

Ban on Maryland Counseling for Struggling LGBTQ Teens Continues With New Defendant

In *Doyle v. Hogan*, the 4th Circuit Court of Appeals sent the case back to the district court Tuesday, leaving the door open to amend the complaint to add Maryland's state board of professional counselors and therapists as the defendants instead of the governor and attorney governor.

Liberty Counsel represents Christopher Doyle, a licensed professional counselor in Virginia and Maryland. Doyle is challenging Maryland's SB 1028, which was signed into law by Gov. Larry Hogan and went into effect on Oct. 1, 2018. Doyle counsels minors who voluntarily seek his help and are struggling with unwanted same-sex attractions, behaviors and identity. Doyle's counseling is provided solely through speech, but it is prohibited by Maryland's counseling ban because the state disapproves Doyle's viewpoint.

The lower court issued an opinion finding that the governor and attorney general lack enforcement authority and are therefore not proper defendants. In reaching this conclusion, the Court of Appeals disagreed with U.S. District Judge Deborah Chasanow, who ruled that the governor and attorney general were proper defendants. The Court of Appeals then stated that Maryland's state board of professional counselors and therapists can enforce the law and is a proper defendant.

Liberty Counsel will now file an amended complaint in the district court to list the state board of professional counselors and therapists as a defendant. At the end of the day, it will likely be the same attorney general defending the case as defended the original case.

The 4th Circuit did say this case raises "an interesting First

Amendment question that would be a matter of first impression in this Circuit.”

The district court previously refused to apply the Supreme Court’s decision in *National Institute for Family and Life Advocates v. Becerra* (NIFLA). The district court relied upon the decisions in *Pickup v. Brown* and *King v. Governor of New Jersey*, both of which held that counseling bans like Maryland’s are permissible under the First Amendment because licensed counselors engage in “professional speech or conduct” and not fully protected speech when counseling clients. But in NIFLA, the Supreme Court specifically overruled both decisions by name, writing there is no such category as “professional speech.” NIFLA warned about creating speech categories and then relegating the speech to a lower First Amendment protection. The Maryland district court ignored NIFLA’s abrogation of *Pickup* and *King* and repeated their error by assigning less First Amendment protection to Doyle’s counseling speech.

Last year, Liberty Counsel successfully struck down two similar laws in which the Eleventh Circuit Court of Appeals ruled that the change counsel bans violate the First Amendment.

Liberty Counsel’s founder and Chairman Mat Staver said, “The Maryland counseling ban condemns minors to struggle with unwanted sexual and gender identities without the ability to seek the help they want. This is an unconstitutional speech restriction that violates the First Amendment because counselors should be permitted to assist clients in their self-determined goals. The Supreme Court has already ruled that professional speech is not a First Amendment orphan. It is just a matter of time before we bring one of these laws to the Supreme Court and strike down all of them throughout the country.” {eoa}

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