

TO: Health & Human Services Committee
FROM: Tom Venzor, Executive Director
Nebraska Catholic Conference
DATE: February 29, 2023
RE: LB179 (Counseling Censorship) (Oppose)

The Nebraska Catholic Conference advocates for the public policy interests of the Catholic Church and advances the Gospel of Life through engaging, educating, and empowering public officials, Catholic laity, and the general public.

The Catholic faith recognizes the supreme dignity of every person. Each of us is made in the image and likeness of God. The only appropriate response to this fundamental fact is charity, which is to will the good of the other. Charity extends to every aspect of our lives, including the ways we counsel and assist others in their life's journey.

LB179 attempts to address conversion therapy, gender identity conversion therapy, and sexual orientation conversion therapy which have been utilized in counseling situations. As defined by LB179, "conversion therapy" would include not only problematic practices which are to be condemned but also includes a number of benign practices. The task before us is to make critical distinctions between these two things.

This Committee and the Judiciary Committee have heard numerous heartbreaking stories this year and over the last several years ago when LB167 (2019) and LB231 (2021) were considered. It seems universally acknowledged that the problematic practices of conversion therapy are unhelpful, unsafe, and unethical. Professional licensing bodies can already discipline a licensed professional for engaging in these inappropriate techniques.¹

LB179 is not simply restricted to harmful practices of conversion therapy. LB179 also bans practices such as talk therapy, which amounts to counseling censorship. This therapeutic technique helps clients choose their counseling goals through the ability to explore the issues they are presenting.

Consider the following example which would be captured by LB179's problematic definition of conversion therapy. An 18-year old male experiences sexual or romantic attractions for somebody of the same sex. He considers these unwanted and undesired attractions. Rather than act on these attractions, he would prefer to live chastity by integrating his human sexuality with his moral or religious convictions. LB179 would prohibit a counselor from helping him realize

¹ For example, in a statement opposing conversion therapy, the American Counseling Association states that this practices "violates our Code of Ethics." "Conversion Therapy Bans," available at <https://www.counseling.org/government-affairs/state-issues/conversion-therapy-bans> (last accessed on Feb. 28, 2023).

his counseling goals. To provide contrast, if the attraction were to somebody of the opposite sex, this same 18-year old could seek such assistance to live chastity without any issue. This unequal treatment raises serious constitutional problems for LB179.²

LB179 also purports to provide a religious accommodation.³ Besides being practically meaningless, it ultimately proposes a false understanding of the health care provider and their moral or religious commitments. Section 3(3) assumes that a person can strictly separate their “pastoral and religious” ministry from their “capacity [as] a health care professional,” as if one were hanging up their coat at the beginning of the workday only to be thrown back on when they leave the office. Certainly, counselors must suspend judgment and refrain from imposing their values onto their clients. But this sub-section would force health care professionals who are clergy members or religious counselors—an undefined and otherwise unrecognizable statutory term—to check their religious and moral values at the door. This treats pastoral and religious considerations as having no bearing on the overall well-being and health of a client or patient.⁴ This faulty philosophical notion of forcing a separation between pastoral/religious values and health care is especially problematic when the patient or client seeks a health care professional who understands and respects their moral or religious commitments and seeks out a health care professional who can bring those moral and religious values to the counselor-client relationship.

The Nebraska Catholic Conference respectfully requests that you not advance LB179 to General File. Thank you for your time and consideration.

² The 11th Circuit Court of Appeals reviewed a similar proposal and considered it unconstitutional. *See Otto v. City of Boca Raton*, No. 19-10604 (11th Cir. Nov. 11, 2020). In *Otto*, a 3-judge panel of the 11th Circuit struck down a so-called conversion therapy ban based on its content-based and viewpoint-based restrictions. The 11th Circuit, in arriving at its conclusion about content-based restriction, noted that “[i]t only matters that some words about sexuality and gender are allowed, and others are not.” This same rule can be applied here in LB179: you can provide counseling about sexuality and gender with some words—words of affirmation to assist somebody further same-sex attraction or gender expression—but you cannot provide counseling with other words—words that help somebody eliminate or reduce their unwanted same-sex attractions or gender dysphoria.

³ *See* Sec. 3(3) of AM145 to LB179 (“This section does not apply to a practice or treatment conducted by a clergy member or religious counselor who is acting in a pastoral or religious capacity and not in the capacity of a health care professional.”).

⁴ The irony of the idea contained in this sub-section that pastoral or religious care can simply be separated from health care is not lost with regard to the etymological roots of psychology which literally means study (*logos*) of the soul (*psyche*). This sub-section is a stark reminder that the work of legislating is not and cannot be divorced from philosophy and theology which both seek to arrive at a fundamental and total understanding of the world. In other words, legislative proposals often have embedded in them philosophical and theological ideas. LB179 is undoubtedly advancing a particular philosophical understanding of the human person and the nature of human sexuality, an understanding that is largely flawed as has been partially developed in this testimony.