



**In re: Banning Professionals from Engaging in Sexual  
Orientation Change Efforts With Youth Experiencing  
Unwanted Same-Sex Attraction  
(S.263-Hoylman/A.3977-Glick)  
Memorandum of Opposition**

Bill S.263-Hoylman/A.3977-Glick seeks to ban mental health professionals from engaging in sexual orientation change efforts—or “change therapy”—with minors.<sup>1</sup> Because this bill is based on flawed assumptions, is unduly invasive, suffers from constitutional problems, and would interfere with the professional judgment and freedom of conscience of mental health professionals, it must not become law.

**1. The proposed legislation lacks a strong scientific basis, as sexual orientation change efforts have benefited some individuals who have sought them.**

The proposed legislation would amend the Education Law as it relates to professional misconduct by mental health professionals. If the proposed new Education Law § 6509-d were enacted, psychiatrists, psychologists, social workers, mental health counselors, marriage and family therapists, creative arts therapists, psychoanalysis practitioners, and other mental health professionals would be subject to discipline if they were to engage in “sexual orientation change efforts” with clients under 18 years of age.<sup>2</sup> The term “sexual orientation change efforts” is defined in the bill as “any practice by a mental health professional that seeks to change an individual’s sexual

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<sup>1</sup> The terms “sexual orientation change efforts” and “change therapy” will be used interchangeably in this paper.

<sup>2</sup> In 2016, the Cuomo Administration took executive action to ban change therapy at state-run facilities and to ban insurance coverage for change therapy with minor clients.

orientation.”<sup>3</sup> The bill provides that mental health professionals who engage in sexual orientation change efforts with youth may have their professional licenses suspended, revoked, or annulled. In addition, the legislation provides for other forms of professional discipline under the existing § 6511 of the Education Law, which allows for penalties such as community service and fines of up to \$10,000.00 per charge.

The sponsors’ argument in support of this proposal can be summarized in the following statement from the bill memorandum: “[S]exual orientation change efforts can pose critical health risks to lesbian, gay, bisexual, and transgender people.” The memorandum further describes sexual orientation change efforts as “dangerous” and “harmful,” while the bill itself intimates that such efforts have no demonstrated likelihood of success. These statements, in turn, are based upon two assumptions that have become fashionable in the United States in recent years—namely, that same-sex attraction is an inherent and unchangeable characteristic, and that any attempts to change it are, by inference, futile and counterproductive. If these assumptions were true, the proposed legislation would make sense, as the State of New York has an interest in discouraging or preventing young people from making unhealthy choices. Because the sponsors’ accusations and assumptions concerning change therapy and same-sex attraction are off the mark, the entire legislation is flawed.

Questions about the causes of same-sex attraction are controversial, and have generated research, debate, and discussion for years. The web site of the American Psychiatric Association declares that “[n]o one knows what causes heterosexuality, homosexuality, or bisexuality,” and adds that “there are no replicated scientific studies supporting any specific biological etiology for homosexuality.”<sup>4</sup> In similar fashion, the web site of the American Psychological Association states that there is “no consensus among scientists about the exact reasons that an individual develops a heterosexual, bisexual, gay, or lesbian orientation.”<sup>5</sup> Given this uncertainty about the causes of same-sex attraction,<sup>6</sup> it would seem self-contradictory for mainstream mental health organizations to be overly certain about the efficacy of change therapy. However, despite their self-confessed ignorance of the causes of same-sex attraction, those organizations appear convinced that attempts to change it are useless and problematic (the American Psychological Association has opined that change therapy has “serious potential to harm young people,”<sup>7</sup> and the bill memorandum lists several other

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<sup>3</sup> The bill’s sponsors have been careful to state that this bill would not ban counseling for youths seeking to “transition from one gender to another.” The fact that this bill would allow professionals to facilitate youths’ attempts at gender transition, but would make it illegal to provide youths with change therapy, is revealing of the outlandish ideology of the bill’s sponsors.

<sup>4</sup> See <http://www.psychiatry.org/lgbt-sexual-orientation>, last accessed April 6, 2014.

<sup>5</sup> See “Answers to Your Questions For a Better Understanding of Sexual Orientation and Homosexuality,” available at <http://www.apa.org/topics/lgbt/orientation.aspx>. Last accessed April 6, 2014.

<sup>6</sup> Despite the lack of certainty about the causes of same-sex attraction, research does indicate that it is not caused solely by genetics. See Jones, Stanton L. “Same-Sex Science.” *First Things*, February 2012. Available at <http://www.firstthings.com/article/2012/01/same-sex-science>; last accessed April 6, 2014. The Jones article notes that “[r]ecent studies show that familial, cultural, and other environmental factors contribute to same-sex attraction,” and opines that a homosexual orientation is “sometimes mutable.”

<sup>7</sup> See <http://www.apa.org/pi/lgbt/resources/just-the-facts.pdf>, last accessed April 6, 2014.

groups with similar perspectives), and that the only appropriate clinical approach to homosexuality is to affirm it.

The prevailing viewpoint of the “gay-affirming psychological mainstream”<sup>8</sup>—the scientific neutrality and objectivity of which has been drawn into question—has met with vigorous dissent from researchers and from professionals who report positive outcomes from change therapy. Both the bill and the bill memorandum rely upon a 2009 APA report entitled *Appropriate Therapeutic Responses to Sexual Orientation* in support of the claim that change therapy is hazardous. However, that report has been subjected to devastating criticism that casts doubt upon its conclusions.<sup>9</sup> Contrary to statements made in the bill, one recent study of individuals attempting to change their sexual orientations through various faith-based approaches found “statistically significant change away from homosexual experience and orientation.”<sup>10</sup> Similarly, Dr. Nicholas A. Cummings, a former president of the American Psychological Association who believes that “[g]ays and lesbians have the right to be affirmed in their homosexuality,” stated in a recent article that he had overseen “hundreds” of clients who had experienced success in their efforts at sexual orientation change.<sup>11</sup>

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<sup>8</sup> Jones, Stanton L. “Same-Sex Science.” *First Things*, February 2012. Available at <http://www.firstthings.com/article/2012/01/same-sex-science>; last accessed April 6, 2014.

<sup>9</sup> Regarding the APA task force report, Stanton L. Jones states the following:

The removal in 1973 of homosexuality from the Diagnostic and Statistical Manual of Mental Disorders both changed the political environment in the mental-health professions and undermined grant funding for research on this subject. Many academics no longer had any motivation to study this phenomenon and considerable political reasons not to do so. Further, prior published research is commonly dismissed as inadequate. The APA’s website stated for many years that claims that homosexual orientation can change “are poorly documented. For example, treatment outcome is not followed and reported over time as would be the standard to test the validity of any mental health intervention.”

Such criticism took its most comprehensive form in the report of the 2009 APA task force studying SOCE (sexual-orientation change efforts). These scholars set extraordinary standards of methodological rigor for what they regarded as a reasonable scientific study of the possibility of sexual-orientation change, a move that resulted in the classification of only six studies out of dozens as meriting close examination. These studies were, in turn, dismissed for a variety of reasons, leaving the panel with no credible findings, by their standards, documenting the efficacy of SOCE. After dismissing SOCE for its lack of empirical validation, the panel then recommended gay-affirming therapy while explicitly acknowledging that it lacked the very type of empirical validation required of SOCE.

In the absence of evidence, it would be proper scientific procedure to acknowledge one’s ignorance.

*See id.*

<sup>10</sup> Jones, Stanton L. & Yarhouse, Mark A. (2011). “A longitudinal study of attempted religiously-mediated sexual orientation change.” *Journal of Sex and Marital Therapy*, Volume 37, pages 404-427.

<sup>11</sup> Cummings, Nicholas A. “Sexual reorientation therapy not unethical.” *USA Today*, July 30, 2013. <http://www.usatoday.com/story/opinion/2013/07/30/sexual-reorientation-therapy-not-unethical-column/2601159/>, last accessed April 6, 2014.

Dr. Cummings' article also asserted that "[c]ontending that all same-sex attraction is immutable is a distortion of reality."<sup>12</sup> While a detailed discussion of the social science debate on sexual orientation change is beyond the scope of this position paper, there is evidence that change is possible.

The bill memorandum offers no persuasive evidence to support its assertions that change therapy is harmful for anyone. Meanwhile, the Jones-Yarhouse study cited above did not find statistically significant evidence that faith-based change efforts were harmful, and suggested that they may, on average, be correlated with improvement in clients' psychological symptoms.<sup>13</sup> Given that there is evidence of the effectiveness of change therapy, and given that the bill's sponsors offer scant support for their assertion that change therapy harms anyone,<sup>14</sup> legislation banning change therapy for minors is unnecessary.

## **2. In regard to sensitive issues of adolescent sexuality, the bill ignores the principle of client self-determination and instead imposes an ideology that would infringe upon the freedoms of New York's young people and their families.**

Client self-determination is a core principle in the mental health professions. General Principle E of the American Psychological Association's "Ethical Principles of Psychologists and Code of Conduct" contains the following language: "Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination."<sup>15</sup> The proposed legislation fails to respect the principle of client self-determination; instead, the bill invites the State of New York to substitute its judgment on a matter of adolescent sexuality for the judgment of young people and their parents.

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<sup>12</sup> *Id.*

<sup>13</sup> Jones, Stanton L. & Yarhouse, Mark A. (2011). "A longitudinal study of attempted religiously-mediated sexual orientation change." *Journal of Sex and Marital Therapy*, Volume 37, pages 404-427.

<sup>14</sup> The sponsors of this legislation held a public forum on May 15, 2014 in New York City on the subject of change therapy. Later, Sen. Brad Hoylman released a report on the testimony that was offered at that forum. Unsurprisingly, the report presents a blatantly one-sided view of change therapy, complete with lurid, uncorroborated accusations against unnamed practitioners. If certain of these accusations were substantiated, New Yorkers for Constitutional Freedoms would support professional discipline (and perhaps even criminal prosecution) against the practitioners involved. NYCF opposes any practices by mental health professionals that degrade or demean the dignity of the human person, including practices involving pornography, client nudity, or sexual behavior. NYCF is currently unaware of any professional or organization in the State of New York (or anywhere else) that uses or advocates such approaches. In the absence of facts that corroborate the statements made at the May 15 forum, NYCF will continue to view the contents of the Hoylman report with great skepticism.

<sup>15</sup> See <http://www.apa.org/monitor/jun04/ethics.aspx>, last accessed April 6, 2014.

Under current law, a minor who seeks professional counseling in regard to same-sex attraction has options. Parents and young people whose respective moral beliefs and faith traditions lead them to the conclusion that their same-sex attraction should be embraced are free to choose counseling services that they believe are best suited to their teenaged children. In similar fashion, parents and young people who view same-sex attraction as an impediment or as a temptation are free to seek change therapy. The proposed bill would remove the latter of these options, and would thus deprive minors with unwanted same-sex attraction of the freedom to choose mental health services that fit their needs. The following comments from Dr. Nicholas Cummings aptly summarize the concerns regarding client self-determination that are created by bills like this: “Attempting to characterize all sexual reorientation therapy as ‘unethical’ violates patient choice and gives an outside party a veto over patients’ goals for their own treatment.”<sup>16</sup>

The type of professional counseling that should be provided to a youth experiencing unwanted same-sex attraction is an issue into which the New York State government need not, and should not, intrude. The proposed legislation would make minors with unwanted same-sex attraction unwitting pawns on the chessboard of a broader cultural conflict regarding the meaning, purpose, and appropriate expression of human sexuality. The sponsors of this legislation have staked out a clear position in this particular cultural conflict; from their perspective, traditional Judeo-Christian teachings regarding sexuality are irrelevant at best and damaging at worst, and the only “certainty” regarding sexuality is the belief that a homosexual orientation is both unchangeable and morally neutral.

While the sponsors of this bill may be sincere in their belief that their stance in this cultural conflict is the correct one, their error lies in their unwillingness to show any respect whatsoever for the needs or concerns of young people and parents who do not share their perspective. The underlying message of this bill is clear: If you experience same-sex attraction, you have to be gay—whether you like it or not. Imposing the sponsors’ dogma upon young people—no matter how trendy or prevalent that dogma may be in certain circles—is not a proper function of state government. Neither is forbidding mental health professionals from offering help and hope to teens with unwanted same-sex attraction. In regard to minors with unwanted same-sex attraction, the State of New York should support professional therapy availability.

### **3. The proposed legislation raises free speech concerns.**

Because the First Amendment’s guarantees of freedom of speech have been applied to the states, those guarantees are applicable in regard to the laws of the State of New York. The proposed legislation limits the free speech of mental health professionals. As such, the bill could be construed as a content-based restriction on free speech, and could thus be overturned. Furthermore, as discussed above, the limitations on speech inherent in the bill are not narrowly tailored to the state’s

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<sup>16</sup> Cummings, Nicholas A. “Sexual reorientation therapy not unethical.” USA Today, July 30, 2013. <http://www.usatoday.com/story/opinion/2013/07/30/sexual-reorientation-therapy-not-unethical-column/2601159/>, last accessed April 6, 2014.

interest in the protection of young people because no objective, unbiased analysis has shown change therapy to be harmful.

#### **4. The proposed legislation would place unnecessary burdens upon mental health professionals, and would impede the proper exercise of their professional judgment.**

This bill would interfere with the freedom of conscience of mental health professionals who believe that it is possible to diminish or resolve unwanted same-sex attraction. Such professionals would be forced either to forfeit their licenses, their careers, and their livelihoods by assisting young people who seek change therapy, or to compromise their own beliefs by refusing to provide that type of compassionate assistance to young people. When considering this bill, the Legislature must confront an important question: Should mental health professionals have the freedom to provide the type of counseling that they and their clients believe to be helpful and needed? Or should they be treated as instrumentalities of the state, allowed only to parrot the perspectives that are currently in vogue with New York's cultural and political elite?

In addition, the legislation represents the proverbial camel's nose under the tent flap. Should New York take this step down the road of ideologically-based government intrusion into the mental health professions, it is only a matter of time before the special interest groups promoting this legislation—along with their allies in the Legislature—take the next step and seek to ban change therapy across the board. (The bill memorandum makes it clear that the bill's sponsors believe change therapy to be dangerous for everyone.) Such an effort would provide a stepping stone to even more intrusive measures, such as banning mental health professionals from referring pregnant clients to life-affirming pregnancy centers and prohibiting mental health professionals from incorporating their religious faith into their counseling. Taken to its logical conclusion, this approach would make it difficult or impossible for mental health professionals with traditional Judeo-Christian perspectives on human life, marriage, family, and sexuality to practice their respective vocations in the State of New York.

**New Yorkers for Constitutional Freedoms calls upon all Members of the New York State Legislature to vote “no” on this ill-advised and unnecessary legislation.**