the Closet: Outing the Addiction Parallels in Anti-Gay Legal Rhetoric*, 3 UC Irvine L. Rev. 151, 181 (“The art of transforming homosexuality into an addiction is a rhetorical magic trick, a sleight of hand executed with pseudoscience and prejudice. Same-sex attractions and intimacy are inherently neither compulsive nor destructive, but in fact are normal variants of sexual expression.”).

homosexuality was not a mental illness but rather, an expected variant of human sexuality.⁷⁴ The evidence developed was telling. “[N]ewly developed [personality] measures indicated that homosexual men and women were essentially similar to heterosexual men and women in adaptation and functioning.”⁷⁵ Additionally, “[s]tudies failed to support theories that regarded family dynamics, gender identity, or trauma as factors in the development of sexual orientation.”⁷⁶ This dramatic shift in empirical research on sexuality and sexual orientation fundamentally challenged the unsubstantiated, yet previously accepted, psychopathological view of homosexuality.⁷⁷

As lifelong gay rights activist Kameny aptly stated in the mid-20th century, “[t]o the clergy we were sinners; to the government, felons; and to the psychiatrists, sick.”⁷⁸ Although fighting this stigma on all fronts, activists were particularly concerned about the consequences of an authoritative psychiatric diagnosis of mental illness—namely, that so long as LGBT individuals were “classified by organized psychiatry as being mentally ill or emotionally disturbed, [they] were never going to be granted any kind of remedy for the cultural ills besetting [them].”⁷⁹ In 1973, following a successful campaign led by activists, such as Kameny, Barbara Gittings, founder and President of the New York chapter of the Daughters of Bilitis⁸⁰ and the original Mattachine Society of Washington, DC, the APA removed homosexuality as a mental disorder from the DSM.⁸¹ While this notable achievement reflected changing attitudes within the medical community, the enduring damage continues to affect LGBT individuals today.⁸²

In many ways, 1973 was a milestone on the LGBT historical timeline. While this was the year that homosexuality was declassified as a mental disorder in the DSM, some saw it as a first step in validating and even endorsing the “Gay Agenda.” This legitimization of homosexuality, coming at a time in American history when the broader sexual revolution and the women’s liberation movement were taking hold, triggered fear and panic in the hearts of some members of society. Having survived conversion therapies by medical practitioners and detrimental policies implemented by their government in outing them and terminating their employment during the preceding decades, LGBT Americans were about to face a new adversary—ex-gay zealots and fundamentalist religious leaders who believed that homosexuality and Judeo-Christian traditions were incompatible.

The result was a re-emergence of new forms of conversion therapies, including residential and day programs designed to fix LGBT Americans by “praying the gay away.”⁸³ These therapies were rooted in the same misconception earlier embraced by the medical

⁷⁴ Glassgold et al., *supra* note 4, at 22.

⁷⁵ *Id.* at 23.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Kameny, *supra* note 73, at 77.

⁷⁹ *Id.*

⁸⁰ David Carter, *Stonewall: The Riots That Sparked the Gay Revolution* 38 (2004).

⁸¹ Glassgold et al., *supra* note 4, at 23.

⁸² Talia Yasmeeen Stoessel, Esq., *Addressing the Harm of Silence and Assumptions of Mutability: Implementing Effective Non-Discrimination Policies for Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Foster Care*, 17 U.C. Davis J. Juv. L. & Pol’y 79, 91 (2013).

⁸³ *Pray the Gay Away?* Wikipedia, https://en.wikipedia.org/wiki/Pray_the_Gay_Away%3F (last visited Oct. 9, 2018).

community and the federal government: the idea that homosexuality was wrong and needed to be cured.

Love In Action (“LIA”) was one organization that took on the mission of “curing” LGBT Americans. To LIA, homosexuality was an addiction that a homosexual could overcome by following the tenets of this Ministry, which consisted of cherry-picked Biblical teachings, fire and brimstone prayer practices, spiritual discipline, and variations of twelve-step programs supporting the underlying premise of sexual brokenness. “This whole idea of LGBT Americans being broken and in need of a cure—religious or psychiatric—is still a pernicious, damaging lie.”⁸⁴ Yet, the time was ripe for LIA to spread its ill-conceived teachings of addiction theory in support of its mission to assist desperate parents hoping to turn their LGBT children straight.

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⁸⁴ Giambrone, *supra* note 28.

II. THE EMERGENCE OF LOVE IN ACTION AS THE PARADIGM FOR CONVERSION THERAPY

A. *Love In Action: How It Began*

Frank Worthen (“Worthen”) founded LIA in 1973 in San Rafael, California—the same year that the APA declassified homosexuality in the DSM. Also in that year, Worthen recorded testimony detailing his experience of having been “trapped in homosexuality.”⁸⁵ According to this testimony, Worthen found God and renounced his own sexual orientation.⁸⁶ He then built a ministry based on gay conversion, generally referred to as “ex-gay ministries.”⁸⁷ LIA claimed to be an “independent Christian non-profit organization” that was “not owned by, operated for, or affiliated with any specific religious denomination.”⁸⁸ (Exhibit 5).

Since its creation, LIA “enjoyed a sustaining and effective Christian ministry, gaining worldwide recognition for the help it provid[ed] to those who have suffered from sexual brokenness.”⁸⁹ LIA “was founded as a Christian ministry to prevent or remediate unhealthy and destructive behaviors facing families, adults and adolescents, which includes promiscuity, pornography and homosexuality.”⁹⁰ The “brokenness” aspect underlying homosexuality was based on the idea that “if we call it brokenness, then if we believe God can heal it, then there’s hope for change.”⁹¹

Three years after the founding of LIA, a group of ex-gay ministries joined forces to form Exodus International (“Exodus”), an umbrella group representing approximately 150 ex-gay ministries (including LIA) in 17 different countries.⁹² The mission of Exodus was to connect various ministries with a similar mission and establish a network. “After its founding [in 1976], Exodus expanded to include hundreds of member ministries, which included religious counseling, self-help, and lay support groups, and became the center of the ex-gay movement.”⁹³

B. *Who was John Smid?*

John J. Smid was a lonely, repressed child who grew up in a home with an emotionally abusive mother who was critical of John and his siblings.⁹⁴ His parents divorced, leaving his mother to raise Smid and his sisters.⁹⁵ From a young age, Smid experienced same-sex

⁸⁵ Tim Wilkins, *Frank Worthen: The “Mother Teresa” Of Ex-Gay Ministry*, http://www.crossministry.org/index.php?option=com_content&view=article&id=234:frank-worthen&catid=65:articles-by-tim&Itemid=278.

⁸⁶ *Id.*

⁸⁷ See Marie-Amélie George, *Expressive Ends: Understanding Conversion Therapy Bans*, 68 Ala. L. Rev. 793, 814-15 (2017).

⁸⁸ Affidavit of John J. Smid, ¶ 7, *Love In Action Int’l, Inc. v. Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005) (Exhibit 5) [hereafter Smid Affidavit].

⁸⁹ Smid Affidavit, *supra* note 88, ¶¶ 8, 10.

⁹⁰ *Id.*

⁹¹ Interview with John Smid (Jan. 4, 2018) [hereafter Smid Interview II].

⁹² Casey Sanchez, *Memphis Area Love In Action Offers Residential Program to “Cure” Homosexuality*, Southern Poverty Law Center (Jan. 1, 2003), <https://www.splcenter.org/fighting-hate/intelligence-report/2003/memphis-area-love-action-offers-residential-program-“cure”-homosexuality>.

⁹³ George, *supra* note 87, at 811.

⁹⁴ Interview with John Smid (Dec. 29, 2017) [hereafter Smid Interview I].

⁹⁵ *Id.*

attractions but “did not understand them or know what to do with them.”⁹⁶ As a teenager, he met another young man who was straight and Smid “fell in love with him emotionally.”⁹⁷ When this young man moved out of town, Smid was “devastated.”⁹⁸ In reaction, Smid started dating a young woman “who had a common dysfunctional background” and married for the first time when he was twenty-two years old.⁹⁹

Smid had two children during his first marriage, yet he was unhappy. He had an affair with a male co-worker who Smid says, “opened my world and crashed it at the same time.”¹⁰⁰ By the time Smid was twenty-five, he told his wife he was gay and they divorced.

For approximately five years after his marriage ended, Smid “lived a full-out gay lifestyle.”¹⁰¹ He frequented gay bars, “had lots of sex” and he was “comfortable being gay.”¹⁰² Until he wasn’t.

After years of “living the gay lifestyle” in Omaha, Nebraska during the 1970s, Smid became disenchanted with the “quick hook-ups” he was having with the men he met, and he wanted more for his life.¹⁰³ At this time, settling down and marry one’s same-sex partner was not an option, and Smid could not envision a life lacking intimacy and connection.¹⁰⁴ This led Smid to a friend who was an evangelical minister. She felt she could help Smid and invited him to her church. This was when things got “all twisted up with religion” in Smid’s mind, and he decided to become an “ex-gay” by renouncing his sexual orientation and turning to the Church.¹⁰⁵

By the mid-1980s, as the AIDS crisis was taking hold in America, Smid found his way to Frank and Anita Worthen (together, the “Worthens”) and LIA.¹⁰⁶ Smid first learned of LIA and the Worthens while listening to a program discussing homosexuality by Focus on the Family,¹⁰⁷ a conservative Christian organization founded in 1977 by psychologist James Dobson and based in Colorado. Thereafter, Smid wrote a letter to LIA and Exodus asking for assistance for a “friend.”¹⁰⁸ He was subsequently contacted by Anita Worthen, who asked if Smid would be interested in taking a volunteer position with LIA as an assistant house manager. Smid believed this was “God calling” and quit his job to drive to California, knowing nothing about the ex-gay ministry he was about to enter.¹⁰⁹

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Focus on the Family, <https://www.focusonthefamily.com/> (last visited Oct. 9, 2018).

¹⁰⁸ Smid Interview I, *supra* note 94.

¹⁰⁹ *Id.*

Upon arriving in California, Smid immersed himself in the conservative evangelical Christian movement where he believed he had finally found a community that welcomed and embraced him.¹¹⁰

Smid worked with Frank Worthen “side by side for four years.”¹¹¹ Smid found it “affirming that people like the Worthens believed in [him]” and this “fueled” Smid.¹¹² In addition to his duties as a house manager, Smid assisted Anita in the office with administrative work.¹¹³ He started writing lectures and teaching outlines, and eventually became a member of the Exodus Board of Directors.¹¹⁴ As Frank Worthen began to expand his ex-gay ministry globally, Smid was tasked with more and more responsibilities for LIA in California.¹¹⁵ When the Worthens left California to grow their ministry in the Philippines, Smid’s moment had arrived.

Smid became the Executive Director of LIA and rose to power in the broader ex-gay movement. He was “put on a pedestal” and invited to speak all over the world, telling his story of how, with God’s help, he beat homosexuality. “Every major senior pastor” knew Smid and the work he was doing. Smid loved the “affirmation” that came from his position and being “a person of influence.”¹¹⁶ It would take over two decades for Smid to realize that he was used by those supporting the ex-gay movement, and that he was actually just a poster child for their cause.¹¹⁷ During the years that Smid led LIA, however, the Ministry became his “identity and [his] prison.”¹¹⁸

C. *Love In Action’s Addiction Model*

Smid relocated LIA to Memphis, Tennessee in 1994. With the change in location came a change in program model. Rather than only teaching the religious aspects for the renunciation of homosexuality, the Ministry adopted an addiction model for “treating” this affliction. Those operating the Ministry “believe[d] that the Bible is the infallible Word of God, [and the] board of directors and staff hold to the firm conviction that scripture is final truth and authority concerning all matters of morality, as well the hope and healing for morality in dilemma.”¹¹⁹ In other words, healing homosexuality was inextricably connected to God’s grace and state regulation of LIA’s work was an unacceptable roadblock to the mission.

But LIA decided to do even more. Smid says that LIA became “affiliated with a 12-step addiction program in Memphis that was run out of a church associated with a program called Second Chance. This program eventually closed due to scandals.”¹²⁰ Smid and the members of LIA, most of whom had no formal credentials or training in the recovery space, relied on

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Smid Interview II, *supra* note 91.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Smid Affidavit, *supra* note 88, ¶ 11 (Exhibit 5).

¹²⁰ Smid Interview I, *supra* note 94.

“discipleship to lead people to a path to Jesus”¹²¹ and out of homosexuality. They saw an opportunity to “train with this teen alcohol recovery program” and adopted the recovery model which they re-worked to fit into the LIA curricula.¹²² Once LIA implemented a recovery model, Smid and his staff began speaking of homosexuality as an “addiction.” Their mantra was that “people use homosexual conduct to medicate the pains of their past.”¹²³ Under Smid’s new addiction model, homosexuality was an addiction or the result of “a series of supporting addictions resulting from abuse and childhood trauma.”¹²⁴

The recovery model was appealing to Smid because, as he recollects now, LIA was never about “curing” homosexuality, despite advertising its programs as “conversion therapy for homosexuals.”¹²⁵ Rather, it was about teaching homosexuals to live with their homosexuality in a way consistent with Christian values; in other words, “healing” homosexuals rather than “curing” them. As Smid explains, the “mission [was] to help men and women learn to live their lives according to the Christian values we taught, meaning sex was designed to be experienced only within a heterosexual, committed, faithful marriage, and in doing so, we believed through discipline and self-control, that a person might even experience diminished compulsion toward homosexual sex and relationships.”¹²⁶ Smid now believes that LIA never taught that a person’s sexual orientation *would* change if he or she followed LIA’s teachings, but rather, that “God was a miracle God and you could experience a life separate from homosexuality.”¹²⁷ Although “Exodus was teaching God could cure homosexuality[,]” Smid says that “internally—that’s not really what we taught and it’s not really what we believed.”¹²⁸

Shortly after taking over LIA, Smid starting hiring professional counselors to carry out the work of the Ministry. Smid felt the program needed credibility as the “APA did not believe in reparative therapy” any longer. Accordingly, Smid set about locating mental health professionals who had the “right” credentials to do the work of a recovery program, but who agreed with the LIA philosophies regarding God’s work in healing homosexuality—philosophies that could not be put into practice in the secular organizations in which these professionals practiced.¹²⁹

The LIA Addiction Workbook adopted the well-known and accepted “12-step” model of Alcoholics Anonymous and applied the model in an attempt to implement change of individuals’ homosexual behaviors.¹³⁰ For example, the fourth step of the 12-step program involves making a “searching, fearless moral inventory of ourselves.”¹³¹ Similarly, LIA participants were instructed to draft “moral inventories” that detailed moments in their past that included the

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Eartha Melzer, *Tenn. Probes ‘ex-gay’ camp: Teen’s blog leads to outcry, charges of child abuse*, Washington Blade (June 24, 2005).

¹²⁵ *Id.*

¹²⁶ Smid Interview II, *supra* note 91.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Smid Interview I, *supra* note 94.

¹³⁰ The Twelve Steps of Alcoholics Anonymous, Alcoholics Anonymous, https://www.aa.org/assets/en_US/smf-121_en.pdf (last visited Oct. 9, 2018).

¹³¹ *Id.*

following:¹³² (1) a past situation where the participants engaged in “sexual immorality” (referred to as the “challenge”); (2) how the participant felt about the “challenge” (referred to as the “consequence”); (3) how the participant now desired to change as a result of the experience with the challenge and the consequence; and (4) identification of the strengths the participant possessed to make these changes. The creation of a “moral inventory” was a fundamental tool of LIA’s programs.¹³³

LIA pursued its mission through various in-house ministries, including “The Source.” The Source provided a 4-day or 2-week non-residential program, or a 28-day or 3-month residential program, all of which claimed to help men, women, and adolescents live “sexually and relationally pure lives through Jesus Christ.”¹³⁴ There was also a short-lived program called “Refuge” which was tailored to teenagers.¹³⁵ It was, in fact, a teenager sent to the Refuge program by his parents, against his will who would thrust LIA onto the national stage for unwanted examination by state regulators.

D. *The Outing of LIA: How LIA Arrived at the Forefront of the Nation’s Conscience*

By the mid-2000s, Smid was well into his second marriage. Although he was not sexually gratified, he and his wife were “compatible.” He prayed that “God would honor [his] faithfulness” and “make [him] attracted to [his] wife.”¹³⁶ That did not happen over the course of their 24-year marriage, and Smid chose to “shut down [his] sexuality rather than deal with temptation.”¹³⁷

Professionally, however, Smid was fulfilled. His LIA organization was “lifted up to be the best model for the ex-gay ministry” and, according to Smid, the organization became “pretty arrogant.”¹³⁸ By 2004, LIA “thought it was on top of their game. The organization had an annual budget of \$750,000 and 5 acres of property in Memphis. LIA had a lot of clients, was well-known and well-regarded, and in a major expansion mode.”¹³⁹ LIA was even taking a foray into the controversy surrounding LGBT civil rights by fighting against marriage equality, which, just the year before, had become the law in Massachusetts.¹⁴⁰ (Exhibit 6).

But then a series of events unfolded that would eventually lead to Smid’s departure from LIA and the collapse of the organization that Smid had built.

¹³² Moral Inventory, LIA Addiction Workbook 1 (available upon request).

¹³³ LIA Program Materials 14-22 (available upon request).

¹³⁴ Smid Affidavit, *supra* note 88, ¶¶ 14, 16.

¹³⁵ Melzer, *supra* note 124.

¹³⁶ Smid Interview I, *supra* note 94.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ In 2003, the Massachusetts Supreme Judicial Court handed down a landmark decision in the case of *Goodridge v. Dept. of Public Health*, 798 N.E. 2d 941 (Mass. 2003), ruling for the first time in the country’s history that same-sex couples had a constitutional right to marry. Smid’s September 9, 2004 letter to a LIA supporter was no doubt in response to the growing marriage equality movement as marriage licenses to same-sex couples in Massachusetts were first issued in May of 2004. *See* Letter from John J. Smid, Exec. Dir., Love In Action, to [REDACTED] (Sept. 9, 2004) (Exhibit 6).

First, in January 2005, a LIA staff member was spotted by a former LIA client in an adult pornography shop. The staff member left LIA, but this incident took a toll on Smid and the remaining staff.¹⁴¹

Then in June of 2005, LIA was confronted for the first time by state investigators as a result of a social media post by a gay teenager, Zach Stark, which detailed the conversion therapy practiced by LIA and the negative impact it was having on him.

1. Zach Stark Outcry

On May 29, 2005, Zach Stark (“Zach”), a gay teenager from Tennessee, posted on his MySpace page that his parents were forcing him to attend LIA’s “Refuge” program to change his sexual orientation.¹⁴² In his MySpace posts, Zach wrote the following messages:

They [his parents] tell me there is something psychologically wrong with me
I wish I never told them. I wish I just fought the urge for two more years.¹⁴³

If I do come out straight, I’ll be so mentally unstable and depressed it won’t matter.¹⁴⁴

I can’t take this No one can. I’m not a suicidal person. I think it’s stupid, really. But I can’t help it -- no I’m not going to commit suicide -- all I can think about is killing my mother and myself. It’s so horrible.¹⁴⁵

In response to Zach’s posts, Smid received numerous phone calls and emails from both U.S. and foreign reporters.¹⁴⁶ On June 6, 2005, Queer Action Coalition (“QAC”) and Parents and Friends of Lesbians and Gays (“PFLAG”) organized protests at LIA to bring attention to the dangers of ex-gay therapy.¹⁴⁷ The timing of the protests could not have been worse for Smid, who had purchased this Memphis property two months earlier and was just opening LIA’s new location.¹⁴⁸

2. Evidence of “Cult-like” Nature of LIA’s “Therapy”

After Zach’s post and the QAC and PFLAG protests, the *Washington Blade* ran an article providing an account of another LIA survivor, Peterson Toscano (“Toscano”), and his treatment

¹⁴¹ Smid Interview I, *supra* note 94.

¹⁴² Sexuality Information and Education Council of the United States, *State Profile: Tennessee*. “Events of Note: Tennessee Moves to Investigate ‘Ex-Gay’ Camp” (July 2005), <https://siecus.org/wp-content/uploads/2015/03/TENNESSEE06.pdf>.

¹⁴³ Wendi C. Thomas, *Getting straight – Christian group’s attempt to convert gay people sparks protests – Bartlett teen, forced into program, shares his fears online*, *The Commercial Appeal* (Memphis, TN) (June 14, 2005).

¹⁴⁴ Alex Williams, *Gay Teenager Stirs a Storm*, *N.Y. Times* (July 17, 2005), http://www.nytimes.com/2005/07/17/fashion/sundaystyles/gay-teenager-stirs-a-storm.html?_r=0.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Melzer, *supra* note 124.

¹⁴⁸ Smid Interview II, *supra* note 91.

at LIA.¹⁴⁹ According to the article, Toscano was a gay man who spent two years at LIA “as the last stop in a 17-year struggle to suppress his sexual orientation.”¹⁵⁰ Toscano said that “the program . . . was highly restrictive.”¹⁵¹ For example, while he was in the program, Toscano and other participants were forbidden from going to most parts of Memphis and from having any physical contact with other men.¹⁵² In addition, LIA clients “had to submit to lengthy meetings where participants criticized each other over the ways that they appeared to be gay.”¹⁵³ Toscano reported that LIA clients “had to describe their sexual fantasies and deviant behaviors in front of groups so that they would be shamed.”¹⁵⁴

This same *Washington Blade* article also contained statements from psychologist and former “ex-gay” leader, Jeffry Ford (“Ford”), who described LIA as resembling a cult. Ford said that “Love in Action resembles a cult in that officials there monitor their clients’ behavior and clients are not allowed to be alone with just one man or woman.”¹⁵⁵ Ford further stated that LIA was run by instilling fear and threats in participants, “the biggest one being ‘losing your salvation and going to hell.’”¹⁵⁶

Garrard Conley (“Conley”) tells the story of a 19-year-old LIA “defector” who was “forced to submit to a mock funeral, as other members read out his obituary, describing his slow, hypothetical decline into HIV and then AIDS. Stories like this were not uncommon at LIA”¹⁵⁷ A founding member of LIA, John Evans, left the Ministry in 1975 when a friend committed suicide after “fail[ing] to convert to straight.”¹⁵⁸ According to Evans, “[i]f you don’t do their thing, you’re not of God, you’ll go to hell. They’re living in a fantasy world.”¹⁵⁹

Other indicia that LIA was a cult include a strict set “of rules and prohibitions designed to maximise LIA’s mind control over patients, [including, but not limited to,] restrictions on . . . travel . . . , on their dressing and grooming . . . and on how they engaged with the secular world”¹⁶⁰

The program materials suggest that, although LIA claimed it was merely a religious ministry, LIA actually engaged in mental health counseling, followed an addiction recovery model and presented psychological concepts to give its teachings the appearance of scientific legitimacy.

¹⁴⁹ Melzer, *supra* note 124.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Melzer, *supra* note 124.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Aaron Hicklin, *I was 19, gay and ready to be ‘cured’ by conversion therapy*, *The Guardian* (June 10, 2018), www.theguardian.com/lifeandstyle/2018/jun/10/i-was-19-gay-and-ready-to-be-cured-by-conversion-therapy.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

Specifically, The Source Program included a “feelings worksheet” and a depiction of “The Cycles in the Grief Process” that resemble mental health counseling.¹⁶¹ Furthermore, The Source Program materials highlight the mental health credentials of LIA’s staff.¹⁶² The Steps-Out Program Class Manual claimed that the “causes” of homosexuality arise in the child development process,¹⁶³ thereby strengthening LIA’s position that mental health counseling would achieve conversion. Some examples of such apparent “causes” from the LIA materials included (a) inadequate father-son affection (which, according to LIA, led to exaggerated curiosity in a child about the male body)¹⁶⁴ and (b) sexual abuse in early years (which, according to LIA, led to homosexuality in women).¹⁶⁵ The LIA materials also included a discussion of “Psychic Response” to explain the “science” of homosexuality and how it can be “cured.”¹⁶⁶ At the time that LIA was actively involved in trying to convert LGBT young people and adults, it was not known that Smid was the author of most of these materials and was not trained in psychology, social work, medicine or other disciplines that purportedly provided a credible basis for his writings. In short, Smid “made-up” the content of the LIA program materials based on snippets of information he had collected over the years.¹⁶⁷ And it was the mental health counseling services offered at LIA, coupled with its addiction recovery model created by Smid, that led the Tennessee state authorities to begin its investigation into the Ministry.

E. Tennessee Authorities Investigate LIA

In the wake of Zach’s posts and the media blitz that resulted, the state of Tennessee initiated several investigations into LIA’s practices with a view toward regulation and protection of the teenage wards under the Ministry’s care.

1. Department of Children’s Services Investigates Allegations of Abuse

The first investigation by Tennessee authorities in June 2005 concerned allegations of child abuse at LIA’s Memphis facility, likely sparked by the statements in Zach’s MySpace posts.¹⁶⁸ In an effort to diminish the public concern for Zach, Smid took part in a news conference where he stated the following:

This program is operated on the will of the guardian and the parent. We will work with the minor children as long as they are not overtly distracting to their own program or the program of others. If it is shown that the client is overtly treatment resistant, we will work with the parent towards alternative options for their care and overall relational health.¹⁶⁹

¹⁶¹ LIA The Source Program Materials 30-35 (available upon request).

¹⁶² LIA Program Materials 93-95.

¹⁶³ Love In Action Program Study Manual 15-27 (available upon request).

¹⁶⁴ *Id.* at 38-39.

¹⁶⁵ *Id.* at 42.

¹⁶⁶ *Id.* at 303-09.

¹⁶⁷ Smid Interview II, *supra* note 91.

¹⁶⁸ Melzer, *supra* note 124; *see also* Smid Interview II, *supra* note 91.

¹⁶⁹ *Id.*

Ultimately, Child Services considered the allegations “unfounded” and ended its investigation.¹⁷⁰

2. Department of Health Investigates LIA’s Failure to Obtain a License as a Drug and Alcohol Treatment Program

The Tennessee Department of Health (“TDOH”) also contacted LIA in June 2005, stating that the Ministry was in violation of state law for failing to obtain a license for the treatment of drug and alcohol addiction.¹⁷¹ On June 29, 2005, the TDOH sent a letter to Smid advising him to “cease and desist” from providing alcohol and drug treatment services that required licensure.¹⁷² (Exhibit 7). After completing its investigation, the TDOH determined that LIA would not need to obtain a license as a drug and alcohol treatment program because, as Smid had explained, LIA’s “focus . . . is to address teens with gender identity issues and anyone with subsequent alcohol and drug treatment issues are referred to a licensed facility for treatment.”¹⁷³ The TDOH took Smid’s explanation at face value, notwithstanding that LIA employed a licensed alcohol and drug addiction counselor. According to Smid, that counselor did not provide substance abuse treatment, “but rather, share[d] his own testimony in counseling from a faith-based perspective.”¹⁷⁴ (Exhibit 8).

3. Department of Mental Health and Developmental Disabilities Office of Licensure Investigation

In July 2005, the Tennessee Department of Mental Health and Developmental Disabilities (“TDMHDD”) opened an investigation into LIA after receiving a “media inquiry” about the Ministry that was no doubt sparked by the Zach incident and related protests.¹⁷⁵ Arthur Hyde, the Director of the TDMHDD, contacted LIA by letter stating that, after reviewing LIA’s website, the TDMHDD was concerned that LIA was providing mental health services without the necessary license, particularly in view of LIA’s characterization of its Refuge program as an “addictions treatment center” and a “professional recovery treatment center.”¹⁷⁶ (Exhibit 9). The TDMHDD requested information from LIA concerning its services in order to determine whether LIA, in fact, required a license to operate from the state.¹⁷⁷ Smid responded by letter, stating that LIA is a “faith-based ministry that uses spiritual guidance to help men, women and adolescents,” and agreed to revise the LIA website and make similar revisions to LIA’s other materials.¹⁷⁸ Smid would not agree to revise the admissions application concerning

¹⁷⁰ Order Granting in Part and Denying in Part Defendants’ Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. June 16, 2006), ECF 27, at 3.

¹⁷¹ Letter from Shirley L. Jones, Reg’l Adm’r, Tenn. Dep’t of Health, to Rev. John Smith [sic], Exec. Dir., Love In Action (June 29, 2005) (Exhibit 7).

¹⁷² *Id.*

¹⁷³ Letter from Cathy Green, Dir. of Licensure, Tenn. Dep’t of Health, to Rev. John Smid, Exec. Dir., Love In Action (Aug. 17, 2005) (Exhibit 8).

¹⁷⁴ *Id.*

¹⁷⁵ Letter from Arthur Hyde, Dir., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Licensure, to John Smid, Exec. Dir., Refuge (July 11, 2005) (Exhibit 9).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Letter from Rev. John J. Smid, Exec. Dir., Love In Action, to Arthur Hyde, Dir., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Licensure (Aug. 2, 2005) (Exhibit 10).

questions about applicants' mental health, however, because "this question is to give us as much information as possible about the applicant to be certain we are not working with individuals who are outside the scope of our practice."¹⁷⁹ (Exhibit 10).

In early August 2005, Smid wrote to LIA donors and supporters to announce the Grand Opening of the Memphis LIA property—an opening that was delayed because of the protests and state investigations. In his letter, Smid stated the following:

Those who seek to destroy the work and message of Love In Action International have been very unified and deliberate in their attack. Consistently though, God proved his faithfulness to us and has used the Tennessee Department of Children's Services and the Tennessee Department of Mental Health to validate what we do and how we minister to our clients...The way God uses these state departments is interesting and humbling.¹⁸⁰

Smid then took the occasion of the state investigations to make a fundraising request for LIA.¹⁸¹ (Exhibit 11). During this time, LIA experienced an "increase in donations and it was largely because we were communicating with our donors that we were in a terrible battle . . . [and if] you believe in us, we hope that you'll send money to support us."¹⁸²

On August 19, 2005, Phil Brown, the TDMHDD's West Tennessee Licensure Coordinator ("Brown"), made a surprise visit to LIA to conduct an on-site investigation and speak with Smid.¹⁸³ Brown advised Smid that Smid had not complied with Hyde's letter from July requesting answers to twelve questions about the Ministry.¹⁸⁴ Brown asked Smid for an explanation of the purpose of LIA, to which Smid replied that it "is a decipleship [sic] program."¹⁸⁵ Smid admitted that some of the LIA residents had been diagnosed with depression and took medication that was self-administered with staff supervision.¹⁸⁶ Smid further acknowledged that participants were restricted in their ability to come and go as they pleased and had varying levels of privileges.¹⁸⁷ When asked if any of the adolescents were at the program against their will, Smid said that "it depend[s] on what [you] mean by 'against their will.'"¹⁸⁸ Smid claimed that the participants would not be at LIA unless they "submit[ted] to the structure" but "[t]hey might not like it, and some probably wouldn't be there if their parents weren't insisting on it."¹⁸⁹ Smid also told Brown that "mental health professionals have never addressed the issue of homosexuality, which is one of the reasons [that LIA] does, through Jesus Christ."¹⁹⁰ When Brown told Smid that Brown was only making this visit to determine whether LIA needed

¹⁷⁹ *Id.*

¹⁸⁰ Letter from Rev. John J. Smid, Exec. Dir., Love In Action, to LIA Friends (Aug. 9, 2005) (Exhibit 11).

¹⁸¹ *Id.*

¹⁸² Smid Interview II, note 91.

¹⁸³ Memorandum from Phil Brown, West Tenn. Licensure Coordinator, to The File (Aug. 19, 2005) (Exhibit 12).

¹⁸⁴ *Id.* at 2.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 2-3.

¹⁸⁷ *Id.* at 3.

¹⁸⁸ *Id.* at 4.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 3.

a license to operate, Smid said that if a license were required, they would “have to make some changes to the program because he is not certain that they want to be licensed.”¹⁹¹ (Exhibit 12).

Four days after Brown’s visit to LIA, the TDMHDD wrote to Smid:

[Y]ou appear to be operating two (2) unlicensed Mental Health Supportive Living Facilities, located at 7010 Snyder and 3838 Clemmer Drive, Memphis, Tennessee. This determination is based on a visit by West Tennessee Licensure Staff on August 19, 2005. This visit substantiated that your agency is providing room, board, and personal care services to more than one (1) mentally ill individual.¹⁹² (Exhibit 13).

In the letter, Hyde stated that LIA’s operation of these unlicensed facilities violated Tennessee Code Annotated § 33.2-405 and warned Smid that if LIA failed to cease operation of its unlicensed facilities within seven business days of receipt of the letter, the TDMHDD would seek an injunction against LIA.¹⁹³ Smid says that in August 2005, he was convinced that TDMHDD had an “agenda, which, at the time in my belief system, was a satanic agenda to shut down LIA because the enemy didn’t like what we were doing.”¹⁹⁴

Subsequently, Smid claimed that he did not receive Hyde’s letter until September 14, 2005, several days beyond the seven-day deadline imposed by the TDMHDD.¹⁹⁵ That same day, LIA’s counsel, Nathan W. Kellum (“Kellum”) of the law firm then known as the Alliance Defense Fund responded to the TDMHDD’s letter.¹⁹⁶ (Exhibit 14). Jonathan Stephens, legal counsel for the TDMHDD, in turn, answered Kellum’s letter by noting that the agency’s August 23, 2005 letter to Smid “spoke for itself” but giving LIA until September 23, 2005 to cease operating its unlicensed facilities.¹⁹⁷ (Exhibit 15). In other words, it was the intention of the TDMHDD to shut down LIA, not because it was a faith-based ministry with a mission to heal “sexual brokenness” in homosexuals, but because it lacked a license to operate, and the State had concerns for the safety of the Ministry’s participants.

On September 19, 2005, Kellum held a telephone conference with TDMHDD officials and explained “that [LIA] does not treat mental illness nor does it provide supportive living services for those with mental illness.”¹⁹⁸ The TDMHDD maintained that LIA was providing room, board, and personal care services for mentally ill individuals who participated in the residential treatment programs.¹⁹⁹ Two days later, TDMHDD officials met with LIA and its

¹⁹¹ *Id.* at 5.

¹⁹² Letter from Arthur Hyde, Dir., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Licensure, to Rev. John J. Smid (Aug. 23, 2005) (Exhibit 13).

¹⁹³ *Id.* at 1-2.

¹⁹⁴ Smid Interview II, *supra* note 91.

¹⁹⁵ Compl. ¶ 74, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

¹⁹⁶ Letter from Nathan W. Kellum, Alliance Defense Fund, to Jonathan Stephens, Esq., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Legal Counsel (Sept. 14, 2005) (Exhibit 14).

¹⁹⁷ Letter from Jonathan Stephens, Legal Counsel, Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Legal Counsel, to Nathan W. Kellum, Esq., Alliance Defense Fund (Sept. 15, 2005) (Exhibit 15).

¹⁹⁸ Compl. ¶¶ 78-79, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

¹⁹⁹ *Id.* ¶¶ 82-83.

counsel at the Ministry's facilities.²⁰⁰ LIA again attempted to convince the TDMHDD that it did not operate a service or facility that provided mental health services, but the TDMHDD remained unconvinced.²⁰¹ (Exhibit 16). The TDMHDD demanded that LIA must, among other things, stop controlling medications of individuals at its facilities, stop monitoring and restricting individuals' whereabouts and access, and stop accepting individuals who required personal care.²⁰²

At the end of the meeting, the TDMHDD agreed to give LIA until September 30, 2005 to consider its options.²⁰³ According to the TDMHDD, LIA could "no longer admit individuals who met the 'mentally ill' description in their ministry, without licensure."²⁰⁴ This was a concern for Smid, and he feared that it would greatly reduce LIA's revenue.²⁰⁵ In response, LIA decided to sue in federal court. In the days leading up to the filing of the lawsuit, LIA used the TDMHDD investigation as a fundraising tool, claiming that the investigation was "the latest development in a recent line of attempted State and public interference in Love In Action."²⁰⁶ (Exhibit 17).

F. *LIA Obtains Support of a State Politician*

On September 15, 2005, Paul Stanley ("Stanley"), a prominent member of the Tennessee House of Representatives and conservative family values politician who was elected to the Tennessee Senate the following year,²⁰⁷ sent a letter to Hyde, advising him that Smid had contacted Stanley and asked him to intervene "as an elected State official in this matter."²⁰⁸ (Exhibit 18). Stanley knew Smid from their men's group.²⁰⁹ They were friends.²¹⁰ According to Stanley, he had worked with LIA for "the last several years" and had personal knowledge of their operation as a faith-based ministry not requiring state licensure.²¹¹ Stanley also provided Hyde with his personal mobile number for Hyde to contact him to discuss the matter.²¹²

²⁰⁰ *Id.* ¶ 88.

²⁰¹ *Id.* ¶¶ 88-90; *see also* E-mail from Phil Brown, West Tenn. Licensure Coordinator, to Nathan Kellum, Alliance Defense Fund (Sept. 21, 2005) (Exhibit 16).

²⁰² Compl. ¶ 91, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

²⁰³ *Id.* ¶ 103.

²⁰⁴ *Id.*

²⁰⁵ Smid Interview II, *supra* note 91; *see also* Letter from Rev. John J. Smid, Exec. Dir., Love In Action, to LIA Supporters (Sept. 21, 2005) (Exhibit 17).

²⁰⁶ *Id.*

²⁰⁷ Some four years after pledging his support for LIA, Stanley's marriage and career would be derailed as a result of an affair he had initiated with a 22-year old intern. *See Paul Stanley recalls scandal that derailed his career*, WMC Action News 5 (Oct. 31, 2011), <http://www.wmcactionnews5.com/story/15915801/paul-stanley-recalls-scandal-that-derailed-his-career/>.

²⁰⁸ Letter from Rep. Paul R. Stanley to Arthur Hyde, Dir., Tenn. Dep't of Mental Health and Developmental Disabilities (Sept. 15, 2005) (Exhibit 18).

²⁰⁹ Smid Interview II, *supra* note 91.

²¹⁰ *Id.*

²¹¹ Letter from Rep. Paul R. Stanley to Arthur Hyde, *supra* note 208.

²¹² *Id.*

On September 27, 2005, Stanley wrote to the state again, this time to the Commissioner of the TDMHDD (“Commissioner”).²¹³ (Exhibit 19). In this letter, Stanley wrote that “[LIA] is a ministry that assists homosexuals that are engaged in a sinful lifestyle find freedom from this lifestyle, while at the same time building a deeper faith in Jesus Christ.”²¹⁴ Stanley went on to say that since LIA is a “ministry,” it “should not be subjected to the same standards as organizations whose specific mission is to deal with mental health issues.”²¹⁵

Stanley accused the TDMHDD’s field staff of having a “personal agenda” that interfered with their ability to remain objective.²¹⁶ He particularly objected to Brown’s recommendation that LIA stop restricting the movement of its participants.²¹⁷ Likening LGBT individuals to alcoholics who should not frequent establishments that serve alcohol, Stanley supported LIA’s decision to prevent its homosexual participants from “frequent[ing] places where homosexual activity would or could occur.”²¹⁸ Stanley compared LIA to ministries such as The Salvation Army and the Memphis or Nashville Union Mission—none of which required licensure.²¹⁹ Stanley ended his letter by requesting a written response from Brown explaining why Brown was targeting LIA and treating this organization “unequally” compared with other faith-based ministries.²²⁰ Further flexing his political muscle, Stanley copied the Tennessee Governor’s office on his letters in support of LIA.²²¹

G. LIA Fights Back: ADF Lawsuit Against Tennessee’s Efforts to Regulate the Ministry

The TDMHDD had made it clear in the communications it had with Smid and Kellum that the state had a legitimate interest in requiring licensure for LIA. In the TDMHDD’s view, LIA operated an unlicensed mental health supportive living facility. Licensure would “ensure quality and uniformity in the provision of personal care services to LIA’s residents . . . [and] enable [LIA] to receive training on licensure regulations and provision of services while networking with other providers.”²²² (Exhibit 20). But neither LIA nor its counsel wanted any state oversight of the organization, its management, board members, or participants. Instead, it saw an opportunity to advance a religious liberties claim by filing a lawsuit against the State.²²³

On September 30, 2005, Kellum of the ADF, sent a letter to the TDMHDD advising that ADF was filing a complaint against the agency and “various individuals connected” with it.²²⁴

²¹³ Letter from Rep. Paul R. Stanley to Virginia Betts, Commissioner, Tenn. Dep’t of Mental Health and Developmental Disabilities (Sept. 27, 2005) (Exhibit 19).

²¹⁴ *Id.* at 1.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.* at 2.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² Letter from Cynthia Clark Tyler, Dir., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Legal Counsel, to Nate Kellum, Alliance Defense Fund (Sept. 22, 2005) (Exhibit 20).

²²³ Smid Interview II, *supra* note 91.

²²⁴ Letter from Nathan W. Kellum, Alliance Defense Fund, to Cynthia Clark Tyler, Dir., Tenn. Dep’t of Mental Health and Developmental Disabilities Office of Legal Counsel (Sept. 30, 2005) (Exhibit 21).

(Exhibit 21). Kellum stated that it was “regrettable” that the TDMHDD left LIA with “no other option” than to litigate its claims against the agency “to avoid the continual violation of LIA’s constitutional rights.”²²⁵ Ironically, this was the same day that the TDMHDD decided that it no longer had concerns about licensure of LIA in light of Kellum’s letter “attesting that LIA is no longer serving more than one mentally ill individual . . . until litigation is concluded [O]ur licensure concerns have been resolved by [LIA’s] attestation.”²²⁶ (Exhibit 22).

On September 30, 2005, ADF filed a complaint against the state of Tennessee specifically naming the Governor of Tennessee (official capacity), the Commissioner of the TDMHDD (official and individual capacities), Arthur Hyde, (official and individual capacities), and Phil Brown (official and individual capacities).²²⁷

Emboldened by the financial and emotional support they had received from donors and influential friends, Smid and ADF decided to see how far LIA’s claims of religious liberty could go to prevent state interference. Until the TDMHDD undertook its investigation in response to the media inquiries that arose from the Zach incident, LIA claimed that it had never “been approached by any state agency regarding licensure or regulation, as it would concern any aspect of its ministry.”²²⁸ Of course, this could have been because LIA was flying under the radar until 2005. In any event, if LIA had its way, the state regulators would never have any authority over the Ministry.

1. LIA’s Counsel: Alliance Defense Fund

Kellum, along with Benjamin Bull and David Hacker, of the ADF, represented LIA in the lawsuit.²²⁹ Kellum was quoted as saying that the state was “trying to turn a Christian ministry into a state-regulated hospital” and that “there’s no legitimate state interest here. This is harassment pure and simple.”²³⁰ Kellum was convinced that starting in June 2005, the TDMHDD had tried to limit LIA’s ministry as a “direct result of political pressure exerted by certain groups and individuals who oppose[d] LIA’s religious viewpoint on the issue of homosexuality.”²³¹ In fact, there is no evidence that the TDMHDD’s investigation and its regulators were politically motivated. The evidence only shows that they were trying to do their jobs and ensure the well-being of the participants in LIA’s residential program.²³²

²²⁵ *Id.*

²²⁶ E-mail from Angela McKinney, Senior Policy Advisor and Special Projects Coordinator, Tenn. Dep’t of Mental Health and Developmental Disabilities, to Joe Carobene, Deputy Commissioner, Tenn. Dep’t of Mental Health and Developmental Disabilities (Sept. 30, 2005) (Exhibit 22); *see also* Letter from Joseph W. Carobene, Deputy Commissioner, Tenn. Dep’t of Mental Health and Developmental Disabilities, to Rev. John Smid, Exec. Dir., Love In Action (Oct. 19, 2005) (Exhibit 23).

²²⁷ *See generally* Compl., *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

²²⁸ *Id.* ¶ 36.

²²⁹ *See generally* Compl., *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005). Note that by October 2006 when the parties settled their dispute, Kellum was no longer with the ADF as he had moved to the Center for Religious Expression. *See generally* Western District of Tenn. Civil Docket, *Bredesen*, No. 05-2724.

²³⁰ *State Threatens to Close Christian Ministry*, WND.com (Oct. 1, 2005), <https://www.wnd.com/2005/10/32622/>.

²³¹ Compl. ¶ 37, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

²³² Smid Interview II, *supra* note 91.

Ever the businessman, Smid said that the lawsuit was a “classic set-up for a fundraising platform” and that people “rall[ied]” with him. “It was a great fundraising edge.”²³³

2. Overview of LIA’s Claims and Motion for Preliminary Injunction

In connection with its complaint filed in the U.S. District Court for the Western District of Tennessee, the ADF brought four claims against the Tennessee state officials (the “state officials or the state”): (1) violation of the Due Process Clause (14th Amendment); (2) violation of the Free Exercise of Religion Clause (1st Amendment); (3) violation of Equal Protection (14th Amendment); and (4) violation of the Free Speech Clause (1st Amendment).²³⁴

Due Process Claim: LIA challenged the state’s application of laws concerning the licensure of mental health facilities as arbitrary, capricious, and vague. LIA specifically challenged TCA § 33.2-402 (definition of service); § 33.2-403 (TDMHDD’s licensure authority); and § 33.2-405 (violation of licensure requirements is a Class B misdemeanor).²³⁵

Free Exercise Claim: LIA alleged that the state was forcing LIA to choose between operating as a faith-based ministry or seeking a license that would compromise its ministry.²³⁶

Equal Protection Claim: LIA claimed that other entities similarly situated to LIA (*i.e.* homeless shelters or The Salvation Army) were not required to obtain a license from the TDMHDD.²³⁷

Free Speech Claim: LIA contended that the state was censoring its religious speech by preventing LIA from communicating with those the state deemed mentally ill, including hindering LIA’s ability to grant referrals to mental health professionals.²³⁸

LIA also sought a declaratory judgment that the TDMHDD’s attempt to require LIA to obtain a license violated the First and Fourteenth Amendments.²³⁹ On the same day it filed its complaint, LIA also filed a motion for preliminary injunction given the impending shut down of its Ministry.²⁴⁰ In federal court, preliminary injunctive relief is an extraordinary remedy, and the party seeking relief must demonstrate risk of immediate irreparable harm.²⁴¹ To support its claim for preliminary injunctive relief, LIA submitted affidavits from Smid and other LIA staff. Smid stated the following:

[Licensure] is not an option for LIA. The costs required for licensure, application, and annual fees are cost prohibitive for us, especially considering our non-profit status. Moreover, it is **repugnant** to LIA’s mission and purpose to have its

²³³ *Id.*

²³⁴ Compl. ¶ 2, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

²³⁵ *Id.*

²³⁶ *Id.* ¶ 139.

²³⁷ *Id.* ¶ 146.

²³⁸ *Id.* ¶ 156.

²³⁹ *Id.*, Prayer for Relief.

²⁴⁰ Plaintiff’s Motion for Preliminary Injunction, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005), ECF 3.

²⁴¹ *Rock & Roll Hall of Fame & Museum, Inc. v. Gentile Prods*, 134 F.3d 749, 753 (6th Cir. 1998).

ministry regulated by the State [D]irect regulation and restriction by the State of our religious activities would most assuredly compromise our very purpose.²⁴²

In response to LIA's motion for preliminary injunction, the state represented that the TDMHDD "had suspended its investigation of LIA's activities '[i]n light of new information' that the Department had received."²⁴³ Because of the state's representation, the court denied LIA's motion.²⁴⁴ LIA later renewed its motion for a preliminary injunction on the grounds that it was compelled to reject several individuals who had come to LIA and sought ministerial help. LIA claimed it had "been forced to forsake its religious mission of supplying ministerial help to needy individuals solely because of the inappropriate licensure requirement being imposed on it."²⁴⁵

3. The Court's Resolution of the State's Motion to Dismiss LIA's Complaint

On October 4, 2005, the state officials moved to dismiss LIA's complaint in full for failure to state a claim.²⁴⁶ The state contended the following: (1) the officials were entitled to Eleventh Amendment immunity with respect to the claims asserted against them in their official capacity; (2) Defendants Hyde and Brown were entitled to qualified immunity for the claims asserted against them in their individual capacities; and (3) each of LIA's constitutional claims failed on their merits.

In connection with the state's Eleventh Amendment immunity defense, the court found that LIA's lawsuit fit squarely within a legal exception to the invocation of the Eleventh Amendment's immunity provision because the lawsuit did not entail monetary damages, but rather, equitable relief and rejected the state's argument on this point.²⁴⁷

In connection with the state's qualified immunity ground, the state argued that qualified immunity barred LIA's claims against state officials Hyde and Brown in their *individual* capacities. Qualified immunity shields "government officials performing discretionary functions . . . from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known."²⁴⁸ On this point, the court sided with the state, reasoning that "it is conceivable that a reasonable official would not comprehend that his attempt to prohibit the un-licensed provision of room, board, and personal care to mentally ill individuals pursuant to state statutes and

²⁴² Smid Affidavit, *supra* note 88, ¶ 97 (emphasis added).

²⁴³ Order Granting-in-Part and Denying-in-Part Defendants' Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. June 16, 2006), ECF 27, at 6 (quoting LIA Letter from Joseph W. Carobene, Deputy Commissioner, Tenn. Dep't of Mental Health and Developmental Disabilities, to Rev. John Smid, Exec. Dir., Love In Action (Oct. 19, 2005) (Exhibit 23)).

²⁴⁴ *Id.*

²⁴⁵ Plaintiff's Memorandum in Support of Renewed Motion for Preliminary Injunction, *Bredesen*, No. 05-2724 (W.D. Tenn. Jan. 20, 2006), ECF 20-4, at 2. This motion was not decided by the Court because the case was settled and dismissed.

²⁴⁶ Defendant's Memorandum in Support of Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. Oct. 24, 2005), ECF 14, at 12.

²⁴⁷ Order Granting-in-Part and Denying-in-Part Defendants' Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. June 16, 2006), ECF 27, at 12-14.

²⁴⁸ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

regulations might run afoul of constitutional due process or the right of free exercise of one's religion."²⁴⁹

The state officials also attacked each one of LIA's constitutional claims as pleaded in the complaint and as summarized below:

Due Process: The state argued that LIA had failed to state a claim that Tennessee's mental health licensure statutes were unconstitutionally vague, contending that the statutes were clear and provided fair warning. The court disagreed. With respect to vagueness, the court found that LIA had sufficiently alleged that the statutes were vague based on the statutes' undefined use of the phrase "long term placement." Without a definition, the court reasoned, "the phrase is inherently subjective because it invites the executive authority charged with enforcing TDMHDD rules to decide, on its own volition, what duration of residence constitutes 'long term placement.'" LIA's due process claim thus survived.²⁵⁰

Free Exercise of Religion: The court also denied the state's motion to dismiss LIA's claim for violation of the Free Exercise Clause of the First Amendment, finding that LIA had sufficiently alleged that Tennessee's mental health licensure statutes burdened LIA's free exercise rights amounting to a constitutional violation. LIA had alleged that "the imposition of a licensure requirement on its ministry, under the pretense that Plaintiff is treating mental illness, is burdensome financially and compromises its ability to minister in the manner most conducive to fulfilling its religious purpose." Based on the exemptions provided to non-religious organizations as alleged by LIA, the court held that LIA had sufficiently stated a claim.²⁵¹

Violation of Equal Protection: The court again sided with LIA with respect to its claim for violation of the Equal Protection Clause of the 14th Amendment, finding that plaintiff had alleged that "other entities similarly situated to LIA, including those specifically exempted from licensure . . . , as well as other faith-based organizations such as the Salvation Army, are not subject to the licensure requirement and are therefore the recipients of disparate, favorable treatment by the State."²⁵²

Violation of Freedom of Speech: The court ruled for the state on this ground and dismissed LIA's claim for violation of its right to free speech. Reasoning that the state had a compelling interest to insure the adequacy of care for its residents, the court determined that any burden on LIA's speech was incidental.²⁵³

²⁴⁹ Order Granting-in-Part and Denying-in-Part Defendants' Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. June 16, 2006), ECF 27, at 14-17.

²⁵⁰ *Id.* at 18-22.

²⁵¹ *Id.* at 23-28.

²⁵² Compl. ¶ 156, *Bredesen*, No. 05-2724 (W.D. Tenn. Sept. 30, 2005).

²⁵³ Order Granting-in-Part and Denying-in-Part Defendants' Motion to Dismiss, *Bredesen*, No. 05-2724 (W.D. Tenn. June 16, 2006), ECF 27, at 28-31.

H. Settlement

About four months after the court issued its opinion on the state's motion to dismiss the complaint, the parties entered into a settlement agreement.²⁵⁴ The parties agreed that Tennessee's licensure requirements could not be applied to LIA, "particularly [regarding] the overnight ministerial assistance and spiritual guidance provided by LIA to individuals with 'mental illness,' as defined by Tennessee statute."²⁵⁵ LIA agreed that none of its personnel would administer medication or restrict access to participants' medication.²⁵⁶ The state also agreed to pay LIA its attorneys' fees, which totaled \$65,994.61.²⁵⁷ (Exhibit 24).

On October 27, 2006, just over one year after LIA filed its complaint against the state, the lawsuit was dismissed with prejudice.²⁵⁸ (Exhibit 25 and Exhibit 26). The lawsuit had taken its toll on LIA, however, and the number of participants in the programs diminished.²⁵⁹

I. What Became of LIA and Smid?

Following the settlement, Smid characterized the result as a win for LIA. He told the media that the settlement was a "victory for residential Christian ministry to be able to disciple men and women without the scrutiny of a mental health department." In Smid's words, "[w]e were challenged by this situation, but the outcome shows once again we are without reproach."²⁶⁰

Within two years of settling the lawsuit, however, Smid would burn out and leave the Ministry he so carefully constructed. Smid says that LIA had become a "very unhealthy place" and it was "trauma" that caused him to leave.²⁶¹ Between the protests by LGBT groups, staff conflicts, including some of the staff turning against him, and his own internal conflicts, Smid was "miserable."²⁶² His board was "split" and he felt that he was an "ineffective leader."²⁶³ He was tired of living in fear.²⁶⁴ In the spring of 2008, therefore, Smid resigned from LIA.

After Smid left, the Ministry "started to spiral."²⁶⁵ LIA was broke, without much of its staff and, within a year of his resignation, "completely crashed and burned."²⁶⁶ Curiously, Smid

²⁵⁴ Settlement Agreement, *Bredesen*, No. 05-2724 (W.D. Tenn. Oct. 27, 2006), ECF 32-1, at ¶ 1 (Exhibit 24).

²⁵⁵ *Id.*; Agreed Order of Dismissal, *Bredesen*, No. 05-2724 (W.D. Tenn. Oct. 27, 2006), ECF 32, at 1 (Exhibit 25).

²⁵⁶ *Id.* ¶ 3

²⁵⁷ *Id.* ¶ 4.

²⁵⁸ Respectively, Agreed Order of Dismissal, *Bredesen*, No. 05-2724 (W.D. Tenn. Oct. 27, 2006), ECF 32, and Order Administratively Closing Case *Bredesen*, No. 05-2724 (W.D. Tenn. Oct. 26, 2006), ECF 31 (Exhibit 26).

²⁵⁹ Smid Interview II, *supra* note 91.

²⁶⁰ Lawrence Buser, *State settles suit over license for Love In Action -- Organization that aims to 'straighten' gays can't give drugs*, The Commercial Appeal (Memphis, TN) (October 28, 2006).

²⁶¹ Smid Interview I, *supra* note 94.

²⁶² *Id.*

²⁶³ Smid Interview II, *supra* note 91.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ Smid Interview II, *supra* note 91. In March 2012, LIA changed its name and became Restoration Path. Restoration Path is located in Bartlett, Tennessee. According to its current website, Restoration Path "is a Christian discipleship ministry that exists to restore those trapped in sexual and relational sin through the power of Jesus Christ. Through our online workshop, individual biblical counseling, and custom intensive programs, we seek to

claims he did not leave LIA to live authentically as a gay man and that this decision came later after much discernment. When he resigned from the Ministry, he had not yet experienced any “shift in [his] philosophical foundation.”²⁶⁷ It was only after Smid left LIA that he felt he had the “freedom to question” what he taught, why he got pulled in, whether the program worked and who he was.²⁶⁸

If Smid were asked today about the result of the lawsuit, he would give a very different answer than the one he gave in 2006. According to Smid, he now believes that:

God was rescuing the people from coming to LIA. I was so deceived. Now, I agree with what Tennessee regulator, Phil Brown and the Department were doing. They were protecting children. I see that now today. Oh my God, they were right. What we were doing to people was wrong. We were playing with people’s minds. . . . We were working in a genre that we were not educated or equipped to work in. And if we were educated and equipped, we could not have gotten a license to do it. The mental health professionals and organizations all clearly stated that homosexuality is not a mental disorder. There should not be an attempt to change that in a person’s life. They were right.²⁶⁹

Nonetheless, Smid maintains that the Tennessee authorities were out to get him and LIA. And he claims that he and LIA were “victims of bias against us for trying to help people be free of homosexuality.”²⁷⁰ His words are, at times, inconsistent. Smid claims that LIA was not trying to “cure” anyone and stands by his earlier statements that those in the ex-gay movement who claimed to be cured were giving “false hope” to others and instilling resentment in men like Smid who asked, “Why isn’t God doing that for me?”²⁷¹ Today, however, Smid does admit that he cannot defend what LIA did “because it was not only religiously wrong, but philosophically wrong...and harmful.”²⁷² If given the opportunity, Smid would like to “go back and run a program helping people accept their homosexuality. . . . I wish we had gone one step further to say: ‘It’s ok to be gay.’”²⁷³

When recently asked about the Ministry’s “success rate”, Smid repeated what he has said many times since leaving LIA: “No amount of religious indoctrination can change a person’s sexual orientation.” Indeed, Smid has never met a “man who experienced a change from homosexual to heterosexual.”²⁷⁴ Smid admitted however, that when marketing LIA’s programs during his tenure, parents would ask about his success rates. To this, Smid said:

empower men and women to embrace their identity in Christ.” Restoration Path, <http://restorationpath.org/>. Restoration Path maintains a small staff of six and focuses on sexual addiction.

²⁶⁷ Smid Interview II, *supra* note 91.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ Smid Interview II, *supra* note 91.

People would ask us about our success rate...And I would say ‘Well, our real goal is to lead people to have a better relationship with God. And everyone that goes through LIA, they have a better relationship with God. So I would say that’s a pretty good success rate.’ Because underneath it, I was afraid to say, we haven’t seen anyone change... [We were a non-profit and] like any non-profit, we needed their funds.²⁷⁵

In other words, if people knew that LIA could not guarantee a “cure” from homosexuality, they would be “infuriated” that they gave their money to the Ministry.²⁷⁶

After resigning as the Executive Director of LIA, Smid remained married to his wife for another three years. But he was not faithful to her. In 2011, Smid attended a conference for gay Christians and it was there that he met the love of his life—Dr. Larry McQueen (“McQueen”).²⁷⁷ Smid was “emotionally involved” with McQueen before Smid and his second wife divorced. Looking back, Smid claims his second marriage “ruined” both Smid and his former wife. He refers to this relationship as a “mixed orientation marriage”—she was heterosexual and he was homosexual.²⁷⁸ The last ten years of their marriage, Smid was celibate.²⁷⁹ A year after meeting McQueen, Smid divorced his wife.²⁸⁰ In November 2014, Smid and McQueen married in Oklahoma. They now reside in Texas.²⁸¹ Theirs is a quiet life, with Smid spending much of his time in his workshop building furniture.²⁸²

When asked about the future of the ex-gay movement, Smid now says that “it needs to go away It needs to change, it is harmful.”²⁸³ He claims that many evangelical churches are “equally harmful,”²⁸⁴ and notes:

Coming from 30 years of evangelical Christianity, it harmed me. It harmed me through the shame that it raised up in me...It harmed me in not understanding the freedom I have as a person. It harmed me in believing in the Devil is around every corner and that God is a God of retribution and suffering and eternity of hell. I mean, that whole thing, ex-gay ministry, was rooted in that [And] it’s not just ex-gay ministry, it’s the Bible-thumping pulpit preachers that are still harming people every Sunday²⁸⁵

Smid believes now that LGBT people are society’s “scapegoats.” He claims that LIA was successful because the program told people what they wanted to hear: that LIA would get rid of the gay in them and in their children. Since Smid and his colleagues were “resolving this

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ Smid Interview I, *supra* note 94.

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² Smid Interview II, *supra* note 91.

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

problem”, others were willing to support them.²⁸⁶ Smid was willing to stand up and talk about homosexuality, and Christian leaders were willing pay him to talk about the ways he could “eradicate homosexuality.”²⁸⁷ All these years later, however, Smid believes that he and others in the ex-gay movement were “used by the Religious Right as a scare tactic.”²⁸⁸ And just as Smid used the 2005 lawsuit to raise money for LIA, Smid claims that the “Religious Right is using the homosexual agenda as a fundraising tool for political purposes.”²⁸⁹

Regarding the power to change hearts and minds, Smid feels the “greatest transformative thing that we have is just our story.”²⁹⁰ When discussing the soon-to-be released movie, “Boy Erased” based on Conley’s memoir, Smid acknowledges that he has recently spoken with Conley and that his is a “powerful story that needs to be told.”²⁹¹ Referencing the movie, Smid says he has become even more aware—and sorry—about the “negative impact that ExGay [sic] ministry has had on the parents of LGBTQ people.”²⁹² He says it is this awareness that led him to pen a letter of apology to these parents (“Smid’s Apology”).²⁹³

Smid’s Apology is lengthy. In it, he says that he saw “more sadness and grief in one place . . . than many could bear. All of this grief was attached to a theology that condemned homosexuality as a broken, sinful and vile situation as well as a tremendous fear of death through the HIV virus.”²⁹⁴ Smid acknowledged that the “therapeutic tools” used by LIA “often caused even more shame. . . . The destruction and abusive theology had wounded hundreds that I knew personally, not to mention the thousands that I impacted vicariously through my influence.”²⁹⁵ He admits that LIA was a “horrible failure” and that “virtually all of the men and women that went through [the] program got to the point of spiritual bankruptcy.”²⁹⁶

Smid claims he is “so very sorry” and “sincerely apologize[s]” to the individuals and families who suffered pain because of LIA.²⁹⁷ To parents struggling with acceptance of their LGBT children, Smid says, “When parents cannot accept and embrace their loved ones [sic] sexual orientation or gender identity, they will likely live in continual grief and shame. This is not from the hand of God, but rather from the hands of a distorted view of life and cultural shame.”²⁹⁸

When asked if he now wants to help LGBT people, Smid says he wants to be a “supportive person to the gay community.”²⁹⁹ It is Smid’s hope that his experiences with LIA

²⁸⁶ Smid Interview II, *supra* note 91.

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ Smid Interview I, *supra* note 94.

²⁹² John J. Smid, *To the Parents – I’m so sorry!*, Grace Rivers Blog (Sept. 20, 2018), <http://www.gracerivers.com/parents> [hereafter “Smid Apology”].

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ Smid Interview II, *supra* note 91.

can be learning tools and that people will get value from what he has shared. He works with men who have had similar experiences as his, and in so doing this, he hopes that they and he can find peace.³⁰⁰ In Smid's Apology, he closes by saying the following: "It is my hope that as our world unfolds, shame and degradation for LGBTQ people will stop. It is my dream that families will totally embrace and support their LGBTQ loved ones. May it be so."³⁰¹

To demonstrate the alignment of his words with his actions, Smid recently donated his LIA papers and related ex-gay ministry archives (collectively, the "Smid Archives") to the MSDC. The MSDC, in turn, donated the Smid Archives to the National Museum of American History at the Smithsonian Institute to preserve this chapter of LGBT history.³⁰² (Exhibit 27). The Smid Archives include thousands of pages of manuals, lessons, fundraising appeals, news clippings, sermons, television interviews, and video cassette recordings.³⁰³

The remainder of this page is intentionally left blank.

³⁰⁰ *Id.*

³⁰¹ Smid Apology, *supra* note 292.

³⁰² See Mattachine Society of Washington, DC, *John Smid, Love In Action Papers – Inventory of Boxes* (Exhibit 27).

³⁰³ Lou Chibbaro, Jr., *Former ex-gay leader donates archives to Mattachine Society*, Washington Blade (June 27, 2017), www.washingtonblade.com/2017/06/27/john-smid-donates-archives/.

III. FUTURE OF CONVERSION THERAPY: WHAT TO EXPECT

While Smid and others involved in LIA and Exodus International have come to agree with the overwhelming majority of medical and mental health professionals that conversion therapy does not work, new organizations have emerged in their absence to continue this ignominious legacy. These organizations consist of religious and lay counselors, and in some cases, mental health professionals, who believe they should not be precluded from talk therapy with minors who are struggling with their sexual orientations or gender identities. The Religious Right, in particular, entered the arena in staunch opposition to the professional consensus against SOCE: “Conversion therapy became such a useful political tool that conservative groups began endorsing and helping found conversion therapy ministries, run by lay counselors and pastors, which removed the practice even further from the medical realm.”³⁰⁴

A. *The Nashville Statement*

In late August of 2017, a group of 150 evangelical Christian leaders became signatories to a “statement of faith” that addressed traditional views of human sexuality, marriage and gender. This statement was drafted by members of the Council on Biblical Manhood and Womanhood (the “Council”) at the annual conference of the Ethics and Religious Liberty Commission (“ERLC”)—the public policy arm of the Southern Baptist Convention—in Nashville, Tennessee.³⁰⁵ Among the more notable signatories to the document were Tony Perkins of the Family Research Council (and now a Commissioner with the U.S. Commission on International Religious Freedom under the Trump/Pence Administration), James Dobson of Focus on Families and member of Trump’s faith advisory board, and “ex-gay” Syracuse professor of English and home-school advocate, Rosaria Butterfield.³⁰⁶

The Nashville Statement (the “Statement”), as the document was called, starts with a preamble in which it states that “Evangelical Christians at the dawn of the twenty-first century find themselves living in a period of historic transition” during this time in “Western culture [which] has become increasingly post-Christian.”³⁰⁷ The Statement’s 14 articles make clear that the signatories support opposite-sex marriage and deny same-sex marriage, support a link between biological sex as determined solely by God, and deny transgender individuals the right to determine their sex. In addition to denying the validity of LGBT sexuality, the Statement expresses objections to “adultery and fornication.”³⁰⁸ In short, the Statement espouses that, “only heterosexuality is permissible, calls people born with intersex conditions ‘disordered’, derides transgender identities and ‘transgenderism’ and makes clear that anyone who is an L.G.B.T. person is immoral.”³⁰⁹

³⁰⁴ See George, *supra* note 87, at 802-08.

³⁰⁵ Holly Meyer, *Evangelical leaders issue Nashville Statement, a ‘Christian manifesto’ on human sexuality*, The Tennessean (Aug. 29, 2017), <https://www.tennessean.com/story/news/2017/08/29/evangelical-leaders-issue-nashville-statement-christian-manifesto-human-sexuality-lgbt-gay-marriage/611756001/>.

³⁰⁶ *The Nashville Statement*, Wikipedia https://en.wikipedia.org/wiki/Nashville_Statement (last visited Oct. 9, 2018).

³⁰⁷ *Nashville Statement*, The Council on Biblical Manhood and Womanhood, <https://cbmw.org/nashville-statement>.

³⁰⁸ *Id.*

³⁰⁹ Eliel Cruz, *The Nashville Statement Is an Attack on LGBT Christians*, N.Y. Times (Sept. 1, 2017), <https://www.nytimes.com/2017/09/01/opinion/Nashville-statement-lgbt-christians>.

The Council issued a press release when the Statement was made public, in which its President, Russell Moore, noted that the Statement was “urgently needed.”³¹⁰ According to Moore, “the Sexual Revolution cannot keep its promises and the church must stand ready to receive with compassion the many who are in need of a better hope. The Nashville Statement is part of that mission, and my prayer is that it will anchor churches and Christians to the gospel of Jesus Christ for years to come.”³¹¹

Shortly after its issuance, the *New York Times* published an editorial that was a warning call to its readers. The Nashville Statement, the editorial stated, espoused “the type of theology...used to defend the denial of goods and services to same-sex couples. The political power evangelicals hold in the United States allows them to codify their beliefs in law [The Statement] and its principles prompt the question of whether the set of religious issues these Christians choose to focus on is politically rather than morally motivated.”³¹²

The Statement seems like something that Smid would have written during his time with LIA. It is a historic irony that the Statement, like LIA, has its roots in Tennessee. There is no coincidence in the fact that many who signed and support the views in the Statement advocate for, among other things, the rights of parents to take control of their children’s sexual orientation and gender identity. In fact, the ERLC’s annual 2017 conference “focused on parenting . . . and addressed a number of topics, including how to talk to your kids about their biblical view of sex, same-sex attraction and gender identities.”³¹³ Everything old is new again.

B. The New Rationale: Parental Rights

In November 2017, the Museum of the Bible opened in Washington, DC. Funded in large measure by the Green family, evangelical Christians who own the Hobby Lobby craft stores, the Museum of the Bible boasted more than half a million visitors in the first six months of its opening.³¹⁴

On July 26, 2018, five prominent Christian leaders gathered at the Museum of the Bible to speak at a program addressing parental rights. Titled, “Parental Rights: A Matter of Religious Freedom”, the program was sponsored by the James Dobson Family Institute (the “Dobson Institute”)³¹⁵ and the ADF. Speakers included Tony Perkins, Mike Farris (“Farris”), the CEO and General Counsel of the ADF, and several speakers from the Dobson Institute. For approximately 90 minutes, the panel discussed the intersectionality of fundamental parental rights and religious liberties, which, according to Farris, “always go hand in hand.” While the panel’s initial discussion focused on parental rights and education—and in particular, the Home School Movement—the speakers also talked about the rights of parents in the realm of same-sex attractions, marriage and conversion therapy.

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.*

³¹⁴ Julie, Zauzmer, *More than 500,000 people have visited the Museum of the Bible in its first 6 months*, Washington Post (May 18, 2018), <https://www.washingtonpost.com/news/acts-of-faith/wp/2018/05/18/more-than-500,000-people-have-visited-the-Museum-of-the-Bible-in-its-first-six-months>.

³¹⁵ Dobson Family Institute, <https://www.dobsonfamilyinstitute.com>.

This is not a new concept. One commentator explained that “[p]arental rights has also been used as the excuse for sending children to quack religious therapists and Christian camps (Note: Think LIA) for LGBT troubled teens to be ‘repaired’, believing sexual orientation and gender identity are behavior choices to be rectified.”³¹⁶

Indeed, as evidenced by the “Parental Rights” conference at the Museum of the Bible (the “Conference”), there is a movement afoot to fight back against the overwhelming consensus that conversion therapy is fraud that is harmful to its victims.³¹⁷ For instance, Jenna Ellis of the Dobson Institute discussed at the Conference the “huge issue in the United States right now” that has received national attention:

Any counseling, anything that discusses same-sex attraction and is against that or trying to counsel away from that would be under the consumer fraud protection element of California’s law. Basically, they’re saying that’s fraudulent, that belief, that understanding, and that counsel. That’s what’s at stake. The people who are interested in protecting religious freedom, who are not interested in protecting parental rights . . . they’re willing so far to say that this is fraud. That’s what’s going on in the United States and then even globally.³¹⁸

Tim Clinton, a practicing psychologist with the Dobson Institute, framed “conversion therapy” as a “vital course of psychological treatment for victims.”³¹⁹ Clinton believes the following regarding those opposed to conversion therapy:

[They w]ant to take away any effort that a parent has to place that [confused] child in any type of ‘counseling’ or ‘psychotherapy’ to deal with what they are going through. They’re saying you should not be able to do that. . . . [You] only can provide affirming therapy. If someone is struggling and has unwanted same-sex attraction issues or more-that you cannot pursue any kind of psychotherapeutic intervention.³²⁰

In short, Clinton believes that a parent has the right to put his or her child into “reparative therapy to help him overcome [same-sex] desires...”³²¹ According to Clinton, it is “abuse” to prevent parents from exercising these “rights” especially if the child has been sexually victimized and then calls into question his same-sex feelings.

³¹⁶ Christopher Kane, “*Parental rights*” is back as a “conversion therapy” talking point, Los Angeles Blade (Aug. 1, 2018), <http://www.losangelesblade.com/2018/08/01/parental-rights-is-back-as-a-conversion-therapy-talking-point/>.

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.*

Charles Francis of the MSDC had something to say about the current parental rights rationale for harmful conversion therapy as discussed at the Conference:

Rebranded as just another ‘parental rights’ issue like homeschooling, harmful ‘conversion therapy’ was promoted as a ‘liberty’ or a parent’s choice. No matter the new package, the powerful evangelical lawyers and advocates echoed decades of bad psychiatry and historic religious calumny that doomed generations of LGBT youth to damaged self-respect and second-class citizenship.”³²²

C. Despite Evidence of Ineffectiveness and Harm, Conversion Therapy Persists

“[E]very major medical, psychiatric, psychological, and professional mental health organization, including the American Psychological Association, the American Psychiatric Association, the National Association for Social Work, the Pan American Health Organization, and the American Academy of Child and Adolescent Psychiatry, has taken measures to end conversion therapy efforts to change sexual orientation.”³²³ In 2015, the U.S. Department of Health and Human Services issued a public statement endorsing efforts to ban SOCE:

When assessing the validity of conversion therapy, or other practices that seek to change an individual’s gender identity or sexual orientation, it is as imperative to seek guidance from certified medical experts. The overwhelming scientific evidence demonstrates that conversion therapy, especially when it is practiced on young people, is neither medically nor ethically appropriate and can cause substantial harm. As part of our dedication to protecting America’s youth, [the Obama] Administration supports efforts to ban the use of conversion therapy for minors.³²⁴

Nonetheless, conversion therapy is still offered by licensed mental health providers, counselors and faith-based ministries and the provision of these services “repathologize[s] sexual minorities.”³²⁵ And politicians and religious leaders are coming out in support of SOCE, notwithstanding the incontrovertible data against it.

In 2018, Steve Negrón, a conservative GOP state lawmaker in New Hampshire voted against a state ban on gay conversion therapy for minors.³²⁶ While explaining why he would not support such a ban in his home state of New Hampshire, Negrón explained that conversion therapy is a way to help children make a decision when they are “confused.”³²⁷ He believes it is

³²² *Id.*

³²³ U.S. Dep’t of Health and Human Serv. Substance Abuse and Mental Health Serv. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 25 (2015), <https://store.samhsa.gov/shin/content/SMA15-4928/SMA15-4928.pdf>.

³²⁴ *Id.* at 34 (citing Valerie Jarrett, *Petition Response: On Conversion Therapy*, Archived Obama White House Website (Apr. 8, 2015), <https://obamawhitehouse.archives.gov/blog/2015/04/08/petition-response-conversion-therapy>).

³²⁵ Glassgold et al., *supra* note 4, at 12.

³²⁶ Cameron Joseph, *Newly Minted House GOP Nominee Recently Defended Gay Conversion Therapy*, Talking Points Memo (Sept. 12, 2018), <https://talkingpointsmemo.com/dc/newly-minted-house-gop-nominee-recently-defended-gay-conversion-therapy>.

³²⁷ *Id.*

important to give children “the right information, and let them get the treatment that they need to understand what the situation is. [Negron also thinks that] parents have a huge role in that as well.”³²⁸ Nonetheless, the ban passed New Hampshire’s Republican-controlled House and Senate with bipartisan support.

In 2000, during his campaign for re-election to Congress, Mike Pence posted a statement on his website, signaling support for conversion therapy. In this statement, Pence reiterated his opposition to marriage equality and said that the federal government should not be supporting organizations that “celebrate and encourage the types of behaviors that facilitate the spreading of the HIV virus.”³²⁹ Pence suggested that instead, federal dollars “should be directed to those institutions which provide assistance to those seeking to change their sexual behavior.”³³⁰

State bans, litigation, and media attention have been bringing the issue of conversion therapy into the light. Throughout the country, many legislatures are seeking or approving legal bans on these practices. “[T]he bans identify conversion therapy writ large as ineffective and potentially harmful, a characterization that LGBT rights groups [and their supporters] hope will create a broad social norm against conversion therapy. This furthers their desire to eliminate all forms of conversion therapy, **no matter the practitioner.**”³³¹ As noted in one law review article:

The laws help ratify the idea that sexual orientation is either a characteristic that no one should be forced to change, or is immutable and thus cannot be altered. LGBT rights groups have seized on the latter in their discussions of the laws, as pressing forward a claim about sexual orientation's immutability has been central to both establishing legal rights for LGBT Americans and refuting opposition arguments. Additionally, the laws indicate that the state needs to take an active role in protecting LGBT youth, a radical reformulation of typical child protection arguments, which have focused on defending minors from the dangers of LGBT adults.³³²

State bans on conversion therapy do not reach religious organizations and cover only licensed mental health professionals.³³³ Nonetheless, controversies similar to the 2005 litigation between Love In Action and the State of Tennessee will no doubt arise over when a religious organization is engaging in practices that *require* state licensure and oversight. Religious and legal organizations supporting conversion therapy will continue to challenge state conversion therapy bans under the First Amendment, claiming that such bans violate the religious rights of licensed mental health professionals to engage in conversion therapy in their otherwise secular practices. And while constitutional challenges to the conversion bans in California and New Jersey have been unsuccessful, legal organizations such as the Liberty Counsel are trying to undo

³²⁸ *Id.*

³²⁹ Liam Stack, *Mike Pence and Conversion Therapy: A History*, N.Y. Times, Nov. 30, 2016, <https://www.nytimes.com/2016/11/30/us/politics/mike-pence-and-conversion-therapy-a-history>.

³³⁰ *Id.*

³³¹ George, *supra* note 87, at 821 (emphasis added).

³³² *Id.* at 821-822.

³³³ *Id.* at 822.

the bans and reverse the court decisions that have upheld them.³³⁴ Future litigation will establish the line between state-sanctioned conversion therapy bans aimed at protecting LGBT youth and preventing discrimination, and the rights of individuals and organizations to practice conversion therapy in furtherance of their religious liberties.

Thus, though recently enacted and proposed state laws banning conversion therapy do not apply to the primary providers of such therapy³³⁵ (*i.e.*, religious organizations), anti-SOCE laws nevertheless serve a critical function in establishing a social norm against conversion therapy.³³⁶ “The information available to the public about SOCE is highly variable and can be confusing and misleading. Sexual minorities, individuals aware of same-sex attractions, families, parents, caregivers, policymakers, the public, and religious leaders can benefit from accurate scientific information about sexual orientation and the appropriate interventions for individuals distressed by their same-sex attractions.”³³⁷

There have been efforts in some states to try to permit conversion therapies or remove or codify the prohibition against licensed mental health professionals from engaging in the practice. In June 2017, the Alabama Child Residential Abuse Protection Act (HB440) was stripped of language that would have restricted conversion therapy for LGBT minors.³³⁸ The bill originally mandated that operators of faith-based youth residential programs “not engage or perform in any sexual orientation change effort on any person under 18 years of age” and included language requiring cultural sensitivity training. The language was removed after the president and general counsel of the Southeast Law Institute, which provides free legal assistance to “persons, churches and other religious organizations on religious, family and related issues,” pressured the bill’s sponsor.

According to a recent study by the Williams Institute, a think tank at UCLA dedicated to independent research on sexual orientation and gender identity and public policy³³⁹, an estimated 20,000 LGBT youth between the ages of 13 and 17 will undergo conversion therapy from a licensed mental health professional before the age of 18 in states where there is no ban prohibiting these practices.³⁴⁰ Nationwide, approximately 57,000 youth will receive treatment from a religious or spiritual advisor before reaching 18.³⁴¹ Nearly 700,000 LGBT adults have been subjected to conversion therapy, with approximately half of them receiving it as adolescents.³⁴² Young people forced to undergo conversion therapy can suffer from “depression,

³³⁴ See Terry Carter, *Case challenging gay-conversion therapy ban won't be heard by SCOTUS*, ABA J. (May 1, 2017), http://www.abajournal.com/news/article/gay_conversion_therapy_ban_california_supreme_court; see also Plaintiffs-Appellants’ Motion to Recall Mandate, *King v. Governor of the State of New Jersey*, No. 13-4429 (3d Cir. Sept. 10, 2018); Plaintiffs-Appellants’ Reply in Support of Motion to Recall Mandate, *King v. Governor of the State of New Jersey*, No. 13-4429 (3d Cir. Sept. 27, 2018), which was denied on October 11, 2018. Order Denying Motion to Recall Mandate, *King*, No. 13-4429 (3d Cir. Oct. 11, 2018).

³³⁵ See Appendix.

³³⁶ See George, *supra* note 87, at 795, 825-830.

³³⁷ Glassgold et al., *supra* note 4, at 6; see also *Ending Conversion Therapy*, *supra* note 323, at 28.

³³⁸ H.B. 440, Regular Sess. (Ala. 2017).

³³⁹ <https://williamsinstitute.law.ucla.edu/>.

³⁴⁰ The Williams Institute, *More than 20,000 LGBT teens in the US will be subjected to conversion therapy* (Jan. 24, 2018), <https://williamsinstitute.law.ucla.edu/press/conversion-therapy-release>.

³⁴¹ *Id.*

³⁴² *Id.*

anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient.”³⁴³ This has become a public health crisis. While public education is critical to stemming this tide, legal bans on conversion therapy practices are needed to protect young people. The APA has issued the following resolution regarding conversion therapy:

[Advising] parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support and education services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth.³⁴⁴

The APA currently endorses client-centric “sexual orientation identity exploration.”³⁴⁵ In contrast to SOCE, the APA’s approach focuses on providing individualistic counseling to clients who wish to reconcile their sexual orientation identity with their religious identity without stigmatizing homosexuality.³⁴⁶ Unlike SOCE, the APA approach is not premised on the eventual re-identification as heterosexual, but rather offers gay-affirmative therapy for those seeking it.³⁴⁷ “Identity exploration is an active process of exploring and assessing one’s identity and establishing a commitment to an integrated identity that addresses the identity conflicts without an *a priori* treatment goal for how clients identify or live out their sexual orientation.”³⁴⁸ The APA approach stands in direct contrast to ex-gay conversion therapy programs such as LIA. The LIA handbooks demonstrate that not only did the Ministry address sexual orientation through the lens of addiction, in other words, as a type of disease to be treated and ultimately cured, but also made strong moral judgments of LGBT people and contained damaging portrayals of same-sex attraction.

³⁴³ Just the Facts Coalition, *supra* note 1, at 7.

³⁴⁴ Glassgold et al., *supra* note 4, at 121.

³⁴⁵ *See id.* at 60-64.

³⁴⁶ *See id.*

³⁴⁷ *Id.* at 13, 60-64.

³⁴⁸ *Id.* at 64.

CONCLUSION

In 1973, the APA removed homosexuality as a mental disorder from the DSM. The idea that sexual orientation was a defect, in need of repair, was flatly and unambiguously rejected. In short order, the rest of the medical community would follow suit, resulting in an overwhelming consensus: homosexuality is neither abnormal nor mentally unhealthy, and attempts to fix or convert homosexuals actually harms them—both emotionally and physically.

Within every wave of progress, however, lies a dangerous undercurrent.

In the same year, 1973, a medical professional at St. Elizabeths Hospital, with a copy of the revised DSM on his or her bookshelf, could also pick up a catalog from the Farrall Instrument Company. Thumbing through that catalog, he or she could purchase a “Visually Keyed Shocker,” and other instruments designed to exact an electroshock on the genitals of a gay patient to attempt to turn him straight.

So, too, in 1973, LIA came to life—an “ex-gay ministry whose entire purpose was to instill in the hearts and minds of its victims, many of whom were teenagers that they were deeply flawed and their only salvation was a miracle from God. LIA was “cult-like.”³⁴⁹ According to one ex-gay ministry leader, “[i]f you don’t do their thing, you’re not of God, you’ll go to hell.”³⁵⁰ Gone were the instruments of physical torture. But in their place were deeply flawed practices and teachings resulting in prolonged and continuous psychological and spiritual torment.

Such are the undercurrents in the history of gay conversion therapy.

Even today, 45 years after the APA’s important declassification of homosexuality as a mental disorder, the same story plays out in our communities, legislatures, and religious institutions. The public is only just beginning to understand the deep and lasting scars that conversion therapy has carved into its victims. It is learning the story of Thomas H. Tattersall, who was fired from the Department of Commerce, found guilty of the “crime of homosexuality,” and committed St. Elizabeths, where he received “repeated ‘insulin shock therapy’ sessions to induce comas[.]” It is hearing about the victims of LIA—Zach Stark, Peterson Toscano, and Garrard Conley, to name just a few—who suffered extreme psychological torment during their time there. And, it is learning about John Smid, the former leader of the “ex-gay” movement, who now admits that LIA was a “horrible failure.”³⁵¹ To parents who thought that they were helping their LGBT children by putting them in conversion therapy programs like LIA, the sorrow and regret they suffer from such misguided decisions “is not” Smid explains, “from the hand of God, but rather from the hands of a distorted view of life and cultural shame.”³⁵²

The reaction to the resurgence of conversion therapy programs has been swift. Already, a number of state legislatures and local municipalities have adopted SOCE bans. Others, along

³⁴⁹ See Melzer, *supra* note 124.

³⁵⁰ *Id.*

³⁵¹ Smid Apology, *supra* note 292.

³⁵² *Id.*

with the U.S. Congress, are considering similar proposals. The medical community universally supports such bans, as do members of both political parties, and a significant number of former leaders of the “ex-gay” movement.

Progress. Yet, the Nashville Statement, the push for faith-based conversion therapy programs, and the call for religious exemptions to state bans, remind us that an undercurrent remains.

Martin Luther King said that “the arc of the moral universe is long, but it bends toward justice.” For the victims and survivors of conversion therapy, that long and painful road toward justice has bent the will of some and broken others. But, in witnessing their stories, the need to end these pernicious practices and their underlying fallacy becomes evident, if not urgent.

Perhaps, John Smid—a man whose life seems to capture all of the tensions and contradictions, the ebbs and flows, of the history of conversion therapy—said it best. The “greatest transformative thing that we have,” Smid said, “is just our story.”³⁵³ Those stories, like the ones told by John Smid and Garrard Conley, shine a light on truth, create a wave of progress, and force the undercurrent to miss its intended victims and wash out to sea.

³⁵³ Smid Interview II, *supra* note 91.

APPENDIX

Current Legislative Challenges

At present, there are conversion therapy bans in fourteen states and Washington, DC. In addition, at least 44 cities, municipalities or counties ban conversion therapy through local ordinances. These bans are aimed at preventing licensed mental health professionals—not religious institutions—from providing conversion therapy.³⁵⁴ This means that current laws may have little practical impact because they do not apply to most modern-day conversion therapy practitioners.³⁵⁵

The same is true for the pending proposed Federal ban on conversion therapy. On April 25, 2017, Senator Patty Murray (D-WA) and 25 co-sponsors introduced the Therapeutic Fraud Prevention Act of 2017 (S.B. 928). The bill prohibits the provision of conversion therapy “for compensation.” It also prohibits advertising that conversion therapy (i) will change sexual orientation or gender identity, (ii) will eliminate or reduce sexual or romantic attractions or feeling towards the same gender, or (iii) is harmless.³⁵⁶ Although “advertising” is not defined, the Senate Bill proposes enforcement by the Federal Trade Commission pursuant to the Federal Trade Commission Act, further confirming that the focus of the bill remains on therapy provided “in commerce” and not on religious counseling.³⁵⁷

The Therapeutic Fraud Prevention Act was referred to the Senate Committee on Commerce, Science, and Transportation in April of 2017, but there has been no further action on the bill since that time. A similar bill was introduced in the House of Representatives, also on April 25, 2017 and referred to the House Committee on Energy and Commerce. But again, no further action has been taken on the bill.

Nonetheless, the existing state and local laws banning conversion therapy send a message to LGBT individuals and others that the broad consensus is that conversion therapy is not effective.³⁵⁸ Despite their limitations, the aim may be to “create a broad social norm against conversion therapy.”³⁵⁹

The chart below outlines the legislative challenges to conversion therapy in each of the 50 states. States with existing laws banning conversion therapy are highlighted in green:

³⁵⁴ Fourteen states and the District of Columbia have passed bans on conversion therapy, though the bans by two of these states (Hawaii and New Hampshire) apply more broadly to licensed counselors and do not focus on mental health professionals. See Appendix Chart.

³⁵⁵ See George, *supra* note 87, at 795, 822.

³⁵⁶ S.B. 928, <https://www.congress.gov/115/bills/s928/BILLS-115s928is.pdf>.

³⁵⁷ The bill also would permit enforcement by state attorneys general in their *parens patriae* (“parent of the state”) capacity if they “have reason to believe that an interest of the residents of the State has been or is being threatened or adversely affected by a violation of the [Act].” S.B. 928 § 4(e).

³⁵⁸ George, *supra* note 87, at 821-43.

³⁵⁹ *Id.* at 821.

| STATE | LEGISLATION UPDATE |
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| <p>Alabama</p> | <p>In 2017, in response to news coverage of shocking abuses occurring at residential religious programs and the subsequent arrests of three leaders of the Saving Youth Foundation, the Alabama Legislature passed the Alabama Child Residential Abuse Protection Act (HB440). The Act requires additional oversight and registration of private religious or faith-based organizations and other residential youth facilities that house children for a period of over 24 hours. <i>See</i> 2017 Alabama House Bill No. 440, Alabama 2017 Regular Session.</p> <p>However, despite overlap between the unlicensed residential programs and conversion therapy practices, the bill was stripped of language originally included to protect LGBT youth. HB440 “which strengthened oversight of faith-based youth residential programs that were previously exempt from regulation, originally mandated that program operators ‘not engage in or perform any sexual orientation change effort on any person under 18 years of age.’ That language, as well as a provision prohibiting discrimination based on sexual orientation, was removed from the bill before it passed the House, sailed through the Senate and was signed by Gov. Kay Ivey.” <i>See</i> Pete Madden, Brian Epstein, and Brian Ross, “Alabama legislation stops short of banning sexual orientation ‘conversion therapy.’” June 15, 2017. http://abcnews.go.com/Politics/alabama-legislation-stops-short-banning-sexual-orientation-conversion/story?id=47984624.</p> <p>“The bill’s sponsor says he doesn’t remember how it happened. ‘I do not recall who took it out or how it came out,’ Rep. Steve McMillan, a Republican from Baldwin County, told ABC News. ‘It could have been me, or it could have been the guy drafting.’” The next year, Rep. Patricia Todd was to introduce a bill to ban gay conversion therapies by licensed mental health professionals. https://www.facebook.com/ALHouseDems/posts/1450451141677915?comment_id=1451420121581017&comment_tracking=%7B%22tn%22%3A%22R%22%7D However, there is no record that she proposed a bill in the 2018 session. <i>See</i> BillTrack 50, AL – Patricia Todd https://www.billtrack50.com/LegislatorDetail/4401.</p> |
| <p>Alaska</p> | <p>No Action</p> |
| <p>Arizona</p> | <p>In 2018, SB 1160 was introduced to ban gay conversion therapy in the Arizona State Senate. The bill’s sponsor acknowledged the bill faces an uphill battle in Arizona’s conservative Legislature, despite the wiggle room it allows for religious and other unlicensed groups. <i>See</i> Maria Polletta, <i>Arizona Bill Would Ban ‘Conversion Therapy’ for LGBT Youth</i>, Arizona Central, January 18, 2018 https://www.azcentral.com/story/news/politics/legislature/2018/01/17/arizona-bill-would-ban-conversion-therapy-lgbt-youths/1013708001/. The bill has made it to a second reading, but has not proceeded further. <i>See</i> LegiScan, AZ SB1160 https://legiscan.com/AZ/text/SB1160/id/1685631.</p> <p>While a statewide ban is pending, Pima County bans conversion therapy through local ordinance. Code tit. 9, ch.9.90, §9.90.030 (2017).</p> |
| <p>Arkansas</p> | <p>No Action</p> |

| STATE | LEGISLATION UPDATE |
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| <p>California</p> | <p>2012 Cal. Stat. ch. 835 “makes California the first state in this country to ban mental health professional from performing conversion therapy.” <i>See</i> Clair, <i>supra</i> note 5, at 551.</p> <p>“Chapter 835 includes various legislative findings, including that homosexuality is not a disease or mental disorder and that California has a compelling state interest in protecting minors ‘against exposure to serious harms caused by sexual orientation change efforts.’ In light of those findings, Chapter 835 prohibits psychiatrists, psychologists, licensed counselors, clinical social workers, and various other mental health professionals from performing ‘sexual orientation change efforts’ on minors. Chapter 835 deems ‘sexual orientation change efforts to constitute unprofessional conduct that shall subject a mental health provider to discipline by the licensing entity for that mental health provider.’” <i>Id.</i> at 554.</p> <p>This conversion therapy ban prohibits licensed mental health professionals from providing SOCE to minors. However, Chapter 835 does not reach “unlicensed lay or religious persons who would attempt to change a minors’ sexual-orientation or...adults who choose to undergo conversion therapy.” <i>Id.</i> at 556.</p> <p>In October 2016, the Ninth Circuit rejected legal challenges to the ban. In May 2017 the Supreme Court declined to hear an appeal, leaving the Ninth Circuit ruling intact. https://www.reuters.com/article/us-usa-court-gayconversion/u-s-top-court-rejects-gay-conversion-therapy-ban-challenge-idUSKBN17X1SJ</p> <p>In 2018, AB 2943 was introduced in the California State House and would classify the selling or advertising of gay conversion therapy as a fraudulent business practice. The bill passed and is currently in the state senate and has not been vote on yet. <i>See</i> Casey Tolan, <i>As a Gay Teen, Evan Low Thought About Changing His Sexuality. Now He’s Fighting Conversion Therapy in California</i>, The Mercury News, May 27, 2018 https://www.mercurynews.com/2018/05/27/evan-low-lgbt-conversion-therapy-california/. The bill has faced major pushback from religious groups who say it could prevent the sale or reading of the Bible. <i>See</i> Sophia Bollag, <i>Group Fights California Bill to Declare Gay Conversion Therapy a Fraud</i>, The Mercury News, June 13, 2018 https://www.mercurynews.com/2018/06/13/group-fights-california-bill-to-declare-gay-conversion-therapy-a-fraud/.</p> |

| STATE | LEGISLATION UPDATE |
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| <p>Colorado</p> | <p>HB 1156 prohibits a licensed physician specializing in psychiatry or a licensed or registered mental health care provider from engaging in conversion therapy with a minor (under the age of 18). Licensed mental health professionals engaging in SOCE are subject to disciplinary action by the appropriate licensing board.</p> <p>“HB 1156 died in Senate Committee on State, Veterans, & Military Affairs on March 22, 2017.”</p> <p>In 2018, the measure was reintroduced as HB 1245 and it passed the state house, but faces strong opposition by the Republican majority in the state senate as a limitation of free speech, even though the bill would not affect churches or the therapy for people who are 18 or older. Joey Bunch, <i>Colorado House Passes Bill, Again, to Ban Conversion Therapy for Minors</i>, Colorado Politics, April 4, 2018 https://coloradopolitics.com/colorado-conversion-therapy/.</p> |
| <p>Connecticut</p> | <p>HB 6695 declares its purpose as “the protection of youth from conversion therapy.” SEXUAL ORIENTATION—THERAPY AND THERAPISTS—CONVERSION, 2017 Conn. Legis. Serv. P.A. 17-5 (H.B. 6695) (WEST).</p> <p>The statute prohibits “health care providers”, defined to include, inter alia, licensed medical practitioners, therapists, and counselors, from practicing or administering conversion therapy to minors (under the age of 18). Engaging in conversion therapy is considered unprofessional conduct subject to disciplinary action by the Department of Public Health. Administering such therapy while conducting trade or commerce, constitutes an unfair or deceptive trade practice, such that an individual may bring a consumer fraud claim against SOCE practitioners.</p> <p>Additionally, public funds may not be spent “for the purpose of (1) practicing conversion therapy, (2) referring a person to a health care provider for conversion therapy, (3) referring any individual to any person engaged in trade or commerce for conversion therapy, (4) health benefits coverage for conversion therapy, or (5) a grant or contract with any entity to conduct conversion therapy or refer any person to a health care provider for conversion therapy or to a person engaged in trade or commerce to provide conversion therapy.” <i>Id.</i></p> <p>REP. CURREY (11th): “As a gay youth and now a gay adult, never was I broken nor in need of being fixed. Being gay is not a disease and, therefore, does not require a cure. Unfortunately, though, this is what many of our LGBTQ youths are being told; most often by parents who aren’t equipped with a level of understanding of what it means to be gay and how to best support and protect their LGBTQ children. This lack of acceptance may lead to a number of reactions, including the cruel and destructive practice of conversion therapy... This practice or treatment is not science, it’s science fiction. And over 40 of our nations and Connecticut’s leading medical mental health and human service professionals organizations agree and do not recognize conversion therapy as a legitimate therapy and have condemned this practice. This includes the American Academy of Pediatrics, the American Medical Association, and even the United Nation’s Committee Against Torture because that’s exactly what conversion therapy is to these children, it’s torture.” Connecticut House Transcript, p. 10, 5/2/2017.</p> |

| STATE | LEGISLATION UPDATE |
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| Delaware | <p>As of July 23, 2018, Title 24, Section 1731 of the Delaware Code lists “conversion therapy” among the forms of “unprofessional conduct” for medical professionals. Accordingly, licensed medical professional are subject to fines and possible loss of their license for engaging in conversion therapy: “A person to whom a certificate to practice medicine in this State has been issued may be disciplined by the Board for unprofessional conduct, as defined in subsection (b) of this section, by means of levying a fine, or by the restriction, suspension, or revocation, either permanent or temporary, of that person's certificate to practice medicine, or by other appropriate action, which may include a requirement that a person who is disciplined must complete specified continuing education courses.”</p> |
| District of Columbia | <p>Chapter 12A prohibits a provider of mental health services from engaging in sexual orientation change efforts with a consumer who is a minor. D.C. Code Ann. § 7-1231.14a (West).</p> <p>Engaging in SOCE with minors is considered “a failure to conform to acceptable conduct within the mental health profession...and shall subject a provider to discipline and penalties.” However, the definition of sexual orientation change efforts does <u>not</u> include:</p> <p>“counseling for a consumer seeking to transition from one gender to another,” or “counseling that provides acceptance, support, and understanding of a consumer or facilitates a consumer's coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices in a manner that does not seek to change a consumer's sexual orientation.” D.C. Code Ann. § 7-1231.02 (West).</p> |

| STATE | LEGISLATION UPDATE |
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| Florida | <p>HB 273 prohibits persons who are licensed to provide professional counseling and various health practitioners from engaging in conversion therapy with person who is younger than a specified age.</p> <p>HB 273 died in House Health Quality Subcommittee on May 5, 2017.</p> <p>HB 717 was introduced in 2018 to ban conversion therapy, but died in the House Health Quality Subcommittee on March 10, 2018.</p> <p>Despite failed attempts on a statewide level, at least 20 cities, municipalities or counties ban conversion therapy through local ordinance. These locations include:</p> <ul style="list-style-type: none"> • Miami Beach, Code ch. 70, art.VII, §70-406 (2016) • Wilton Manors, Code ch. 12, art. IV§12-12 (2016) • Miami, Code §37-13 (2016) • West Palm Beach, Code ch. 54, art. V,§54-173 (2016) • Bay Harbor Islands, Code ch. 23, art. I, §23-5.2 (2016) • Boynton Beach, Code ch. 15, art. XIII, §15-136 (2017) • Lake Worth, Code ch. 15, art. VII, §15-103 (2017) • El Portal, Code ch. 5.5, §5.5-2 (2017) • Key West, Code ch. 42, §42-118 (2017) • North Bay Village, Code ch. 137, §137.02 (2017) • Tampa, Code ch. 14, art. X, §14.312 (2017) • Delray Beach, Code ch. 133, §133.02 (2017) • Riviera Beach, Code ch. 12, art. I, §12.26 (2017) • Wellington, Code ch. 36, art. V, §36-47 (2017) • Greenacres, Code ch. 8, art. III, §8-74 (2017) • Boca Raton, Code ch. 9, art. VI, §9-106 (2017) • Oakland Park, Code ch. 8, art. VIII, §8-128 (2017) • Palm Beach County, Code ch. 18, art. V, §18-125 (2017) • Broward County, Code ch. 16 1/2, art. IX, §16 1/2- 168 (2018) • Gainesville, Code ch. 17, art. IV, §17-38 (2018) |
| Georgia | No Action |

| STATE | LEGISLATION UPDATE |
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| Hawaii | <p>HB 1266 prohibits persons licensed to provide professional counseling from engaging in, attempting to engage in, or advertising SOCE to persons under 18 years of age. The bill includes legislative findings regarding health risks that SOCE pose to LGBT youth.</p> <p>The purpose of the bill is to “protect the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, against exposure to serious harms caused by sexual orientation change efforts.”</p> <p>HB 1266 was referred to CPC and House Committee on Judiciary (JUD) on January 30, 2017.”</p> <p>In 2018, SB 270 was introduced and prohibits specific state-licensed persons who are licensed to provide professional counseling from engaging in, attempting to engage in, or advertising sexual orientation change efforts on minors. Establishes the sexual orientation counseling task force to address the concerns of minors seeking counseling on sexual orientation, gender identity, gender expressions, and related behaviors. SB 270 passed both houses and was signed by the Governor on May 25, 2018, making Hawaii the 12th state to ban the practice. <i>See</i> Trudy Ring, <i>Hawaii Bans ‘Ex-gay’ Therapy on Minors</i>, <i>The Advocate</i>, May 25, 2018 https://www.advocate.com/politics/2018/5/25/hawaii-bans-ex-gay-therapy-minors.</p> |
| Idaho | <p>HB 62 prohibits a person who is licensed to provide professional counseling from engaging in conversion therapy with a person under eighteen (18) years of age or a vulnerable adult. Administering SOCE is considered unprofessional conduct subject to discipline by the relevant licensing entity.</p> <p>HB 62 states that “Idaho has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual and transgender youth, and in protecting its minors against exposure to serious harms caused by conversion therapy.”</p> <p>HB 62 was referred to House Committee on Ways and Means on January 27, 2017.</p> <p>In 2018, HB 398 was introduced to protect patients under eighteen (18) years of age from the harmful effects of conversion therapy and provides that a licensed, professional counselor shall not engage in the practice of conversion therapy. The Bill was referred to the House Committee on Ways and Means on January 25, 2018.</p> |

| STATE | LEGISLATION UPDATE |
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| <p>Illinois</p> | <p>HB 217, the Youth Mental Health Protection Act (YMHPA) states its purpose as protecting “lesbian, gay, bisexual, and transgender youth from sexual orientation change efforts, also known as conversion therapy.” 405 Ill. Comp. Stat. Ann. 48/10. The statute prohibits “mental health providers,” defined to include licensed mental health professionals, from engaging in SOCE with minors (under the age of 18). 405 Ill. Comp. Stat. Ann. 48/15; 405 Ill. Comp. Stat. Ann. 48/20. The YMHPA makes it an unlawful practice for any person or entity conducting trade or commerce from falsely advertising or offering conversion therapy, in which such services “represent homosexuality as a mental disease, disorder, or illness.” 405 Ill. Comp. Stat. Ann. 48/25. Mental health providers engaging in SOCE may be found to have engaged in unprofessional conduct and subject to disciplinary review by the licensing entity or other review board.</p> <p>The law includes legislative findings that “[b]eing lesbian, gay, or bisexual is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years.” These findings discuss the APA Task Force report, the APA’s position statement, and other organizations’ position statements. “Illinois has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth and in protecting its minors against exposure to serious harms caused by sexual orientation change efforts.” 405 Ill. Comp. Stat. Ann. 48/30.</p> <p>A group of pastors recently challenged the constitutionality of the YMHPA and sought a declaratory judgment stating that religious counseling services fall outside of the scope of “trade or commerce” even when pastors are compensated for their work. <i>Pastors Protecting Youth v. Madigan</i>, 237 F. Supp. 3d 746 (N.D. Ill. 2017). The District Court dismissed the case for lack of standing finding that the YMHPA’s definition of “trade or commerce” was unlikely to apply to free religious counseling services in contrast to commercial services. The pastors nonetheless viewed the outcome as a victory for interpreting the YMHPA as exempting pastor counseling from liability. 405 Ill. Comp. Stat. Ann. 48/5.</p> |
| <p>Indiana</p> | <p>No Action</p> |
| <p>Iowa</p> | <p>House File (HF) 93 was introduced on January 24, 2017, and prohibited mental health provided from engaging in SOCE with patients under the age of 18. The bill was referred to the Committee on Human Resources and no further action has been taken. A similar Senate bill had been introduced in January as well.</p> <p>However, on February 23, 2017, a revised version of the house bill (HF 424) was introduced. This pending bill removed the age limitation, thereby proposing a ban on SOCE for patients of all ages. The bill was again referred to the Committee on Human Resources.</p> |

| STATE | LEGISLATION UPDATE |
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| Kansas | <p>SB 172 prohibits any licensed physician from performing conversion therapy with an individual under 18 years of age. Physicians practicing conversion therapy constitutes unprofessional conduct, which is subject to discipline by the state board.</p> <p>SB 172 was introduced and referred to Senate Committee on Public Health and Welfare on February 8, 2017.</p> |
| Kentucky | <p>HB 342 prohibits licensed physicians from: (a) engaging in conversion therapy with a person under 18 years of age; (b) receiving monetary compensation in exchange for conversion therapy; or (c) advertising for the provision of conversion therapy.”</p> <p>HB 342 was introduced on February 13, 2017 and referred to House Committee on Health & Family Services on February 15, 2017.</p> <p>In 2018, HB 258 was introduced to prohibit practitioners from engaging in conversion therapy, including the compensation and advertisement for conversion therapy; require violations to be subject to board discipline and false claims laws; prohibit public funds from being used for conversion therapy. It was introduced on January 25, 2018 and died in the House Licensing, Occupations, and Administrative Regulations Committee on April 14, 2018.</p> |
| Louisiana | No Action. |
| Maine | <p>LD 912 proposes to amend the current law to establish that practices or treatments that seek to change an individual’s sexual orientation or gender identity are prohibited for certain licensed professionals.</p> <p>LD 912 was introduced and referred to Committee on Labor, Commerce, Research and Economic Development on March 7, 2017. It was carried over to any special or regular session, or both, of the 128th Legislature pursuant to Joint Order HP 1138.</p> <p>The Bill passed the Democratic-controlled House 80-55 on April 17, 2018. It passed the Republican-controlled Senate 19-12 on June 27, 2018. It is likely that Maine’s Republican Governor will veto the legislation.</p> <p>https://www.metroweekly.com/2018/06/maine-lawmakers-approve-conversion-therapy-bill-but-veto-may-be-imminent/.</p> |
| Maryland | <p>In 2018, SB 1028 was introduced prohibiting certain mental health or child care practitioners from engaging in conversion therapy with individuals who are minors; providing that a certain mental health or child care practitioner who engages in conversion therapy with a minor shall be considered to have engaged in unprofessional conduct subject to disciplinary action.</p> <p>Republican Delegate Meagan Simonaire spoke about her own parents push for her to undergo conversion therapy. The bill was passed by both houses and signed by the Governor on May 15, 2018. <i>See Maryland Bans ‘Gay Conversion Therapy’ for Minors</i>, Associated Press May 15, 2018 https://wtop.com/maryland/2018/05/maryland-bans-gay-conversion-therapy-for-minors/.</p> |

| STATE | LEGISLATION UPDATE |
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| Massachusetts | <p>H.1190 prohibits licensed professionals from advertising for or engaging in sexual orientation and gender identity change efforts with a patient less than eighteen (18) years of age. Any licensed professional violating this prohibition shall be such subject to discipline by the appropriate licensing board, which may include suspension or revocation of license. It also includes provisions that would require a “mandated reporter” to notify authorities for a possible investigation by the state – meaning it could start a process where a parent who seeks conversion therapy for a child could have that child taken away by the state’s social-services agency.</p> <p>H.1190 discharged to Joint Committee on Children, Families and Persons with Disabilities on April 6, 2017. Reported favorably by committee and referred to the committee on Health Care Financing on July 13, 2017. Committee recommended ought to pass with an amendment, substituting therefor a bill with the same title, H4014 on November 7, 2017. Referred to the committee on House Ways and Means with the amendment pending on November 7, 2017.</p> <p>On June 27, 2018, The Massachusetts House passed H. 4664, “An Act relative to abusive practices to change sexual orientation and gender identity in minors” —on a 137-14 vote—a bill to ban gay conversion therapy for minors. http://www.bostonherald.com/news/local_politics/2018/06/massachusetts_house_approves_gay_conversion_therapy_ban</p> <p>The Senate approved the bill by voice vote in the last minutes of the legislative session on August 1, 2018, but failed to make technical changes to mirror the version that passed the House, thereby preventing it from going to the Governor’s desk. <i>See</i>, http://www.washingtonblade.com/2018/08/16/bill-to-ban-conversion-therapy-dies-in-mass/</p> |
| Michigan | <p>In 2018, HB 5550 was introduced to prohibit a mental health professional from engaging in conversion therapy with a minor and subjected them to sanctions for violating it. The bill was referred to the House Health Policy Committee on February 13, 2018.</p> |
| Minnesota | <p>“SF 1854 introduced and referred to Senate Committee on Health and Human Services Finance and Policy on March 6, 2017. HF 2246 introduced and referred to House Committee on Health and Human Services Reform on March 8, 2017. HF 2281 introduced and referred to House Committee on Health and Human Services Reform on March 9, 2017.”</p> <p>All three proposed bills contain conversion therapy ban including banning conversion therapy for “vulnerable adults.”</p> <p>All three bills exclude from definition of conversion therapy: “(1) counseling that provides assistance to a person seeking to transition from one gender to another; (2) counseling that facilitates a client's coping skills, social support, and identity exploration and development; or (3) sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices.”</p> <p>The proposed legislation has not made it out of the House Committee.</p> |

| STATE | LEGISLATION UPDATE |
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| Mississippi | No Action |
| Missouri | In 2018, HB 2141 was introduced on January 17, 2018 to prohibit mental health professionals from engaging in conversion therapy or sexual orientation change efforts with minors. The bill was referred to the House General Laws Committee and died on May 18, 2018. |
| Montana | No Action |
| Nebraska | LR 153, “Interim study to examine the existence and practice of conversion therapy in Nebraska for minors”, introduced and referred to Executive Board May 9, 2017. Referred to Judiciary Committee May 15, 2017.” |
| Nevada | <p>The purpose of SB 201 is “to protect the well-being of children who are under 18 years of age by prohibiting such licensed health care professionals from providing children with conversion therapies, which are any practices or treatments that seek to change the sexual orientation or gender identity of the children.” HEALTH CARE PROVIDERS—SEXUAL ORIENTATION—CHILDREN AND MINORS, 2017 Nevada Laws Ch. 23 (S.B. 201).</p> <p>SB 201 amends Chapter 629 of NRS to prohibit “psychotherapists,” defined as licensed mental health and medical professionals, from providing any conversion therapy to minors (under the age of 18). Any psychotherapists administering conversion therapy to minors are subject to disciplinary action by the applicable state licensing boards. Legislative findings report that “[a] significant number of well-known and well-respected professional and scientific organizations have publicly denounced or disavowed conversion therapies because of the highly doubtful effectiveness and highly probable harmfulness of such therapies.” The Legislature also declared that “there is a legitimate and compelling need to protect the well-being of children who are under 18 years of age from the harmful and destructive effects of conversion therapies by prohibiting certain licensed health care professionals from providing children with conversion therapies because such therapies have not been proven to be medically or clinically effective but have been shown to have a high potential to cause substantial harm to the physical and psychological well-being of children, who are much more vulnerable to the potentially traumatic effects of such intensive conversion therapies.” <i>Id.</i></p> <p>SB 201 passed the Senate by a vote of 31-8 on May 11, 2017, and was signed by Governor Sandoval on May 17, 2017.</p> |
| New Hampshire | <p>HB 587 was introduced in 2017 and passed the state house on February 8, 2018 and the state senate with amendments on April 19, 2018. The state house accepted the amendments and the Governor signed the bill on June 11, 2018.</p> <p>The bill prohibits persons licensed to provide counseling services to propose to engage or engage in conversion therapy with a person under 18 years of age. Explicitly excludes in conversion therapy definition: “counseling that provides 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 identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity.”</p> |

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| <p>New Jersey</p> | <p>N.J. Stat. Ann. §§ 45:1-55 prohibits licensed mental health professionals from providing SOCE to minors (under the age of 18). N.J. Stat. Ann. § 45:1-55 (West). The law includes legislative findings that “[b]eing lesbian, gay, or bisexual is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years.” N.J. Stat. Ann. § 45:1-54 (West). These findings discuss the APA Task Force report, the position statements of the APA and other organizations. “New Jersey has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by sexual orientation change efforts.” <i>Id.</i></p> <p>The Third Circuit upheld New Jersey’s anti-SOCE law and rejected a challenge brought by licensed counselors alleging that the New Jersey statute violated their First Amendment rights and the rights of their patients. <i>King v. Governor of the State of New Jersey</i>, 767 F.3d 216 (3d Cir. 2014).</p> <p>The Third Circuit also rejected a similar challenge brought by a minor seeking to undergo SOCE counseling and by his parents alleging that the statute violated their First Amendment rights and fundamental parental rights. <i>See Doe ex rel. Doe v. Governor of New Jersey</i>, 783 F.3d 150 (3d Cir. 2015). The U.S. Supreme Court rejected petitions for certiorari in both the <i>King and Doe</i> cases, thereby allowing the law to stand. <i>See King v. Christie</i>, 135 S. Ct. 2048 (2015); <i>Doe v. Christie</i>, 136 S. Ct. 1155 (2016).</p> |
| <p>New Mexico</p> | <p>SB 121 made it illegal for a licensed mental health professional to provide conversion therapy to any minors (under the age of 18). HEALTH CARE PROVIDERS—DISCIPLINARY PROCEEDINGS—CONVERSION THERAPY, 2017 New Mexico Laws Ch. 132 (S.B. 121). The bill did not include in definition of conversion therapy: “counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation”, or “mental health services that facilitate a person’s coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation.” <i>Id.</i></p> <p>The board may “withhold, deny, revoke or suspend a psychologist or psychologist associate license...or otherwise discipline a licensed psychologist or psychologist associate upon proof that the applicant, licensed psychologist or psychologist associate... uses conversion therapy on a minor.” <i>Id.</i></p> |

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| New York | <p>AB 3977 passed Assembly and referred to Senate Committee on Higher Education on March 28, 2017.”</p> <p>Legislative findings noting that being Lesbian, Gay, Bisexual, or Transgender is not a disease. Highlighting reports of professional medical associations outlining harm of conversion therapy.</p> <p>Deems it professional misconduct for a mental health professional to engage in conversion therapy with an individual under the age of 18.</p> <p>Definition of conversion therapy excludes: “counseling for a person seeking to transition from one gender to another, or psychotherapies that: (A) provide acceptance, support and understanding of patients or the facilitation of patients' coping, social support and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and (B) do not seek to change sexual orientation.”</p> <p>The bill died in the Senate and was returned to the state House on January 3, 2018. It passed the state House again on April 30, 2018 and was referred to the Senate Higher Education Committee.</p> <p>While statewide efforts to ban conversion therapy are pending, at least six cities, municipalities or counties ban conversion therapy through local ordinance. These locations include:</p> <ul style="list-style-type: none"> • Erie County, Local Law No. 5-2-2017 (2018) • New York City, Code ch. 5, §20-825 (2018) • Albany, Code ch. 152, §152-2 (2018) • Ulster County, Local Law No. 11 of 2018 (2018) • Rochester, Code ch. 95A, §95A-5 (2018) • Albany County, Local Law No. “E” for 2018 (2018) |
| North Carolina | No Action |
| North Dakota | No Action |

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| <p>Ohio</p> | <p>SB 126 introduced on April 5, 2017. SB 126 referred to Senate Committee on Health, Human Services and Medicaid on April 26, 2017.</p> <p>The Ohio Senate bill would prohibit health care professionals from engaging in conversion therapy when providing mental health treatment to a minor patient.</p> <p>The bill does not prohibit:</p> <p>“(1)Assisting a patient who seeks to transition, is in the process of transitioning, or has transitioned from one gender to another;</p> <p>(2) Providing a patient with acceptance, support, and understanding or facilitating a patient's coping, social support, or identity exploration and development;</p> <p>(3) Providing a patient with sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices;</p> <p>(4) Counseling that does not seek to change a patient's sexual orientation.”</p> <p>While Ohio’s statewide ban is pending, at least five cities ban conversion therapy through local ordinance. These cities include:</p> <ul style="list-style-type: none"> • Cincinnati, Code ch. 769 (2015) • Toledo, Code ch. 554 (2017) • Columbus, City Codes§2331.10 (2017) • Dayton, Code §135.04 (2017) • Athens, Code ch. 3.12 (2017) |
| <p>Oklahoma</p> | <p>No Action</p> |
| <p>Oregon</p> | <p>HB 2307 prohibits a mental health care or social health professional from practicing conversion therapy if the recipient of the conversion therapy is a minor (under the age of 18). Or. Rev. Stat. Ann. § 675.850 (West).</p> <p>The law’s definition of conversion therapy does not include:</p> <p>“[c]ounseling that assists a client who is seeking to undergo a gender transition or who is in the process of undergoing a gender transition” or</p> <p>“[c]ounseling that provides a client with acceptance, support and understanding, or counseling that facilitates a client's coping, social support and identity exploration or development, including counseling in the form of sexual orientation-neutral or gender identity-neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, as long as the counseling is not provided for the purpose of attempting to change the client's sexual orientation or gender identity.”</p> <p>Any state board that regulates licensees may impose any form of discipline on mental health care or social health professionals administering SOCE.</p> |

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| <p>Pennsylvania</p> | <p>Both the Pennsylvania House and Senate proposed bans in the House and the Senate. SB 44 was introduced and referred to Senate Committee on Consumer Protection and Professional Licensure on January 12, 2017. HB 1177 was introduced and referred to House Committee on Health on April 12, 2017.</p> <p>Both bills ban licensed mental health professionals from engaging in conversion therapy. Like other proposed and enacted laws from other states, the definition of conversion therapy explicitly excludes: “counseling for an individual undergoing gender transition, counseling that provides acceptance, support and understanding of an individual or facilitates an individual's coping, social support and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, or counseling that does not seek to change sexual orientation or gender identity.”</p> <p>While statewide bans remain pending, at least nine cities ban conversion therapy through local ordinance. These cities include:</p> <ul style="list-style-type: none"> • Pittsburgh, Code ch. 628, §628.02 (2016) • Philadelphia, Code ch. 9-900, §9-903 (2017) • Allentown, Bus. Reg. and Tax. Code art. 320, §320.02 (2017) • Reading, Code ch. 185, §185.102 (2017) • Doylestown, Code ch.1, part G, §1-359(5) (2017) • State College, Code ch. IX, part J, §9-1002 (2018) • Yardley, Code ch. 1, part 4, §1-444 (2018) • Bellefonte, Ordinance 071618-01 (2018) • Bethlehem, Code art. 1122, §1122.03 (2018) |

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| Rhode Island | <p>The “Prevention of Conversion Therapy for Children Act” was signed by Governor Raimondo on July 18, 2017. https://legiscan.com/RI/bill/H5277/2017. The law contains extensive legislative findings containing information about the harms of conversion therapy, including reports on the topic by the American Psychiatric Association, American Academy of Pediatrics, American Medical Association Council on Scientific Affairs, and other organizations of health professionals. 2017 Rhode Island House Bill No. 5277, Rhode Island 2017 Legislative Session.</p> <p>The enacted legislation makes it illegal for a licensed professional to engage in conversion therapy with a minor, or advertise conversion therapy to a minor. The ban on the “advertising” of conversion therapy seems to go farther than other State bans to limit a licensed health professional’s ability to refer minor patients to ministries engaging in conversion therapy or other sexual orientation change efforts.</p> <p>Includes a prohibition on state funds being used to fund conversion therapy. Prohibits State grants for “any entity that conducts conversion therapy or refers individuals for conversion therapy.”</p> <p>Definition of conversion therapy excludes: “counseling that provides 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 identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual’s sexual orientation or gender identity.”</p> |
| South Carolina | No Action |
| South Dakota | No Action |
| Tennessee | No Action |
| Texas | <p>HB 569 introduced on December 12, 2016. HB 569 referred to House Committee on State Affairs on February 28, 2017.</p> <p>The bill would label as “unprofessional conduct” any efforts by a mental health provider to: “change the child’s or minor’s sexual orientation, including by attempting to change the child’s or minor’s behavior or gender identity or expression or eliminate or reduce the child’s or minor’s sexual or romantic attractions or feelings toward individuals of the same sex.”</p> <p>The bill excludes from its labeling of unprofessional conduct counseling that: “provides acceptance, support, and understanding of a child or minor or facilitates a child or minor’s coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, if that counseling does not seek to change sexual orientation or gender identity . . . or provides support to a child or minor undergoing gender transition in accordance with established standards of care.”</p> <p>Language in SB 651, introduced on January 27, 2017, may protect therapists that practice conversion therapy. https://mic.com/articles/168248/new-texas-bill-may-let-therapists-practice-conversion-therapy-in-name-of-religious-freedom#.eqJM4fA3X</p> |
| Utah | No Action |

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| <p>Vermont</p> | <p>Chapter 196 prohibits a mental health care provider from using conversion therapy with a client who is a minor (under the age of 18). Vt. Stat. Ann. tit. 18, § 8352 (West). Mental health care providers administering conversion therapy to minors are deemed to have engaged in “unprofessional conduct” subject to discipline. Vt. Stat. Ann. tit. 18, § 8353 (West).</p> <p>Definition of conversion therapy in the statute does not include psychotherapies that: “provide support to an individual undergoing gender transition” or “provide acceptance, support, and understanding of clients or the facilitation of clients’ coping, social support, and identity exploration and development, including sexual-orientation-neutral or gender-identity-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices without seeking to change an individual’s sexual orientation or gender identity.” Vt. Stat. Ann. tit. 18, § 8351 (West).</p> <p>However, H.B. 230 amends § 8352 allowing minors seeking to undergo SOCE the ability to consent to receive “outpatient mental health treatment.” Signed into law by Governor Phil Scott on May 17, 2017. VERMONT BILL TEXT. 2017 Vermont House Bill No. 230, Vermont 2017-2018 Legislative Session, 2017 Vermont House Bill No. 230, Vermont 2017-2018 Legislative Session.</p> <p>§ 8350 provides that “[a] minor may give consent to receive any legally authorized outpatient treatment from a mental health professional, as defined in section 7101 of this title. Consent under this section shall not be subject to disaffirmance due to minority of the person consenting. The consent of a parent or legal guardian shall not be necessary to authorize outpatient treatment. As used in this section, ‘outpatient treatment’ means psychotherapy and other counseling services that are supportive, but not prescription drugs.”</p> |
| <p>Virginia</p> | <p>In 2018, SB 245 was introduced to prohibit any health care provider or person who performs counseling as part of his training for any profession licensed by a regulatory board of the Department of Health Professions from engaging in conversion therapy with any person under 18 years of age. It was referred to the Senate’s Committee on Education and Health and rejected by the committee on January 18, 2018. <i>See</i> Katie O’Connor, <i>Committee Drops Bill to Outlaw Conversion Therapy for LGBTQ Youth</i>, Richmond Times-Dispatch, January 18, 2018 http://www.richmond.com/news/virginia/government-politics/general-assembly/committee-drops-bill-to-outlaw-conversion-therapy-for-lgbtq-youth/article_65d66cb0-99c0-5935-b4d4-8479a476da65.html</p> |

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| Washington | <p>SB 5722 would categorize performing conversion therapy on someone under the age of 18 as “unprofessional conduct.”</p> <p>The bill’s definition does not explicitly state what is not included in the definition of conversion therapy, and thus may have a broader reach than other enacted and proposed state bans. It does not prohibit counseling to provide support about sexual orientation and gender identity issues. The state house also added language covering unlicensed counselors to the bill, prohibiting anyone operating with a religious organization, religious denomination or church from performing conversion therapy. <i>See</i> Morgan Gstalter, <i>Washington State Outlaws Gay Conversion Therapy for Minors</i>, The Hill, March 29, 2018 http://thehill.com/homenews/state-watch/380796-washington-state-outlaws-gay-conversion-therapy-for-minors.</p> <p>The bill passed the senate, passed the state house with amendments and the state senate concurred with the amendments. The Governor signed the bill on March 28, 2018.</p> <p>Prior to passage of SB 5722, Seattle passed a local ordinance banning conversion therapy. Code ch. 14.21, §14.21.040 (2016)</p> |
| West Virginia | <p>The West Virginia House and Senate have identical pending legislation banning conversion therapy. HB 2650 was introduced and referred to House Health and Human Resources on February 22, 2017. SB 435 was introduced and referred to Senate Committee on Health and Human Services on February 24, 2017.</p> <p>HB 2650 and SB 435</p> <p>The house bill contains extensive legislative findings highlighting studies by various health organizations surrounding the ineffectiveness and harm of conversion therapy. “A mental health provider may not engage in sexual orientation change efforts with a person under the age of eighteen under any circumstances.”</p> <p>The bill’s definition of conversion therapy or sexual orientation change efforts does not include:</p> <p>“counseling or mental health services that provide acceptance, support, and understanding of a person without seeking to change sexual orientation or mental health services that facilitate a person’s coping, social support, and gender identity exploration and development, including sexual orientation neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change sexual orientation.”</p> |

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| Wisconsin | <p>Senate Bill 261 was introduced and referred to the Senate Committee on Health & Human Services on May 17, 2017.</p> <p>The bill would prohibit any “mental health provider” from engaging in conversion therapy with an individual under the age of 18.</p> <p>The bill’s definition of “conversion therapy” explicitly excludes: “Counseling or therapy that provides acceptance, support, and understanding of the individual or the facilitation of an individual’s coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices,” or “Counseling for an individual seeking to transition from one gender to another.”</p> <p>The bill failed to pass pursuant to Senate Joint Resolution 1 on March 28, 2018.</p> <p>Despite failed attempts at a statewide ban, at least two cities ban conversion therapy through local ordinance. These cities include:</p> <ul style="list-style-type: none"> • Milwaukee, Code ch. 75, §75-19 (2018) • Madison, Code ch. 23, §23.60 (2018). |
| Wyoming | No Action |