UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

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

Plaintiffs,

v.

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

Defendants.

Case No. 4:25-cv-00084-RK

Plaintiffs' Suggestions in Opposition to Defendants' Motion to Dismiss and Reply in Support of Their Preliminary Injunction Motion

TABLE OF CONTENTS

Table of Authorities

Cases

Statutes

Other Authorities

Introduction

Kansas City and Jackson County made it illegal for families and counselors to talk to each other about certain views on sexuality and gender identity. That violates the First and Fourteenth Amendments. When citizens want to speak to each other, we trust them to decide what to hear and what to say. The government doesn't have an all-access pass to censor private conversations. So not only have the plaintiff counselors (Counselors) and Missouri stated plausible claims, but they also will likely succeed and deserve a preliminary injunction now.

In response, the City and County deny standing out the gate. But they admit that their ordinances restrict the very thing the Counselors want to pursue—counsel minors to affirm their bodies and pursue opposite-sex attractions. The City doesn't dispute its ordinance forces the Counselors to (i) offer counseling to promote same-sex relationships, (ii) encourage clients to identify differently from their sex, and (iii) use client pronouns contrary to their sex. That's decisive. As objects of the ordinances, the Counselors face a credible threat of prosecution and have standing.

On the merits, the City and County try to repackage the Counselors' speech as conduct and regulate it accordingly. But that runs into a long list of precedents. Words don't shape-shift into conduct because the government slaps a license on someone. If they did, governments could censor almost any speech by any professional in any way—from punishing NAACP lawyers for advising clients to sue over segregation to stopping marriage counselors from telling clients to use contraceptives. To limit such unchecked power, this Court should apply strict scrutiny here. And the City and County can't meet this standard. Their ordinances have many exemptions, they never address narrow tailoring, and reliable science supports the Counselors and Missouri. The City and County simply have not met their incredibly high bar to restrict conversations they deem too dangerous. This case should proceed, and a preliminary injunction should issue.

Scientific Background

Gender identity and sexual orientation—particularly among minors—are not fixed. Both tend to be unstable, and there is room for personal agency. For gender identity, "multiple studies" of "juvenile gender dysphoria" report that gender dysphoria "does *not* persist through puberty" for "the large majority" of minors. Expert Report of Stephen B. Levine (Levine), ¶¶ 133–149. One study showed that more than 88% of minors struggling with "gender discordance" became comfortable with their biological sex after puberty. *Id.* ¶ 134. For sexual orientation, change can occur along multiple axes—like "attraction," "behavior," and "identity"—and it is "'unscientific'" to say that sexual orientation is "immutable." Expert Decl. of D. Paul Sullins, Ph.D. (Sullins) ¶¶ 7–23 (curriculum vitae forthcoming).

At the same time, current scientific evidence does not show that voluntary counseling to help minors reconcile their gender identity with their sex or to change unwanted same-sex attractions inevitably cause harm. Levine ¶¶ 14, 40–49, 60; Sullins ¶ 80–130. On the flip side, there are "no studies" to show that affirming a child's transgender identity "leads to more positive outcomes (mental, physical, social, vocation, or romantic)" than does "'watchful waiting' or ordinary therapy." Levine ¶ 192; *see id.* ¶¶ 39– 54 (explaining different models). And "multiple clinical studies of change-allowing therapy or support … reported successful change along the homosexual-to-heterosexual continuum and strong net psychological benefit." Sullins ¶¶ 99–112. *See also* Verified Complaint (VC) ¶¶ 160–61, ECF No. 1 (reciting testimony of those who were helped by counseling). Even defense expert Douglas Haldeman once recognized how counseling that addressed unwanted same-sex attraction among religious adherents could be helpful. Sullins ¶¶ 115, 117.

By contrast, the "affirmation model" of gender identity adopted by the City and County—which "insists on immediate, unconditional support for the current identity"—"sets young people on a path to all-but-inevitable medicalized transition."

Levine ¶¶ 16, 50, 153, 157, 173. While most minors experiencing gender dysphoria desist, children who begin "social transition" or who receive the "'affirming' methodology" typically do not. *Id.* at ¶ 153. In those cases, minors often start "a 'conveyor belt' path that almost inevitably leads to" hormones and interventions that make them "'patients for life' with complex medical implications." *Id.* ¶¶ 16(g), 152, 157–58. The risks of these interventions are well known which is why they are limited or banned across Europe (and Missouri). *Id.* at ¶ 93–111. Those risks include sterilization, adverse sexual responses, cardiovascular harm, sexual-romantic harms, and other life-long consequences. *Id.* at ¶¶ 159–161, 223–245.

Against this background, Haldeman claims (1) "there is no valid evidence that SOGICE [sexual orientation and gender identity change efforts] achieves the stated goal" and (2) "there is significant and valid evidence that SOGICE can cause serious harm, including depression, anxiety, suicidal ideation, and suicide." Decl. of Doulgas C. Haldeman ¶ 7, ECF No. 20–3. But his report cites only "a total of five" peer-reviewed "papers." Sullins ¶ 5. And it suffers from serious deficiencies.

On the first point, Haldeman relies on old reports, ill-defined terms, studies with significant methodological flaws, and outdated methods of approaching sexual orientation. Levine ¶¶ 253–62; Sullins ¶¶ 10, 44, 85–98, 105. Haldeman does not differentiate between counseling on gender identity and sexual orientation. Levine ¶¶ 253–54. Haldeman also relies on studies that improperly lump together the use of aversive techniques and voluntary, conversational counseling, which distort those studies' conclusions. Sullins ¶¶ 91–93. And he ignores numerous studies that contradict his conclusion, as well as the natural desistance through watchful waiting and active psychotherapy. Sullins ¶¶ 99–112; Levine ¶ 263–66.

Haldeman's second point also depends on inaccurate assumptions which are refuted by current scientific evidence. His conclusions on inherent harms depend on obsolete practices and methodological bias. Sullins ¶¶ 44, 85–98. And he ignores the

harms associated with affirmation; he looks past the "very low quality" evidence to support "transition" and "affirmation." Levine ¶¶ 162–74. In short, there "are no" reliable studies "that show that affirmation of transgender identity in minors permanently reduces suicide or suicidal ideation, or improves long-term outcomes, as compared to other therapeutic approaches." *Id.* at ¶¶ 16(j), 175–187, 197–219; Sullins ¶¶ 24–79, 119–132. And there is evidence that "mental health outcomes for individuals who persist in a transgender identity are poor." Levine ¶¶ 188–96.

The Counselors and others in Missouri hope to help minors avoid the devastating consequences of irreversible medical or surgical interventions by working with them to develop comfort with their biological sex. VC ¶¶ 49–81; Levine ¶¶ 14, 251. And they can provide helpful counseling to minors struggling with unwanted same-sex attractions. Sullins ¶¶ 99–112. They do so by speaking with them, listening, and providing advice to help minors voluntarily reconcile their gender identity with their sex and pursue healthy, opposite-sex attractions. VC ¶¶ 49–81, 162–238. The City and County should not censor that speech.

Argument

The City and the County combined their motion to dismiss with their response to the preliminary-injunction motion. On motions to dismiss, courts accept factual allegations as true and "draw all reasonable inferences in the plaintiff's favor." Defs.' Br. 9, ECF No. 20. So it is improper to dismiss "colorable First Amendment" claims based on a government's interests because those interests raise "factual arguments." *City of Los Angeles v. Preferred Commc'ns, Inc.*, 476 U.S. 488, 494 (1986). The first issue is whether the Counselors and Missouri *plausibly* alleged their claims. Then, on the preliminary-injunction motion, the issues are whether the Counselors and Missouri will likely succeed on their free-speech and due-process claims and then meet the other preliminary-injunction factors.

The Counselors and Missouri (I) have standing. They also alleged plausible claims and deserve a preliminary injunction because the ordinances (II–V) violate their First Amendment rights; (VI) fail strict scrutiny; and (VII) are vague and overbroad. They (VIII) meet the other preliminary-injunction factors too.

I. The Counselors and Missouri have standing.

Only "one plaintiff" need have "standing." *Biden v. Nebraska*, 600 U.S. 477, 489 (2023). They all do. The Counselors have standing because they suffer an injury-in-fact by chilling their speech as an objectively reasonable response to a credible threat of prosecution. The City and County barely contest Missouri's standing. It does as *parens patriae* on behalf of its citizens' First Amendment rights and to vindicate its own sovereign interests in protecting the integrity of its laws.

A. The Counselors suffer an injury because they chill their speech in the face of a credible threat of penalties.

For standing, the Counselors must show injury-in-fact, causation, and redressability. *Susan B. Anthony List v. Driehaus* (*SBA List*), 573 U.S. 149, 157 (2014). Only injury-in-fact is disputed. The Counselors meet that standard—it is "lenient" and "forgiving." *Turtle Island Foods, SPC v. Thompson*, 992 F.3d 694, 700 (8th Cir. 2021). In fact, at the motion-to-dismiss stage, the Counselors need only show a "reasonable inference" of standing. *Animal Legal Def. Fund v. Vaught,* 8 F.4th 714, 718 (8th Cir. 2021). The Counselors suffer an injury because (i) they intend "to engage in a course of conduct arguably affected with a constitutional interest"; (ii) their activities are "arguably "proscribed by" the ordinances; and (iii) they face a "credible threat of prosecution." *SBA List*, 573 U.S. at 159.

Arguably affected. For the first prong, courts assume a plaintiff's legal theory is correct because "standing in no way depends on the merits." *Warth v. Seldin*, 422 U.S. 490, 500 (1975). This standing and merits distinction explains why

every case cited by the City and County found standing, even though some courts ruled *against* the counselors on the merits. Defs.' Br. at 18–19 (collecting cases with similar issues). The Counselors' claims are "arguably" affected with a First Amendment interest. VC ¶¶ 49–81, 162–238, 277–323. The Counselors speak with their clients but cannot say what they want about gender identity and sexual orientation. They practice consistent with their beliefs, but the ordinances burden their free exercise. And they want to post statements and ask questions explaining their religious motivations for the types of counseling they offer, but the Publication Clause prohibits that. They easily meet the "arguably" affected requirement.

Arguably proscribed. Next, the City and County confirm the Counselors' activities *at least* arguably defy the ordinances. The Counselors need not prove their desired activities "actually violate the statute." *281 Care Comm. v. Arneson*, 638 F.3d 621, 628 (8th Cir. 2011). It is enough to allege that the City and County could "interpret the[ir] actions as violating the statute" or their activities "come close enough" to violating the ordinances. *Id.* at 630. In short, "arguably proscribed" does not mean certainly prohibited. *SBA List*, 573 U.S. at 162–63 (cleaned up).

The City and County declare the Counselors' "desired *therapy* is conduct, not speech, which is regulated by the" Counseling Ordinances. Defs.' Br. 13. They also state the ordinances "prohibit" the Counselors "from doing what they want to do," detail why they believe the ordinances cover the Counselors' speech, and justify the ordinances based on a "compelling interest." *Id.* at 7, 13–24. And the other counseling cases cited by the City and County interpreted those laws to arguably proscribe those counselors' activities. *Id.* at 18–19 (collecting cases). Others read the ordinances the same way, describing the Counselors' speech as the "definition" of what the ordinances prohibit. PROMO Amicus Br. 9, ECF No. 25–1.

The Counselors' desired activities violate the City's Public Accommodation Ordinance too. The Counselors hope to provide counseling that (i) encourages

sexuality and marriage only in the context of opposite-sex unions; (ii) only seeks to harmonize clients' gender identity with their biological sex; and (iii) only uses pronouns consistent with their clients' sex. VC ¶¶ 82–89. The City calls these "discriminatory practices" and claims a "compelling interest" to stop them. Defs.' 2, 9, 29–30. The City admits its ordinance requires the Counselors to offer counseling that encourages a view of marriage that contradicts their beliefs. *Id.* at 29. The City's position here mirrors its consistent position in amicus briefs. VC ¶¶ 246–56.

Shifting gears, the City and County hint that their ordinances may not apply by suggesting the Counselors do not practice "in Kansas City or Jackson County" based on administrative filings with the Counselors' principal (not sole) place of business. Defs.' Br. 1, 8. But the City and County never say how those documents prove the Counselors do not practice in the City and County. No one would dispute that Armstrong Teasdale attorneys practice in Kansas City even though the law firm's business address is apparently registered in St. Louis. In any event, the Counselors have sworn that they "practice and do business" within the "geographical boundaries of" these jurisdictions. VC ¶¶ 35–36, 241. And they do.

Credible threat. Finally, the Counselors face a credible threat of enforcement. There is "little question" about that because the Counselors are "a target" or "an object" of the ordinances. *Minn. Citizens Concerned for Life v. Fed. Election Comm'n*, 113 F.3d 129, 131 (8th Cir. 1997) (cleaned up). It has been reversible error to rule against a plaintiff's standing when it is "the object" of the regulation. *State v. Equal Emp. Opportunity Comm'n*, 129 F.4th 452, 458 (8th Cir. 2025). The ordinances also "restrict" the Counselors' "expressive activity," so courts typically "assume a credible threat of prosecution in the absence of compelling contrary evidence." *St. Paul Area Chamber of Com. v. Gaertner*, 439 F.3d 481, 486 (8th Cir. 2006) (cleaned up). The facts before the Court only add to that assumption.

For example, the City and County "have not disavowed" enforcing the law against the Counselors. *SBA List*, 573 U.S. at 165. To the contrary, the City and County assert a "compelling interest" in enforcing their ordinances, the City has filed amicus briefs in other cases involving the First Amendment and public-accommodation laws, and the County issued a press release promising to defend its ordinance. Defs.' Br. 24, 29–30; VC ¶¶ 239–70. Next, the Counseling Ordinances were "adopted comparatively recently," which heightens their likely enforcement. *281 Care Comm.*, 638 F.3d at 628 (law "amended fewer than five years before this suit was filed"). What's more, they "provid[e] for criminal" and "civil penalties" which force the Counselors to "obey" or "risk" an enforcement action. *Minn. Citizens*, 113 F.3d at 131. And a wide range "potential complainants" exist because members of the public may file complaints. *SBA List*, 573 U.S. at 164. For these reasons, the Counselors have refrained from addressing certain topics in counseling sessions, accepting prospective clients who might cause them to violate the Counseling Ordinances, and posting statements on their websites explaining their beliefs about gender identity and sexuality. VC ¶¶ 162–238, 277–323. Their "[s]elf-censorship can itself constitute injury in fact." *281 Care Comm.*, 638 F.3d at 627.

The City and County pursue two lines to avoid this result. They claim Wyatt Bury has not yet violated the Counseling Ordinance. Defs.' Br. 11–12. But Bury "need not expose" himself to punishment before filing suit, especially where he has "been forced to modify" his "speech … to comply with the" ordinance. *Gaertner*, 439 F.3d at 485–87. Bury has declined requests *to avoid* potential violations of the Counseling Ordinance. VC ¶¶ 214–30.

Next, the City and County rely on *Zanders v. Swanson*, 573 F.3d 591 (8th Cir. 2009). But there, the plaintiffs were not a "target" of the law, and their alleged injury required speculation on how the law "*could* be manipulated" or "misuse[d]" by "the police." *Id.* at 594. Here, the Counselors' standing rests on "objectively

reasonable chill" based on the "scope, context, and enforcement structure" of the ordinances not "speculative notions of bad faith." *281 Care Comm.*, 638 F.3d at 629 (distinguishing *Zanders* on these grounds). The Counselors have standing.

B. The State has standing.

The State has sovereign and quasi-sovereign standing to sue: quasi-sovereign standing because it can sue on behalf of its citizens to assert their rights, and sovereign standing to sue to vindicate Missouri law, including its prohibition on interventions on minors to identify as the opposite sex and its licensing regime. VC ¶¶ 5–29. The City and County's contrary threadbare arguments fail.

Start first with the "quasi-sovereign" injury. The City and County contend in one sentence (at 13) that the Attorney General cannot sue under *parens patriae*. But the single case they cite says the opposite. The issue in *Clark Oil & Refining Corporation v. Ashcroft* was "whether Missouri law permits the attorney general to maintain a *parens patriae*" action, and the Missouri Supreme Court held there was "ample authority in Missouri law for the attorney general to bring these suits." 639 S.W.2d 594, 595–96 (Mo. 1982). That is exactly what the State does here: it seeks to sue *parens patriae* on behalf of all Missourians injured by the ordinances. VC ¶¶ 9–18. For that reason, the City's and County's incorrect arguments about the Counselors' locations are also irrelevant.

Next, the City and County never dispute Missouri's sovereign interest in protecting its laws. They just argue (at 13) that the ordinances do not implicate those laws. Their argument confuses standing with the merits. The argument is also wrong. The ordinances prohibit speech that encourages individuals to align their identity with their sex. But Missouri law has a policy of favoring that speech because the State prohibits hormonal and surgical interventions on minors to identify as the opposite sex. Mo. Rev. Stat. § 191.1720. A court just upheld that

law.[1] Children struggling with gender dysphoria should be given access to counseling, not irreversible hormonal and surgical interventions.

Missouri has an interest on that point because counseling can help minors realign with an identity congruent with their sex. What's more, absent other interventions, nearly *all* individuals with gender dysphoria later realign with their sex. The American Psychiatric Association acknowledged that desistance or realignment with sex may occur up to 98% of the time. *Diagnostic and Statistical Manual of Mental Disorders*, American Psychiatric Association 516 (5th ed., text revision, 2022). By contrast, as the 400-page Cass Review found, "social transition in childhood" and pharmacological interventions "may change the trajectory of gender identity development."[2] So most individuals with gender dysphoria align their identity with their sex absent an intervention. But the City and County require counselors to uncritically endorse a minors' identity, even if it is different from the day before. A professional should be free to explain the dynamic nature of gender identity and explain the research showing that up to 98% of children with gender dysphoria later revert to an identity congruent with their sex. The County and City prohibit this speech. In doing so, they deny children the benefits of the approach that has been shown to resolve gender dysphoria, which is the approach endorsed by Missouri law. This denial is more damaging still because gender identity is not genetically fixed. Indeed, the same court that upheld Missouri's law limiting gender transitions in minors noted that the plaintiffs' final witness was an individual whose "identity and sexual orientation *change every day*."[3]

It is unsurprising that Missouri has a strong interest in the free speech rights of professionals licensed under its regime. Nor is it surprising that the State's

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[1] *Noe v. Parson*, 23AC-CC04530 (Cole County, 2024), https://bit.ly/3G3LtB1.
[2] The Cass Review 32 (2024) https://bit.ly/4jqNUMs.
[3] *Supra* note 1.

principal concern about the ordinances is that they "suppress[] speech in the context of minors with gender dysphoria." VC ¶ 12. Missouri law expresses a clear policy of encouraging professionals to speak with and guide children as the identities in the vast majority of those children realign with their sex. The ordinances impede Missouri law by preventing counselors from doing so.

II. The Counseling Ordinances violate the First Amendment by dictating speech here.

The Counseling Ordinances violate the First Amendment. They (A) restrict the Counselors' speech, not their conduct, and (B) still regulate speech, though in a professional setting. And (C) the City and County's counterarguments fail.

A. The Counseling Ordinances regulate speech, not conduct.

The Counselors talk with their minor clients. VC ¶¶ 66–71. They listen, ask questions, learn about their clients' goals, exchange ideas, and offer suggestions to help their clients meet those goals and flourish. *Id.* ¶¶ 66–71, 162–92. Those conversations involve speech. And the First Amendment protects that speech.

Even so, the City and County relabel the Counselors' speech as "conduct" or "[m]edical treatment" and then say that the Counseling Ordinances do not violate the First Amendment because they only restrict conduct. Defs.' Br. 13–18, 20, 22, 24. The City and County are wrong. They overlook key distinctions between speech and conduct and how courts separate the two.

Laws that mostly regulate conduct still trigger First Amendment scrutiny if they apply to speech in specific cases. The analysis begins with deciding whether the law—as applied—affects speech or conduct. Eighty-five years' worth of Supreme Court precedents adopt this approach.[4] But two cases are illustrative.

[4] *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 52–57 (1988) (tort law unlawful as applied to satire); *Hess v. Indiana*, 414 U.S. 105, 108 (1973) (disorderly conduct law unlawful as applied to "spoken words"); *Marsh v. State of Ala.*, 326 U.S. 501, 509

Start with *Cohen v. California*, 403 U.S. 15 (1971). A state law prohibited "disturb(ing) the peace … by offensive conduct." *Id.* at 16 (cleaned up). The state prosecuted a man for wearing a jacket bearing an offensive expletive. *Id.* The state argued the action was a legitimate prosecution of conduct, designed to prevent "violent reaction." *Id.* at 16, 22. The Supreme Court disagreed. It held that the "conviction" rested on "the words … used to convey" a "message to the public." *Id.* at 18. So "[t]he only 'conduct' which the State sought to punish" was "the fact of communication." *Id.* Without some "separately identifiable conduct" that "does not necessarily convey any message," the law in application regulated "speech." *Id.*

Next, *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010). There, legal-advocacy groups and an attorney challenged a federal law banning "material support" to terrorist organizations. *Id.* at 8. On its face, the ban targeted conduct. But the plaintiffs wanted to provide some groups with "expert advice." *Id.* at 21–22, 25–27. The government characterized this advice as "conduct, not speech." *Id.* at 26. The Supreme Court rejected that argument because the law applied "depend[ing] on what they sa[id]." *Id.* at 27. And although the law could "be described as directed at conduct," it only "applied to plaintiffs" because "the conduct triggering coverage under the statute consists of communicating a message." *Id.* at 28.

In both cases, the Supreme Court looked beyond what the laws generally regulated to how they *applied* to the plaintiffs. And they applied because of the plaintiffs' speech—not any "separately identifiable conduct." *Cohen*, 403 U.S. at 18. In this way, they trigged the First Amendment.

So too here. The Counselors do not dispense drugs, use aversive techniques, perform surgery, or offer any other medical procedures separately identifiable from

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(1946) (criminal trespass law unlawful as applied to the distribution of "religious literature"); *Cantwell v. Connecticut*, 310 U.S. 296, 303–07 (1940) (breach of peace law unlawful as applied to playing of record critical of the Catholic church).

their speech. Their counseling consists of words—talking with clients, asking questions, and discussing clients' goals and desires. VC ¶¶ 66–71, 162–92.

The City and County claim *Holder* does not apply because the issue is not "communicating a message," but "practicing a *treatment*." Defs.' Br. 14 n.4. The Ninth and Tenth Circuits foreshadowed the City and County's mistake. In *Tingley v. Ferguson*, the court called the counselor's therapy a "treatment" that could be restricted as conduct even though the counselors' "treatments 'consist[ed] entirely of speech.'" 47 F.4th 1055, 1072–73, 1078, 1082 (9th Cir. 2022). In *Chiles v. Salazar*, the court acknowledged that Colorado's law targeted the counselor's "verbal language," but still held the language morphed into conduct because the law generally regulated conduct. 116 F.4th 1178, 1208 (10th Cir. 2024).

But *Cohen*, *Holder*, and other cases reject this labeling game. *Tingley* and *Chiles* acknowledged that the "treatment" was the counselors' speech. With that concession, those laws did "not actually seek to regulate non-speech activity" but "speech" itself. *Telescope Media Grp. v. Lucero* (*TMG*), 936 F.3d 740, 756 (8th Cir. 2019) (for-profit context did not convert speech into conduct). As in *Tingley* and *Chiles*, neither the City nor the County "identify *anything* else" that its ordinances regulate here but the Counselors' speech. *Id.* at 757. For good reason. Conduct is not the issue; speech is. And the ordinances limit the Counselors' conversations with their minor clients—i.e., their speech. Just as "various other formulae for the repression of expression" must still "satisfy the First Amendment," the conduct label "can claim no talismanic immunity from constitutional limitations." *N.Y.T. v. Sullivan*, 376 U.S. 254, 269 (1964).

The City and County next compare their ordinances to the Solomon Amendment's equal-access requirement in *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.* (*FAIR*), 547 U.S. 47 (2006). The analogy fails. In *FAIR*, law schools were "not speaking when they host[ed] interviews and recruiting

receptions." *Id.* at 49. And because the requirement only compelled conduct—equal access to rooms for interviews and receptions—the schools could be forced to send logistical emails as an incidental burden on their speech. *Id.* at 61–62.

But there is nothing incidental about how the ordinances burden the Counselors' speech. Returning to *Holder*, the ordinances dictate the Counselors' speech directly because they apply "depend[ing] on what they say." 561 U.S. at 27. So *FAIR* does not apply. *303 Creative LLC v. Elenis*, 600 U.S. 570, 596 (2023) (distinguishing *FAIR* on this basis). Nor do the other cases the City and County cite for incidental effects on speech—like those regulating reliance on wage history, abortions, or who may become lawyers or dieticians. Defs.' Br. 14, 16–17. The ordinances regulate speech incidental to more speech—there is no separate conduct.

Even so, governments still have wide latitude to regulate professionals. They can (i) compel speech incidental to actual conduct—like informed consent (speech) requirements related to physical interventions (conduct); (ii) require the disclosure of factual, noncontroversial information; (iii) regulate non-expressive conduct, like violence, malpractice, fraud, and much else; (iv) impose countless content-neutral licensing requirements; (v) regulate written medical prescriptions and other speech with "an independent legal effect" *Pickup v. Brown*, 740 F.3d 1208, 1219 (9th Cir. 2014) (O'Scannlain, J., dissenting from denial of rehearing en banc); and (vi) in rare cases (not this one), a speech regulation could pass strict scrutiny. So the City and County have plenty of options to regulate conduct without violating the First Amendment—just not the one they have chosen here.

B. The Counseling Ordinances regulate speech in professional settings where the First Amendment still fully applies.

Given the Supreme Court's 85-year test for determining when laws regulate speech, the question becomes whether those rules change in the professional context. *See supra* note 4 (collecting Supreme Court cases since 1940). They do not.

NIFLA v. Becerra confirmed that there is no separate "'professional speech'" category. 585 U.S. 755, 767 (2018). The First Amendment applies the same even when the speech is "uttered by 'professionals.'" *Id.* The City and County's misreads that command in two ways.

First, the City and County get the analysis backwards when they start "by asking whether the regulation is one governing the conduct of professionals." Defs.' Br. 16. *NIFLA* didn't start there. It began by looking at the specific "licensed notice" and deciding it was "a content-based regulation of speech." *NIFLA*, 585 U.S. at 766. In other words, the Court asked whether the operative requirement restrained conduct or speech—not whether the law generally regulated professional actions. The Eleventh Circuit got it right by saying that was "the first question … to consider." *Otto v. City of Boca Raton*, 981 F.3d 854, 861 (11th Cir. 2020). By contrast, *Chiles* got it wrong when it "first ask[ed] whether" the law "regulates professional conduct" generally, concluded the law did, and then found by extension the law must then only govern conduct, not speech. 116 F.4th at 1204–09.

Second, the City and County overemphasize *NIFLA*'s discussion of informed-consent cases and say those cases "outline[] the appropriate First Amendment analysis for such professional speech regulations." Defs.' Br. 14. But *NIFLA* explained that informed-consent laws governed the performance of a non-expressive "medical procedure" (like an abortion) by requiring physicians to provide patients with "information" relevant to their decision to undertake the procedure. *NIFLA*, 585 U.S. at 769–70. *NIFLA* contrasted that with the notice requirements that were "not tied to a procedure," applied "to all interactions … regardless of whether a medical procedure" was sought, and "provide[d] no information about the risks or benefits of those procedures." *Id.* at 770. Given that application, the law "regulate[d] speech as speech." *Id.* The same is true here.

Like the City and County, *Tingley* and *Chiles* did not properly grapple with this distinction. In those cases, the courts concluded that the laws regulated only speech incidental to conduct because the states defined counseling as medical treatment. *Tingley*, 47 F.4th at 1075, 1081–84; *Chiles*, 116 F.4th at 1204–10. But that conclusion leads to untenable results. It would allow governments to define counseling as treatment, take the opposite view of the City and County, and then ban counselors from "provid[ing]" verbal "support and assistance to a person undergoing gender transition." K.C. Ord. § 50-234(b)(1). Or states could stop family law attorneys from suggesting divorce, immigration attorneys from advising on Green Cards, civil-rights attorneys from combatting discrimination,[5] or counselors from recommending IVF to women under the guise of regulating these licensed professionals' "conduct." The City and County's own cases acknowledge these outcomes wrongly "target the communicative aspects" of these professionals. *See Cap. Associated Indus., Inc. v. Stein*, 922 F.3d 198, 208 (4th Cir. 2019); Defs.' Br. 16 (citing same). And if these examples go too far, so do the Counseling Ordinances.

C. The City and County's alternative theories do not relieve the burden on speech or allow them to restrict it.

The City and County offer three more reasons to ban the Counselors' speech. The City and County say (i) the Counselors can speak elsewhere; (ii) the Counselors' unique role warrant unique restrictions; and (iii) governments historically oversee medicine. Each reason falls short as to the Counselors and others in Missouri.

Speak elsewhere. The City and County claim the ordinances do not burden speech because the Counselors can have "[c]onversations" and "exchange … ideas" about "sexuality and gender topics" and can "refer minors to client service providers outside of the reach of the Laws." Defs.' Br. 11–12, 21. But the Supreme Court has

[5] *Cf. NAACP v. Button*, 371 U.S. 415, 429–45 (1963) (holding rule of professional conduct that banned NAACP's litigation practices violated the First Amendment).

"consistently rejected" the argument that speech is not burdened just because "speakers have alternative means of expression." *Consol. Edison Co. of New York v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 530, 541 n.10 (1980).

Unique role. Next, the City and County say they can restrict speech to prevent the Counselors "from utilizing their position and training to employ therapeutic treatments and practices to try to change a child's sexual orientation or gender identity." Defs.' Br. 11. Neither the City nor the County develops this argument much. But it harkens back to the professional speech dichotomy *NIFLA* rejected. A person's "position" or "training" is no reason to deprive them of First Amendment rights. *NIFLA* recognized that the First Amendment protects "noncommercial speech of lawyers" and "professional fundraisers" despite their expertise. 585 U.S. at 771. And *Holder* noted a law triggers the First Amendment as a "content-based regulation of speech" if it targets "advice derived from 'specialized knowledge'" as opposed to "general or unspecialized knowledge." 561 U.S. at 27. Both cases acknowledged that the specialization of expression was a reason to protect it and that targeting that speech raised constitutional concerns.

Public health. Last, the City and County rely on governments' authority to manage "public health." Defs.' Br. 20. To be sure, governments can regulate public health in various ways—like passing licensing requirements or banning chemical and surgical interventions. But none of the common-law cases cited by the City and County authorize a local government to suppress speech in the name of public health. Governments cannot misuse their power to impose a "licensing requirement" to "reduce a group's First Amendment rights." *NIFLA*, 585 U.S. at 773. Several good reasons support this conclusion.

Dictating ideas through public health justifications can "increase state power and suppress minorities." *Id.* at 771–772 (collecting historical examples). It can also disrupt the "marketplace of ideas" and squelch "good-faith disagreements" that may

lead to progress. *Id.* at 772. An uninhibited marketplace of ideas is critical in medicine and mental health because consensus changes—but only if governments allow the free flow of views without censoring those it disfavors. Imagine if governments had laws now that required all psychiatrists to convince their same-sex attracted clients that they were not gay because homosexuality was once considered a mental disorder. *See Chiles*, 116 F.4th at 1227 (Hartz, J., dissenting) (making this point). Such a ban would stunt any movement on that topic. The Counseling Ordinances have that same stifling effect on the Counselors and others like them. Eisenreich Decl. ¶¶ 39, 51, ECF No. 9–1; Bury Decl. ¶¶ 42, 45, ECF No. 9–2. The City and County's deference to other professional organizations add problems. Defs.' Br. 4–6. Those groups can be wrong too. And they can base their policies on inaccurate conclusions, shoddy studies, ideologically driven outcomes, and opaque voting processes. *See* Sullins ¶¶ 131–158; Levine ¶¶ 61–81; *Chiles*, 116 F.4th at 1237–46 (Hartz, J., dissenting) (making this point). All the more reason to encourage a broad range of speech to "test" the "truth." *NIFLA*, 585 U.S. at 772.

III. The City's Public Accommodations Ordinance regulates speech here.

The City repeats its claim that the Public Accommodations Ordinance regulates the Counselors' conduct because it manages "professional conduct" and "medical treatment" and only "incidentally involves speech." Defs.' Br. 26–27. Those arguments fail for the same reasons they failed as to the Counseling Ordinances. But the City makes a few new claims and repackages old ones. None work.

For example, the City suggests the Counselors do not even speak when they counsel. To the City, the Counselors only "listen," "act as a forum for the speech of others," and do not offer their own "opinions or ideas." Defs.' Br. 28–29. The City likewise says counseling "is not inherently expressive." *Id.* at 28. These claims just ignore the facts. The Counselors talk with their clients, ask them questions, have

conversations, and give advice. *E.g.*, Eisenreich Decl. ¶¶ 26–28; Bury Decl. ¶¶ 31–39; VC ¶¶ 70–71. Plainly, giving advice entails expressing one's views.

Next, the City says the ordinance affects conduct because it prohibits the Counselors from "turn[ing] away" clients because of a protected characteristic. Defs.' Br. 26–27. This claim rewraps its prior argument about laws that generally regulate conduct. But the Supreme Court and the Eighth Circuit look beyond public-accommodation laws' general application to how the laws apply in specific operation. *See 303 Creative*, 600 U.S. at 592–93 (website creation); *TMG*, 936 F.3d at 750–54 (films). And here, the ordinance compels the Counselors' speech by requiring them to provide same-sex marital and relationship counseling, offer counseling that encourages clients to identify inconsistent with their sex, and use pronouns that do not align with a client's sex. VC ¶¶ 252–54. The City never disputes the ordinances compel these consequences. *See* VC ¶¶ 239–61. But these effects infringe the Counselors' "right to control [their] own message" by forcing them to promote ideas that violate their beliefs. *303 Creative*, 600 U.S. at 595 n.3.

Contrary to the City's suggestions, this result necessarily "interferes" with the Counselors' "speech." *TMG*, 936 F.3d at 752. "[A]t a minimum," this requires them to "convey a different message" than their desired ones—that healthy sexuality occurs in the context of marriage between one man and one woman and that sex is immutable. *Id.* at 752–53. This requirement is only "trigger[ed]" because of their "choice to talk about" the topics of sexuality and gender identity. *Id.* at 753. And because the ordinance regulates their speech, neither *FAIR* nor *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74 (1980) apply. *See TMG*, 936 F.3d at 757–58 (distinguishing these cases when law affected speech).

Moving on, the City says the ordinance does not affect their speech because supporting opposite-sex and same-sex marriages or relationships "should be the same." Defs.' Br. 29. That claim is hard to fathom. And it ignores the Counselors'

beliefs about marriage and how promoting different views violates their convictions. *See* Eisenreich Decl. ¶¶ 35–36; Bury Decl. ¶¶ 37–41. Doubling down, the City states the ordinance does not affect the Counselors' message because they can still promote their views "individually" or "disaffiliate themselves with ideologies or viewpoints of their clients." Defs.' Br. 27. But giving the Counselors the option to speak elsewhere is a not a real choice. And the Counselors' "freedom" of speech "would be empty" if "the government could require" them "to affirm in one breath that which they deny in the next" through disaffiliation. *Hurley v. Irish–Am. Gay, Lesbian and Bisexual Grp. of Bos.*, 515 U.S. 557, 573, 576 (1995) (cleaned up).

The City never mentions pronouns nor disclaims the Counselors' reading of the ordinance as requiring certain pronouns. VC ¶¶ 254–61. But compelled use of inaccurate pronouns compels speech too. Pls.' Suggestions in Supp. of Their Preliminary Injunction Motion (MPI) 15, ECF No. 10 (collecting cases).

IV. The Ordinances regulate the Counselors' and similar Missouri citizen's speech based on its content and viewpoint.

The ordinances regulate speech based on its content and viewpoint. MPI 7–8, 16–17 (collecting cases). The City and County do not dispute that the Counseling Ordinances are content based. They admit as much by arguing the ordinances are "limited … to specific topics relating to a particular profession." Defs.' Br. 15. The Public Accommodations Ordinance in application is content based for the same reason: it compels and restricts speech on the topics of gender identity and sexual orientation. MPI 16–17. The ordinances also restrict disfavored viewpoints. The City and County disagree, saying the ordinances "apply equally" to licensed professionals. Defs.' Br. 21. That argument misses the mark. It is not solely about *to whom* the ordinances apply, but *how*. The ordinances may apply to all counselors, but they only ban certain views—like those that help minors align their sex with their identity, encourage the belief that healthy sexuality occurs within the confines

of marriage between one man and one woman, and promote the idea that sex cannot be changed. By allowing some views—e.g., automatic affirmation of a young person's claimed desire to be the opposite sex—and banning others, the ordinances have the effect of "excis[ing] certain ideas or viewpoints from the public dialogue." *303 Creative*, 600 U.S. at 588 (cleaned up). The Counseling Ordinances' application to "all regulated therapy providers," Defs.' Br. 21, just confirms the ordinances are also overbroad as a regulation on viewpoint, MPI 8 (making this point).

V. The Ordinances violate the Counselors' and similar Missouri counselors' free exercise of religion.

The ordinances plausibly violate the Counselors' and other Missouri citizens' free-exercise rights in two ways. *First*, they violate the hybrid-rights doctrine because they "burden[] their religious motivated speech." *TMG*, 936 F.3d at 759. The City and County never mention this claim, even though it was alleged. VC ¶¶ 369, 382. *Second*, the ordinances are not neutral or generally applicable. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32 (1993). A law is not neutral if its history or operation work to "restrict practices because of their religious motivation." *Id.* at 532–40. A law is not generally applicable if it allows exemptions or "if it prohibits religious conduct while permitting secular conduct that undermines the government's interests in a similar way." *Fulton v. City of Philadelphia*, 593 U.S. 522, 533–34 (2021). The ordinances fail these tests.

Counseling Ordinances. The County's ordinance is not neutral toward religion. Even "subtle departures from neutrality" cannot be tolerated in a law's "[h]istorical background" or "contemporaneous statements made by" rule makers. *Masterpiece Cakeshop v. Colorado C.R. Comm'n*, 584 U.S. 617, 639 (2018). Here, the sponsoring councilman said that "religious organizations" typically practiced so-called "conversion therapy," noted opposition from "the Baptist church," and

declined to include a religious exemption because "the reality that the church can do whatever they want however they want is just not true." VC ¶¶ 149–53.

The ordinances are also not generally applicable because they allow secular conduct that undermines the City's and the County's asserted interests. The City and the County proclaim an interest in "protecting the health and safety of minors." Defs.' Br. 19. But the ordinances do not apply to any *unlicensed* providers or to many other providers licensed under state law. K.C. Ord. § 50-234(b)(4); Cnty. Ord. § 5575.1(d); VC ¶¶ 154–55. And the City's ordinance does not restrict any free "conversion therapy." K.C. Ord. § 50-234(c). These exemptions "undermine[] the government's asserted interests" even more than granting an exemption for the Counselors; the current exemptions allow *any kind* of "conversion therapy" if administered for free, by an unlicensed provider, or by some licensed providers. *Fulton*, 593 U.S. at 534 (discussing *City of Hialeah*, 508 U.S. at 542–46).

The other cases cited by the City and County are distinguishable. Defs.' Br. 22. They addressed different laws. One case was decided in 2014, before more recent Supreme Court jurisprudence, including *Fulton*. And the sponsoring councilman's hostile comments here are unique.

Public Accommodation Ordinance. The City's Public Accommodation Ordinance fails general applicability by exempting lodging and some private clubs. K.C. Ord. §§ 38-1(a)(24)(a), (g). And the City's anti-discrimination ordinance elsewhere allows secular conduct that undermines its interests by exempting employers with fewer than six employees and some housing accommodations. K.C. Ord. §§ 38-1(a)(13); 38-113(b)(1)–(2); 38-103(c); 38-105(h). The City says its interest in applying the ordinance here is to "eliminat[e] discrimination." Defs.' Br. 9. But total exemptions for employers and housing accommodations undermine that interest for "secular activity" that is "comparable" to the Counselors' "judged

against the asserted government interest that justifies the regulation." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). So the ordinance is not generally applicable.

VI. The Ordinances trigger and fail strict scrutiny.

The Counseling Ordinances and the Public Accommodation Ordinance are per se unconstitutional because they compel and restrict speech based on content and viewpoint. MPI 18 (collecting cases). Neither the City nor the County address this argument. But putting that aside, at least strict scrutiny applies because the ordinances violate the Counselors' and similarly situated Missouri citizens' free-speech and free-exercise rights. *See Fulton*, 593 U.S. at 541–42 (free exercise); *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015) (speech). For strict scrutiny, the City and County must prove with evidence that applying its ordinances here serves a compelling interest in a narrowly tailored way. MPI 18. Failure to show either a compelling interest *or* narrow tailoring dooms a law. *See Fulton*, 593 U.S. at 541–42 (resolved on interests); *Reed*, 576 U.S. 171–72 (resolved on tailoring).

But the City and County never mention narrow tailoring. For example, the Counselors and Missouri claimed that the Counseling Ordinances are overinclusive. MPI 20–21. The City and County had no response. The Counselors and Missouri also offered eight alternatives that would be less restrictive than applying the ordinances to them. MPI 21–23. The City and County stayed silent on those alternatives. That's fatal. A government cannot meet its "obligation" to establish an "alternative will be ineffective"—as narrow tailoring requires—if it never considers the alternatives. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 816 (2000). And there are less-restrictive practices elsewhere—like Idaho; Independence, Missouri; Mississippi; and Utah. MPI 21, 23. Again, the failure to confront and disprove these options shows that the ordinances are not sufficiently tailored. *See McCullen v. Coakley*, 573 U.S. 464, 491–92 (2014) (holding law failed scrutiny when

other jurisdictions adopted less burdensome alternatives). Without narrow tailoring, the ordinances cannot survive strict scrutiny on that basis alone.

The City's and County's focus on their interests fare no better either. Neither (A) the Counseling Ordinances nor (B) the Public Accommodation Ordinance serve a compelling interest as applied to the Counselors and similar Missourians.

A. The City and County lack a compelling interest in enforcing their Counseling Ordinances here.

The Counseling Ordinances do not serve a compelling interest. The City and County never reconcile their supposed interests with the ordinances' exemptions. MPI 19–20. But that underinclusivity reveals the ordinances do not advance a compelling interest. *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 802 (2011) (noting underinclusivity undermines compelling interests). For example, the Counselors could comply with the ordinances by "refer[ing] minor clients to service providers outside of the reach of the Laws." Defs.' Br. 21. And the Counselors would not violate the City's ordinance if they offered counseling without "compensation." K.C. Ord. § 50–234(c). If the City and County truly wanted to eliminate the alleged harms covered by the ordinances, they would not allow referrals or exemptions.

Even so, the City and County claim an interest in avoiding "serious harms" to minors. But reliable scientific evidence shows that the Counselors cause no harm and provide benefits. Sullins ¶¶ 80–130; Levine ¶¶ 236–66. The studies the City and County rely on have significant flaws—as demonstrated by the issues with Haldeman's report. *See* Sullins ¶¶ 131–158; Levine ¶¶ 64–81; *Otto*, 981 F.3d at 868–70 (reviewing some of these studies and finding them unreliable).

At a minimum, there is significant uncertainty about how best to help minors experiencing gender dysphoria and unwanted same-sex attractions. But the City and County "bear[] the risk of uncertainty" on strict scrutiny. *Brown*, 564 U.S. at 799–800. If anything, mounting evidence reveals that the Counseling Ordinances

undermine the City and County's own interests in protecting minors. By prohibiting counselors from talking about these issues with clients, the City and County leave children no alternative but the so-called affirmation model. Levine ¶¶ 50–54. That approach leads to a predictable and treacherous path toward social transition and medical interventions like puberty blockers, cross-sex hormones, and surgeries. *Id.* at ¶ 16(g)-(n). Rather than help children, this path makes them a "'patient for life'" and exposes them to significant health issues with no reliable evidence of a compensating benefit. *Id.* at ¶¶ 152, 157. Better to let counselors have open discussions on these options before forcing them to seek irreversible interventions.

B. The City lacks a compelling interest in enforcing its Public Accommodation Ordinance here.

The City has no legitimate interest in applying its Public Accommodation Ordinance to the Counselors' and similar Missouri citizens' speech on marriage or gender identity. The City claims an interest in "preventing discrimination." Defs.' Br. 29. But that is not enough for three reasons. *First*, the City cites no evidence of "an actual problem" of discrimination "in need of solving." *Brown*, 564 U.S. at 799. *Second*, the ordinance is "underinclusive" as to the asserted interest, *id.* at 802, because it totally exempts lodging accommodations and associations and clubs with fewer than two hundred and fifty members, K.C. Ord. § 38–1(a)(23)(a), (g). *Third*, the Counselors do not discriminate. As the City admits, the Counselors "provide services" to "Christians," "non-Christians," and members of the LGBT community. Defs.' Br. 25–26. *See also* Eisenreich Decl. ¶ 17; Bury Decl. ¶ 24. The Counselors just object to providing counseling that forces them to express messages about marriage, relationships, and gender identity that violate their religious beliefs. As applied here, the ordinance does not prevent "discrimination"; it targets and compels the Counselors' speech. Laws serve no "legitimate interest" when they do that. *Hurley*, 515 U.S. at 578; *303 Creative*, 600 U.S. at 585–87 (collecting cases).

VII. The Ordinances are vague and overbroad.

The Counseling Ordinances and the Public Accommodation Ordinance's Unwelcome Clause are vague, overbroad, and give officials unbridled discretion.

Counseling Ordinances. The City and County claim their ordinances are not vague. They say the Counselors and other Missouri citizens "know *exactly* what is prohibited." Defs.' Br. 24. But "conversion therapy" itself is a vague term, subject to different meanings and manipulations. Levine ¶¶ 15, 76, 253. And the Counselors often confront unclear situations —like sexual behaviors such as pornography and inappropriate sexual relationships among minors. VC ¶¶ 191, 219–28. The ordinances also include other murky terms like "appearance," "expression," "mannerisms," "romantic attractions," and "feelings." K.C. Ord. § 50-234(b)(1)-(2); Cnty. Ord. § 5575.1(a)-(b). Even the ordinance's definitions confuse things. The County defines "sexual orientation" as an "enduring … attraction." 5575.1(e). But it is "unscientific" to say that sexual orientation is "immutable"—i.e., enduring. Sullins ¶¶ 7–23. The City defines "sexual orientation" as "perceived by others"—an inherently subjective definition. Seeking to change, eliminate, or reduce any of these items could violate the ordinances. But an ordinary person would not know for sure. MPI 11. The City and County offer no guidance.

The ordinances are overbroad too. They ban "a substantial amount of protected expressive activity," including consensual and helpful conversations between counselors and their clients. *United States v. Williams*, 553 U.S. 285, 287, 293 (2008). The ordinances are overbroad for another reason—they ban speech based on its viewpoint. With that finding, overbreadth is nearly automatic. "[V]iewpoint bias end[s] the matter." *Iancu v. Brunetti*, 588 U.S. 388, 399 (2019).

Public Accommodation Ordinance. The City never mentions its Unwelcome Clause by name. *See* Defs.' Br. 29. Nor does it define "unwelcome," "objectionable," or "not acceptable," engage in statutory interpretation, or confront

any of the cases and scenarios demonstrating overbreadth. *Id.*; K.C. Ord. § 38–113(a). But those terms are overbroad. MPI 23–24.

VIII. The Counselors meet the other preliminary-injunction factors.

The Counselors and Missouri meet the remaining injunction factors. No one delayed in bringing this motion. The Counselors tried to operate their practices despite the burdens of the ordinances but kept receiving requests that put them at risk of violating the ordinances. Eisenreich Decl. ¶¶ 46–53; Bury Decl. ¶¶ 43–51. They filed suit when they saw a growing need for their counseling, their burdens became too great, and their risk of prosecution became credible. Missouri sued soon after a state court upheld its law limiting medical and surgical interventions related to gender identity. Granting the injunction serves the public's interest because it preserves constitutional rights and upholds Missouri's policy of regulating licensed professionals. *See* Mo. Rev. Stat., Ch. 334, 337. The City and County are wrong to say that granting the injunction causes "substantial public harm." Defs.' Br. 25. An injunction helps children by allowing them to navigate gender identity and sexual orientation from quality professionals of their choice. Reliable studies show the benefits of this option, and the harms of the City and County's path of steering children towards life-altering procedures. Sullins ¶¶ 80–130; Levine Report ¶¶ 162–249. All factors favor granting the requested injunction.

Conclusion

The Counselors and similarly situated Missouri citizens have standing because they are the objects of the City's and County's ordinances. Those ordinances restrict their First and Fourteenth Amendment freedoms without sufficient justification. The Counselors and Missouri pled plausibly claims and deserve an injunction as this case proceeds.

Respectfully submitted this 14th day of April, 2025.

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Certificate of Service

I hereby certify that on the 14th day of April, 2025, I electronically filed the foregoing document with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record who are registered owners of the ECF system.

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