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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT TACOMA**

11 **BRIAN TINGLEY,**

12 Plaintiff,

13 v.

14 **NICHOLAS W. BROWN**, in his official
15 capacity as Attorney General for the State
16 of Washington; **DENNIS WORSHAM**, in
17 his official capacity as Secretary of Health
18 for the State of Washington; and **SHAWNA**
19 **FOX**, in her official capacity as Assistant
Secretary of the Health Systems Quality
Assurance division of the Washington State
Department of Health,

Defendants.

Case No. 3:21-cv-05359

The Honorable Tiffany M.
Cartwright

**PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:
July 21, 2026

Oral Argument Requested

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INTRODUCTION

For years, Washington law has censored Brian Tingley's counseling conversations with his clients. It has forced him to modify how he speaks about the human body, to turn away clients seeking to live consistent with their beliefs about sexuality, and to refrain from posting his views about counseling on his own website. Ninth Circuit precedent has allowed it, calling his speech mere conduct and saying the First Amendment doesn't protect him.

Now, by an 8-1 vote, the Supreme Court has vindicated Tingley's constitutional right to speak consistent with his religious convictions and his clients' wishes, holding that "conversion therapy" laws like Washington's censor speech based on viewpoint and trample on the First Amendment. *Chiles v. Salazar*, 146 S.Ct. 1010, 1029 (2026). That ruling rejected the Ninth Circuit's decision in this case, confirming that Tingley's speech is no less protected because he delivers it in a counseling session. Still, Washington's law and this Court's previous judgment continue to harm Tingley and chill his speech. This Court should enter a preliminary injunction to stop this ongoing constitutional violation and the irreparable harm it's causing.

Tingley is likely to prevail because Washington's law is "presumptively unconstitutional." *Id.* at 1021 (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)). The *Chiles* decision evaluated a Colorado law just like Washington's that banned counseling when minors seek to pursue their own goals of changing some aspect of their gender identity or sexual orientation. As the Supreme Court recognized, these voluntary conversations are protected speech (not conduct), *id.* at 1023; laws like Washington's discriminate based on viewpoint, *id.* at 1024; and laws like Washington's must at least pass strict scrutiny, *id.* "[T]he First Amendment stands as a shield against any effort to enforce orthodoxy in thought or speech in this country," including in counseling sessions. *Id.* at 1029. So Tingley's claims are

likely to succeed.

Losing free-speech rights automatically inflicts irreparable harm too. Tingley has self-censored for years by turning away clients who seek his help, changing his counseling conversations to avoid violating the law, and refraining from posting statements about his beliefs on his website. And the balance of equities and the public interest favors protecting Tingley’s freedom of speech. It is “[t]he people”—not just Tingley—who “lose whenever the government transforms prevailing opinion into enforced conformity.” *Id.* (citation modified). For these reasons, Tingley moves the Court to preliminarily enjoin Defendants from enforcing Washington’s law as applied to his counseling conversations.

BACKGROUND

I. Tingley’s counseling practice

Tingley is a licensed Marriage and Family Therapist with 20 years of experience counseling both adults and minors on a wide range of topics. V. Compl. for Declaratory and Inj. Relief (Compl.) ¶ 70, Dkt. 1; Decl. of Brian Tingley Supp. Pls.’ Mot. for Prelim. Inj. (Tingley Decl.) ¶¶ 1–3, Dkt. 2-1. He sees himself as an “encourager and facilitator, walking alongside [his] client to provide support, to challenge, and to provide feedback on the road they have chosen.” Tingley Decl. ¶ 14. He seeks to help his clients “achieve the lives and the personal goals that they have set out for themselves.” *Id.* ¶ 14. In all cases, his counseling consists of nothing but conversations: asking his clients questions, listening empathetically, and offering suggestions as to how they can better understand themselves and their own goals. Compl. ¶ 76; Tingley Decl. ¶¶ 13–14, 66.

Tingley is also a Christian. Tingley Decl. ¶ 7. He does not “pass moral judgment,” tell his clients that their feelings or actions are “wrong,” or dictate “how they should live their lives.” *Id.* ¶ 10. Rather, he “provide[s] a safe environment for each client to allow for his or her own self exploration” so he and his client can work

1 together to achieve the client’s goals. *Id.* Many of Tingley’s clients choose to work
 2 with him because of their shared religious convictions and their desire to work with
 3 someone whose worldview aligns with their own. Compl. ¶ 71; Tingley Decl. ¶ 8.

4 Tingley’s Christian faith also “informs [his] understanding of human nature.”
 5 Tingley Decl. ¶ 9. He believes that God created each human as male or female, that
 6 each person’s sex is an integral part of her God-given identity, and that each person
 7 should seek to identify and live consistent with her sex. *Id.* ¶¶ 26–27. Tingley also
 8 believes that God created marriage as the union between one man and one woman,
 9 that “sexual relationships belong ... only within marriage,” and that “we are to obey
 10 God’s laws and instruction regardless of conflicting desires or feelings we may
 11 have.” *Id.* ¶¶ 29–30.

12 Many of Tingley’s clients who share his religious convictions come to him to
 13 receive counseling on issues involving sex, gender, and sexuality. *Id.* ¶¶ 23, 40, 51,
 14 60–61. Both Tingley’s and those clients’ goals “are grounded in [their] shared
 15 Christian faith and acceptance of biblical teachings.” Tingley Decl. ¶ 24. Tingley has
 16 worked with minors who identified as transgender toward the goal of “becom[ing]
 17 more comfortable with [their] biological sex.” *Id.* ¶ 45; *see also id.* ¶ 51; Decl. of
 18 Brian Tingley Suppl. Pl.’s Mot. for Relief from J. (Tingley Suppl. Decl.) ¶ 10, Dkt.
 19 60. Tingley has also worked with “multiple clients, including minor clients, who
 20 experienced unwanted same-sex attraction and desired [his] help in reducing those
 21 attractions so that they ... could live in a manner consistent with the moral
 22 teachings of their Christian faith.” Tingley Decl. ¶ 53. Tingley has a “strong desire”
 23 to continue counseling minors who are dealing with these issues. *Id.* ¶ 52.

24 **II. Washington’s ban on “conversion therapy”**

25 Tingley cannot provide this counseling for minors struggling with these
 26 sexual-orientation or gender-identity issues because Washington law prohibits it.
 27 The applicable statute defines “conversion therapy as “a regime that seeks to

change an individual’s sexual orientation or gender identity,” including “efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.” RCW § 18.130.020(4)(a). “Conversion therapy” “does not include counseling or psychotherapies that provide acceptance, support, and understanding of clients or the facilitation of clients’ coping, social support, and identity exploration and development that do not seek to change sexual orientation or gender identity.” RCW § 18.130.020(4)(b). Violations can be punished with fines up to \$5,000, suspension from practice, and even the loss of license and livelihood. RCW § 18.130.160.

III. Tingley’s lawsuit and self-censorship

Tingley sued Washington state officials in 2021 and sought to enjoin enforcement of the law against his counseling practice. *See generally* Compl. ¶¶ 1–16. This Court dismissed his claims. Or. Granting Defs.’ Mot. to Dismiss and Denying Pl.’s Mot. for Prelim. Inj., Dkt. 47.

Since then, Tingley has self-censored his speech in at least three ways. First, he’s modified his speech during counseling to avoid stepping onto forbidden ground. Tingley Suppl. Decl. ¶¶ 25, 29–35. Second, he’s turned down prospective clients who are minors and want to pursue goals that Washington prohibits: counseling aimed at reducing same-sex sexual attraction or behavior or developing comfort with the person’s sex. *Id.* ¶ 23. He’s done this at least six times, and he will continue to turn down clients that put him at risk of violating the law. *Id.* ¶¶ 23, 28. Third, he’s avoided explaining on his website that he offers counseling for young people about gender and sexuality issues consistent with his Christian worldview. *Id.* ¶¶ 36–40. Even so, he’s at risk of an enforcement action any time he discusses gender or sexuality with a minor client. *Id.* ¶¶ 26–27, 43–47.

IV. Tingley’s motion to reopen this case

After the district court denied Tingley’s preliminary-injunction motion, Tingley appealed the decision to the Ninth Circuit and eventually petitioned the Supreme Court for certiorari. The Court denied his petition. *Tingley v. Ferguson*, 144 S.Ct. 33 (2023).

Three years later, the Supreme Court decided *Chiles v. Salazar*, a case involving a professional like Tingley challenging a nearly identical Colorado law. 146 S.Ct. at 1029. Like Washington, Colorado banned “any practice or treatment ... that attempts or purports to change an individual’s sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex.” Colo. Rev. Stat. § 12-245-202(3.5)(a). But it permits “practices or treatments that provide ... [a]cceptance, support, and understanding for the facilitation of an individual’s coping, social support, and identity exploration and development.” *Id.* § 12-245-202(3.5)(b).

Tingley subsequently moved to reopen this case. Pl.’s Mot. for Relief from J., Dkt. 59. As Tingley explained in that motion, *Chiles* resurrected his free-speech claims. *Id.* at 4–5. Tingley now seeks protection from this Court.

ARGUMENT

This Court should enjoin Washington’s ongoing violation of Tingley’s constitutional rights. The *Chiles* decision controls Tingley’s free-speech claims, so Tingley is likely to succeed on the merits. And success on the merits of his First Amendment claim establishes irreparable harm and shows that the equities weigh in Tingley’s favor.

I. Tingley is likely to succeed on his free-speech claims.

Washington’s law censors Tingley’s protected speech. And it does so based on viewpoint. That means that the law’s application to this speech must at the very

1 least satisfy strict scrutiny. But Washington cannot meet that demanding standard.

2 **A. Washington’s law regulates Tingley’s protected speech.**

3 Tingley is a counselor who wants to “sit and talk with” his clients. Tingley
4 Decl. ¶ 13. Conversation is his one tool to help people, young and old, “achieve
5 comfort with themselves and live happy and satisfied lives.” Tingley Suppl. Decl. ¶
6 9. Sometimes, the client suffers from distress because they resent their sexed
7 bodies. *Id.* ¶ 10. Other clients struggle to live a romantic life consistent with their
8 faith. *Id.* ¶ 11. His conversations are always voluntary. Tingley Decl. ¶ 15. And
9 Tingley never employs aversive techniques—just talk. *Id.* ¶ 13.

10 *Chiles* confirmed that the First Amendment protects these counseling
11 conversations. It is “obvious” that conversations (“the spoken word”) between
12 counselors and their clients are “the quintessential form of protected speech.”
13 *Chiles*, 146 S.Ct. at 1023. Like Kaley Chiles, all Tingley “does is speak with
14 clients[.]” *Id.*; see Compl. ¶ 76; Tingley Decl. ¶¶ 13–14, 66. He “does not prescribe
15 medication, use medical devices, or employ any physical methods.” *Chiles*, 146 S.Ct.
16 at 1023.

17 Yet Washington’s law regulates Tingley’s speech, and it does so explicitly. It
18 regulates “conversion therapy,” including talk therapy, if the client is under 18 and
19 the conversations include “efforts to change behaviors or gender expressions, or to
20 eliminate or reduce sexual or romantic attractions or feelings toward individuals of
21 the same sex.” RCW § 18.130.020(4). Tingley’s conversations often involve working
22 with clients to help them “overcome or *change* mental, emotional, or relationship
23 issues that they identify,” and to “achieve the lives and the personal goals that they
24 have set out for themselves.” Tingley Decl. ¶ 14 (emphasis added). That includes
25 minor clients suffering from gender dysphoria “who wish[] to live consistently with
26 their biological sex.” Tingley Suppl. Decl. ¶ 10. It also includes clients whose goal is
27 to “reduc[e] unwanted same-sex attraction.” *Id.* ¶ 11.

1 Washington previously argued that it could regulate Tingley’s counseling
 2 conversations as “conduct” because they occur while providing “treatment.” Br. on
 3 the Merits for Resps. at 36, *Tingley v. Ferguson*, 144 S.Ct. 33 (2023) (No. 22-942).
 4 But as *Chiles* makes clear, that gambit doesn’t work. A law regulates speech if it
 5 applies based on what the speaker wants to say. *Chiles*, 146 S.Ct. at 1021.
 6 Colorado’s law regulated the way Kaley Chiles could speak about “issues of human
 7 sexuality.” *Id.* at 1023. So calling it a regulation of her conduct was “simply
 8 mistaken.” *Id.*; see also *Conant v. Walters*, 309 F.3d 629, 637 (9th Cir. 2002)
 9 (prohibiting doctors from recommending medical marijuana would “punish
 10 physicians on the basis of the content of doctor-patient communications”).

11 Here too, any “effort to recast speech as conduct fail[s].” *Chiles*, 146 S.Ct. at
 12 1023. Tingley’s speech does not “become conduct just because it can also be
 13 described as a ‘treatment’” or “‘therapeutic modality.’” *Id.* And the fact that Tingley
 14 is a licensed mental-health professional “changes nothing.” *Id.* at 1024. Full free-
 15 speech protection belongs to professionals who speak as part of their profession,
 16 including doctors, *Conant*, 309 F.3d at 637; lawyers, *Holder v. Humanitarian L.*
 17 *Project*, 561 U.S. 1, 26 (2010); and counselors, *Chiles*, 146 S.Ct. at 1023. Speech is
 18 not “unprotected merely because it is uttered by ‘professionals.’” *Nat’l Inst. of Fam.*
 19 *& Life Advocs. v. Becerra (NIFLA)*, 585 U.S. 755, 767 (2018).

20 Nor is regulating a counselor’s speech part “of a long (if heretofore
 21 unrecognized) tradition of content regulation.” *Chiles*, 146 S.Ct. at 1026 (citation
 22 modified). It does not fit into the exception for commercial speech because it “does
 23 not require professionals to [merely] disclose ‘factual, noncontroversial
 24 information....’” *Id.* at 1025 (quoting *NIFLA*, 585 U.S. at 768). And its effect on
 25 speech is not merely incidental to its regulation of conduct either. Like Kaley
 26 Chiles, all Tingley “does is speak—and... speech is all [Washington] seeks to
 27 regulate.” *Id.* Indeed, carving out an exception here would give states free rein to

1 regulate counselors according to government officials’ preferred views at any given
 2 time. *Id.* at 1029 (explaining how a contrary rule would likely have permitted
 3 prohibitions on “affirming ... homosexuality”). The First Amendment doesn’t work
 4 that way.

5 Other governments defending similar censorship laws have recognized that
 6 *Chiles* controls the legal analysis in their cases. See Mot. to Waive Oral Arg. ¶ 6,
 7 *Wyatt Bury, LLC v. City of Kansas City*, No. 25-2566 (8th Cir. May 5, 2026) (“The
 8 resolution of *Chiles* definitively decided the dispositive issues in this case,
 9 specifically the interplay between the First Amendment, the protection of
 10 professional conduct that involves speech, and conversion therapy bans.”); Joint
 11 Notice Regarding *Chiles v. Salazar* at 2, *Cath. Charities of Jackson, Lenawee, &*
 12 *Hillsdale Ctys. v. Whitmer*, No. 1:24-cv-718 (W.D. Mich. April 14, 2026), Dkt. 51 (“In
 13 light of the Supreme Court’s decision in *Chiles*, and the Sixth Circuit’s decision on
 14 appeal in this case, the parties are working on a stipulated judgment and order that
 15 will resolve Plaintiffs’ claims.”). *Chiles* is dispositive here too; Tingley’s speech is
 16 constitutionally protected, and Washington’s censorship law does not “implicate any
 17 recognized exception to ... usual First Amendment rules.” 146 S.Ct. at 1025.

18 **B. Washington’s law regulates Tingley’s speech based on**
 19 **viewpoint.**

20 Washington’s law regulates Tingley’s speech based on viewpoint—the same
 21 defect that *Chiles* identified in Colorado’s law. *Chiles* controls the analysis here also
 22 because both Washington’s and Colorado’s laws employ materially identical
 23 language. First, they define conversion therapy the same way:

a regime that seeks to change an individual's sexual orientation or gender identity. The term includes efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.

RCW § 18.130.020(4)(a)

any practice or treatment... that attempts or purports to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attraction or feelings toward individuals of the same sex.

Colo. Rev. Stat. § 12-245-202(3.5)(a)

Second, they explicitly permit counseling that provides “[a]cceptance, support, and understanding” or facilitates “coping, social support, and identity exploration.”

Compare RCW § 18.130.020(4)(b), *with* Colo. Rev. Stat. § 12-245-202(3.5)(b)(I); *see also* Colo. Rev. Stat. § 12-245-202(3.5)(b)(II) (also allowing “[a]ssistance to a person undergoing gender transition”).

That means Washington’s law operates the same way as Colorado’s: Tingley “cannot voice certain ‘perspectives’ the State disfavors when speaking with consenting clients.” *Chiles*, 146 S.Ct. at 1024 (citation modified). Tingley believes—and his clients agree—that “it is more important [for a person] to live consistently with their religious values than to conform their lives to their subjective feelings,” including feelings of same-sex attraction or discomfort with their bodies. Tingley Decl. ¶ 22. “But if a gay or transgender client seeks [Tingley’s] counsel in the hope of changing his sexual orientation or gender identity, [Tingley] cannot provide it.” *Chiles*, 146 S.Ct. at 1024. He cannot help his clients change related “behaviors,” “gender expressions,” or “feelings” either. RCW § 18.130.020(4)(a). But he may convey the opposite view—“acceptance” and “support” for a client’s stated gender identity or sexual orientation. *Id.*

That is textbook viewpoint discrimination. Expressing that “change is... possible” is prohibited. Tingley Decl. ¶ 32. But affirming the status quo is allowed. *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019) (allowing “positive” but not “derogatory”

speech is viewpoint discrimination). *Chiles* is clear: laws like these “prescribe[] what views [a counselor] may and may not express” in order to “muzzle unpopular ideas.” 146 S.Ct. at 1024 (citation modified). Other courts evaluating materially identical laws agree on this point: this type of “law codifies a particular viewpoint—sexual orientation is immutable, but gender is not—and prohibits the therapists from advancing any other perspective.” *Cath. Charities of Jackson, Lenawee, & Hillsdale Ctys. v. Whitmer*, 162 F.4th 686, 692 (6th Cir. 2025) (enjoining a materially identical law) (citation modified); *Otto v. City of Boca Raton, Fla.*, 981 F.3d 854, 864 (11th Cir. 2020) (same).

Viewpoint-based speech restrictions are “nearly always” unconstitutional. *Chiles*, 146 S.Ct. at 1021. The Supreme Court *has never* upheld such a law or held that such a law passed strict scrutiny. That means the restriction on Tingley’s speech might be per se invalid. *See Iancu*, 588 U.S. at 399 (“viewpoint bias ended the matter”); *see also Otto*, 981 F.3d at 870 n.12 (explaining that a materially identical ordinance in Florida “may be unconstitutional per se” because of Supreme Court precedent forbidding viewpoint-based regulations of speech).

C. The restriction on Tingley fails strict scrutiny.

While Washington’s law might fail automatically for discriminating based on viewpoint, it must at least survive strict scrutiny. A viewpoint discriminatory law is “an egregious form of content regulation,” *Chiles*, 146 S.Ct. at 1021 (citation modified), and is “presumptively unconstitutional,” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Strict scrutiny is “a demanding standard that requires the government to prove its restriction on speech is ‘narrowly tailored to serve compelling state interests.’” *Chiles*, 146 S.Ct. at 1021 (quoting *Reed*, 576 U.S. at 163). “[I]t is rare that a regulation ... will ever be permissible” under this standard. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 818 (2000). In fact, the

Supreme Court has only upheld such a law “once” “[i]n the First Amendment context.” *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 484 (2025).

1. Censoring Tingley’s speech does not advance a compelling interest.

“[A] statute restricting speech” must serve a compelling interest in “*each application*.” *Fed. Election Comm’n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 478 (2007) (opinion of Roberts, C.J.). So Washington must show “a compelling interest” specifically in silencing Tingley rather than “rely[ing] on broadly formulated interests.” *Fulton v. City of Philadelphia*, 593 U.S. 522, 541 (2021) (citation modified). In the past, Washington claimed that its law protects the psychological well-being of minors. This fails for at least three reasons: 1) the asserted interest can’t justify a viewpoint-discriminatory law, 2) there’s no evidence establishing that Tingley’s counseling causes harm, and 3) censoring Tingley’s speech causes harm by depriving minors of the counseling they seek.

First, Washington seeks to silence viewpoints it deems harmful, and “a desire ... to exclude the expression of certain points of view from the marketplace of ideas” is “plainly illegitimate.” *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 804 (1984). There’s a reason the Court has never blessed a viewpoint-discriminatory law: they represent “an egregious assault” on Americans’ “inalienable right to think and speak freely” and our country’s “faith in the free marketplace of ideas as the best means for discovering truth.” *Chiles*, 146 S.Ct. at 1029 (citation modified).

R.A.V. v. City of St. Paul proves the point. 505 U.S. 377 (1992). In defending its ban on racially motivated cross-burning, St. Paul asserted an interest like Washington’s: protecting certain populations from certain messages. *Id.* at 392. But seeking to prevent harm “caused by a distinctive idea, conveyed by a distinctive message,” is really an attempt “to handicap the expression of particular ideas.” *Id.*

at 393–94. Washington isn’t bashful about its goals: counselors must “provide acceptance, support, and understanding” only. RCW § 18.130.020. They cannot express another viewpoint—not even the client’s own viewpoint if it clashes with Washington’s—no matter how kind, compassionate, or voluntary the conversations are. This attempt to silence views and change societal thinking is a “decidedly fatal objective.” *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 579 (1995).

Viewpoint discrimination is especially pernicious when the government inserts itself into an area that is “presently a subject of fierce public debate.” *Chiles*, 146 S.Ct. at 1029 (citation modified). “History is littered with examples of official efforts to manipulate and control ... the content of doctor-patient discourse ... to increase state power, suppress minorities, and muzzle unpopular ideas.” *Id.* at 1024 (citation modified). “[T]he people lose when the government is the one deciding which ideas should prevail.” *NIFLA*, 585 U.S. at 772.

Second, strict scrutiny requires a “direct causal link” between the censored speech and the harm the censor seeks to address. *Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 799 (2011). In *Brown*, California sought to ban the sale of violent video games to minors by citing studies showing these games were “significantly linked to increases in aggressive behaviour[.]” *Video Software Dealers Ass’n v. Schwarzenegger*, 556 F.8d 950, 963 (9th Cir. 2009), *aff’d sub nom. Brown*, 564 U.S. 786. But that evidence wasn’t enough because it did “not prove that violent video games *cause* minors to *act* aggressively.” *Brown*, 564 U.S. at 800. There is no study or evidence that Tingley’s type of counseling causes harm either. Expert Rep. of Kristopher Kaliebe, MD (Kaliebe) ¶ 301; Expert Rep. of D. Paul Sullins, (Sullins) ¶ 96.

Washington’s law conflates aversive techniques—trying to change behavior through conditioning using negative stimuli—with consensual conversations.

Kaliebe ¶¶ 314–15. But the counseling profession long ago abandoned aversive techniques in this context. Sullins ¶¶ 80–83 (noting aversion therapy continues as a treatment in other contexts). Even so, Washington and professional organizations like the American Psychological Association (APA) “lump[] together all ‘behavioral techniques, psychoanalytic techniques, medical approaches, [and] religious and spiritual approaches’ under the broad labels of gender identity change efforts (GICE), sexual orientation change efforts (SOCE), or conversion therapy. *Id.* ¶ 84. The terminology is meant to misleadingly “evoke physical techniques such as electric shock therapy” to justify the law’s broad reach. *Chiles*, 146 S.Ct. at 1018 (citation modified); Sullins ¶ 91.

The problem is that Washington’s law “reaches further” to prohibit “talk therapy[] employing no physical techniques or medications.” *Chiles*, 146 S.Ct at 1018, 1020. Indeed, Tingley counsels only clients who speak with him voluntarily, and he “never impose[s] [his] Christian faith on anyone.” Tingley Suppl. Decl. ¶ 9. Most of Tingley’s “clients are Christians who choose to work with [him] because of [their] shared worldview.” *Id.* And these conversations “help [Tingley’s] clients achieve the lives and the personal goals that they have set out for themselves based on their own beliefs and wishes.” Tingley Decl. ¶ 14.

The literature doesn’t prove that these voluntary conversations cause harm. Start with young people struggling with gender-related distress. The U.S. Department of Health and Human Services (HHS) recently published a peer-reviewed umbrella review of the evidence related to pediatric gender medicine. U.S. Dep’t of Health and Hum. Servs., *Treatment for Pediatric Gender Dysphoria: Review of Evidence & Best Practices* (2025)¹ (HHS Report). It found “no reliable evidence to suggest that psychotherapy for [gender dysphoria] is harmful.” *Id.* at 261; *see also*

¹ <https://opa.hhs.gov/sites/default/files/2025-11/gender-dysphoria-report.pdf>

1 Kaliebe ¶ 300. This dearth of research warrants caution before legislatively
 2 silencing speech on one side of the debate. But by silencing Tingley’s and his clients’
 3 perspectives, Washington pushes these children down the road of medicalization
 4 with all the attendant harms (described more below).

5 Studies don’t prove that helping people live consistent with their beliefs
 6 about sex causes any harm either. Take it from the APA, which *promotes* laws like
 7 Washington’s. In 2022, it conducted a literature review on SOCE and “did not find
 8 any ... studies ... which could assess a clear causal impact of SOCE on outcomes.”
 9 Sullins ¶ 96. Indeed, there have not been *any* “scientifically rigorous studies” on this
 10 subject since 1981. *Id.* ¶ 94; *see also Otto*, 981 F.3d at 868 (“the American
 11 Psychological Association ... concedes that nonaversive and recent approaches to
 12 SOCE have not been rigorously evaluated” (citation modified)). “No known study to
 13 date has drawn from a representative sample of sufficient size to draw conclusions
 14 about the experience of those who have attempted SOCE.” Sullins ¶ 94 (quoting
 15 peer-reviewed article examining SOCE among former and current religious
 16 persons). And “no known study to date has provided a comprehensive assessment of
 17 basic demographic information, psychosocial well-being, and religiosity, which
 18 would be required to understand the effectiveness, benefits, and/or harm caused by
 19 SOCE.” *Id.*

20 This lack of evidence torpedoes Washington’s case because it “bears the risk
 21 of uncertainty.” *Brown*, 564 U.S. at 799–800 (“ambiguous proof will not suffice”).
 22 That is why the only other courts to apply strict scrutiny to nearly identical laws
 23 have found it not satisfied. *Otto*, 981 F.3d at 868 (finding “reports and studies
 24 setting out harms ... offer[ed] assertions rather than evidence”); *Cath. Charities*, 162
 25 F.4th at 696 (finding studies on “aversive therapies” did not apply to voluntary
 26 counseling).

27 *Third*, far from helping young people, Washington’s law harms the children

1 and families who seek Tingley’s help, particularly young people with gender-related
 2 distress. Despite its common usage, the term gender identity is not a well-defined
 3 concept; it is “subjective, unverifiable, and unfalsifiable concept dependent entirely
 4 on a person’s self-report.” Kaliebe ¶ 45. And the idea that a person’s inner identity
 5 differs from their sex “remains controversial.” *Id.* ¶ 44. But one thing is clear: a
 6 person’s gender identity can—and often does—change. *Id.* ¶ 92. Some people who
 7 express a transgender or nonbinary identity will later “desist” and resume an
 8 identity consistent with their sex. *Id.* In fact, most children struggling with gender
 9 dysphoria (of whom some will express a transgender identity) will naturally grow
 10 out of their distress absent interventions that encourage a transgender
 11 identification. *Id.* ¶¶ 56, 63. Even Washington’s experts conceded that a person’s
 12 gender identity can “vary over time.” Decl. of Judith M. Glassgold, Psy.D
 13 (Glassgold), Ex. C at 17, Dkt. 30-3.

14 Counseling can—and often does—help these children grow comfortable with
 15 their bodies. Kaliebe. ¶¶ 304–11; Tingley Supp. Decl. ¶¶ 10–11. But in Washington,
 16 while counselors can express “acceptance” of a transgender identification, they
 17 cannot support a child in “seek[ing] to change ... gender identity.” RCW
 18 § 18.130.020(4)(b). Yet “[u]nquestioning affirmation is in itself a form of influence
 19 that forecloses a thoroughgoing exploration and potentially compromises
 20 autonomy.” Kaliebe ¶ 338. Indeed, it can lead to a child’s identity becoming “locked
 21 in.” *Id.* ¶ 147. And that increases the odds that the child will progress to medical
 22 interventions like puberty blockers, hormone supplements, and eventually surgery.
 23 *Id.* ¶¶ 149–51. These interventions carry known risks, including loss of bone
 24 density, impaired neurological functioning, worsening mental health, and even
 25 infertility. *Id.* ¶¶ 205–20; see *United States v. Skrametti*, 605 U.S. 495, 522 (2025)
 26 (cataloging these and other harms). “There are ... many reasons to believe social
 27 transitioning is harmful or iatrogenic (where medical treatment causes the disease

or illness)” because it encourages the child down a path that leads to life-altering medical interventions that would otherwise be unnecessary. Kaliebe ¶ 146.

Consider also adolescents (as opposed to children) suffering from gender dysphoria—a “novel cohort” whose “gender dysphoria appears to relate to social and online factors.” *Id.* ¶¶ 70, 77. They exhibit high rates of mental illnesses such as depression, anxiety, and eating disorders. *Id.* ¶ 304. There is a lot we don’t know about this group because they were almost “nonexistent” before 2010. *Id.* ¶ 74. Yet they are now the largest population referred to gender clinics. *Id.* ¶ 71. “[S]ome unknown percentage” of these adolescents who identify as transgender “will reassume a gender identity consistent with their natal sex, even after irreversible procedures.” *Id.* ¶ 92. But “[t]he low quality of studies on this topic obscures the true number.” *Id.*

Counseling for adolescents who want to realign their identity with their sex often helps them. It can alleviate the gender-related distress by addressing this population’s “co-occurring mental health conditions, neurodiversity, trauma, family issues, or other sources of distress” *without* resorting to social transitioning or medical interventions. *Id.* ¶ 300. That is why HHS concluded that “[p]sychotherapy for adolescents with [gender dysphoria] is a well-suited intervention.” HHS Report at 266. European countries such as the UK, Sweden, and Finland have similarly recommended “psychotherapy as the first line of treatment for gender dysphoria.” Kaliebe ¶ 306. But in Washington state, counselors cannot help a young person pursue change on the topic of gender identity. *Id.* ¶¶ 77, 298. Instead, they’re forced to affirm these young people in a transgender or nonbinary identification, leading some adolescents to undergo irreversible procedures they will later regret. *Id.* ¶ 339 (describing a young woman who was approved for chest surgery despite having “documented history of trauma, depression, and other comorbidities”).

Many people also benefit from counseling conversations that pursue change

1 in some aspect of sexual orientation. A common misconception is that sexual
 2 orientation is easy-to-define, binary, and fixed. That is reductive and “very far from
 3 the truth.” Sullins ¶ 20. In fact, sexual orientation is “multifaceted.” *Id.* ¶ 8; *see also*
 4 Glassgold ¶ 13. It includes not just romantic or sexual attraction, but a person’s
 5 related behaviors and identity. *Id.* ¶ 8. Any aspect of this multidimensional
 6 construct can change. For example, a teenager who identifies with or experiences
 7 same-sex attraction may choose to enter into an opposite-sex relationship. Or a
 8 religious child with same-sex sexual behavior may choose to become celibate. The
 9 APA even acknowledges that “clinical articles and surveys of individuals indicate
 10 that some may find such a life fulfilling.” Glassgold, Ex. B at 61. Further, non-
 11 heterosexual identities are notoriously unstable in young people, with many who
 12 initially identify as such “coming to identify as ‘completely’ or ‘100%’ heterosexual
 13 within a few years.” Sullins ¶ 15. Washington ignores the science and prohibits
 14 Tingley from helping these children and adolescents pursue their own goals.

15 A person’s natural attractions can change too. In fact, “a sizeable majority” of
 16 men and women with same-sex attraction *also* report “some heterosexual
 17 attractions.” *Id.* ¶ 20. So “‘change’ for many individuals need not imply a complete
 18 reversal,” like flipping a switch, but an “incremental” change in the “mix or
 19 intensity of attractions.” *Id.* ¶ 22. “Participants in multiple clinical studies of
 20 change-allowing therapy or support... have reported successful change along the
 21 homosexual-to-heterosexual continuum and strong net psychological benefit.” *Id.*
 22 ¶ 105. That’s why Lisa Diamond, “a widely published researcher,” has recognized
 23 that studies “unequivocally demonstrate that same-sex and other-sex attractions do
 24 change over time in some individuals.” *Id.* ¶ 14.

25 The kind of counseling that Tingley wants to provide regularly helps religious
 26 persons in particular. “[A]lmost all participants who seek therapy with a goal of
 27 change in some aspect of sexual orientation are highly religious persons.” *Id.* ¶ 87.

One study of overwhelmingly religious persons “provides clear *prima facie* evidence” that this counseling does “help at least *some* dissatisfied homosexually oriented people.”² That has been Tingley’s experience helping individuals who want to live “consistently with their religious values” and don’t want to identify as gay or lesbian. Tingley Decl. ¶¶ 22, 149. Yet Washington dismisses the centrality of religion to these individuals and insists that they wear a label which they reject. If anything “threatens the core identity of such persons,” it is Washington’s paternalistic law dictating which goals these individuals may pursue in counseling. Sullins ¶ 149.

In short, young people have benefited—and will continue to benefit—from Tingley’s counseling. Tingley Decl. ¶¶ 38–45, 58–62. And minors have the same right to receive this information as anyone else. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213–14 (1975) (“Speech that is neither obscene as to youths nor subject to some other legitimate proscription cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.”). Yet Washington’s law cuts off distressed kids and their families from the counseling they seek, overrides client autonomy, and substitutes the client’s goals with the State’s ideological ones. And it does all of this, “whether [they] want that protection or not.” *Martin v. City of Struthers*, 319 U.S. 141, 143 (1943). Courts should be “especially skeptical of regulations that seek to” deprive people of speech “for what the government perceives to be their own good.” *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 577 (2011).

2. Censoring Tingley’s speech is not narrowly tailored.

The restriction on Tingley also lacks narrow tailoring because it is overbroad,

² Nicolosi, J., Byrd, A. D., & Potts, R. W. (2000), Retrospective Self-Reports of Changes in Homosexual Orientation: A Consumer Survey of Conversion Therapy Clients. *Psychological Reports*, 86 (3_part_2), 1071–1088 (p. 1083). <https://doi.org/10.1177/003329410008600302.2>

1 underinclusive, and ignores less-restrictive alternatives.

2 Start with overbreadth. Far beyond aversive techniques or involuntary
3 therapy, the restriction on Tingley reaches “clients who voluntarily and willingly
4 talk with [Tingley] about their problem[s].” Tingley Decl. ¶ 15. These young people
5 cannot access the help they want even with no evidence that such counseling causes
6 harm. That “is vastly overinclusive” because the law’s “entire effect is only in
7 support of what the State thinks parents [and minors] *ought* to want,” according to
8 the State’s narrow ideological view on this issue. *Brown*, 564 U.S. at 804.

9 Restricting “personal, caring, consensual conversations” imposes “an especially
10 significant First Amendment burden.” *McCullen v. Coakley*, 573 U.S. 464, 488
11 (2014) (highlighting effectiveness of “one-on-one communication”).

12 The statute also muzzles counseling if the client wants to change any
13 “behaviors,” “expressions,” or “feelings” connected to their gender identity or sexual
14 orientation. RCW § 18.130.020(4)(a). Of course, change is a natural part of life,
15 especially for young people, but the State dictates that young persons may choose
16 one path (“affirming”) and they cannot choose a different one (“change”). Tingley
17 cannot counsel a young girl who recently began identifying as transgender but
18 wants to realign her identity with her sex, even though “gender-related distress is
19 fleeting” for most children. Kaliebe ¶ 95. Nor can Tingley counsel a child who
20 identifies as gay but wants to pursue changes in that area, even though “[s]elf-
21 identification as non-heterosexual is strikingly impermanent in the case of teens
22 and young adults.” Sullins ¶ 15. This type of paternalistic speech restriction reaches
23 far too broadly.

24 The law also sweeps up counseling for diverse populations with different
25 etiologies under the single umbrella of “conversion therapy.” Sexual orientation is
26 not the same thing as gender identity, and it is unclear whether *any* “research with
27 data show[s] why these separate constructs should be placed together.” Kaliebe

¶ 321. The differences run deeper still within each category: childhood gender dysphoria differs from adolescent gender dysphoria in “demographics ..., timing/onset, prevalence trends, and comorbidity burden, all of which suggest[] ... that direct extrapolations from one group to the other are invalid and potentially harmful without separate, rigorous research.” *Id.* ¶ 75. A law that groups these very different populations together cannot be narrowly tailored to any of them.

The law is also underinclusive, “rais[ing] serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.” *Brown*, 564 U.S. at 802. In *Garcia v. Cnty. of Alameda*, for example, the county banned spectators within 200 feet of a “sideshow”—street racing and driving exhibitions—to promote public safety. 150 F.4th 1224, 1233 (9th Cir. 2025). But “so long as they [were] not there to spectate,” people could still attend the events. *Id.* at 1234. That made the ordinance “hopelessly underinclusive.” *Id.* (quoting *Reed*, 576 U.S. at 171).

Washington similarly undermines its interest on at least three fronts. First, it invokes an interest in prohibiting harmful counseling but does not forbid other types of counseling that have much more evidence of harm. *See* Haney, K. M., *Attachment therapy: Are we truly doing “no harm”?* Clinical Psychology: Science and Practice, 28(1), 72–80. (2021)<https://doi.org/10.1111/cpsp.12379> (describing harmful forms of attachment therapy involving “therapeutic holding” or “rebirthing”); *see also* American Psychological Ass’n, *Special Issue on Harmful Treatments in Psychotherapy* (May 24, 2021), perma.cc/3P9G-N8MJ. This inconsistency makes the statutory regime “wildly underinclusive.” *Brown*, 564 U.S. at 801–802 (holding law prohibiting sale of violent video games to minors was underinclusive for failing to regulate “Saturday morning cartoons”).

Second, Washington allows the prohibited conversations in other contexts outside the licensed health professionals listed in the law. RCW § 18.130.040. The

1 law excludes life coaches, mentors, teachers, and religious leaders—to name just a
 2 few. *Chiles*, 146 S.Ct. at 1026 (noting that “life coaches” were not regulated). Nor
 3 does the law prohibit these conversations once a person turns 18 years old. RCW
 4 §§ 18.130.020 and 18.130.180. This type of arbitrary line drawing makes the law
 5 “woefully underinclusive” because “the State does not extend the [alleged] protec-
 6 tion to everyone.” *IMDb.com, Inc. v. Becerra*, 962 F.3d 1111, 1127 (9th Cir. 2020).

7 Third, Washington bans minors from accessing this counseling but not from
 8 making choices with similar potential effects on their well-being. For example,
 9 Washington authorizes these same minors to change their gender on their birth
 10 certificate (RCW § 246.490.075); and to obtain an abortion without parental consent
 11 (RCW § 9.02.100). And Washington allows minors at any age to undergo irreversible
 12 and life-altering hormonal or surgical measures that would purport to “affirm” a
 13 transgender identity—even though these decisions can lead to lifelong regret and
 14 complications. *Kaliebe* ¶ 339. So Washington allows conduct that implicates the
 15 same kinds of risks the law professes to stop. *Garcia*, 150 F.4th at 1234 (spectator
 16 ban failed because it permitted attendance to “sell girl scout cookies”).

17 “There is, of course, an alternative to [the State’s] highly paternalistic
 18 approach.” *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 374 (2002) (condemning
 19 censorship based on “fear that people would make bad decisions”). In fact, there’s
 20 more than one, and the government bears the burden to show that “less restrictive
 21 measures would not be effective.” *IMDb.com*, 962 F.3d at 1126. “If a less restrictive
 22 alternative” is available, the government “must use” it. *United States v. Playboy*
 23 *Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000).

24 Washington could start by limiting its law to aversive techniques and leave
 25 pure speech alone. It could ban any number of conduct-based techniques like shock
 26 therapy and negative conditioning. Likewise, it could ban counseling in which the
 27 counselor seeks to override the clients’ goals. Washington has many options without

1 prohibiting consensual conversations that respect the client’s goals and autonomy.
 2 Tingley Suppl. Decl. ¶ 4 (“I never set goals for clients, but I help them with goals
 3 they set for themselves.”).

4 The State also “has various other laws at its disposal that would allow it to
 5 achieve its stated interests while burdening little or no speech.” *Garcia*, 150 F.4th
 6 at 1233 (quoting *IMDb.com*, 962 F.3d at 1126). In *Garcia*, the spectator ban was too
 7 broad because the county could enforce littering, noise-pollution, reckless driving,
 8 and even murder laws to address concerns about traffic, pollution, property damage,
 9 and violence. *Id.* at 1233–34. Washington could likewise enforce its prohibition on
 10 “[i]ncompetence, negligence, or malpractice which results in injury to a patient or
 11 which creates an unreasonable risk that a patient may be harmed.” RCW §
 12 18.130.180(1), (4). Washington already assumes that this approach works because
 13 elsewhere it permits “[t]he use of a nontraditional treatment[s]”—presumably those
 14 without proven track records—“provided that [they do] not result in injury to a
 15 patient or create an unreasonable risk that a patient may be harmed.” RCW §
 16 18.130.180(4). “People who actually hurt children can be held accountable, but
 17 broad prophylactic rules in the area of free expression are suspect.” *Otto*, 981 F.3d
 18 at 870 (citation modified).

19 Alternatively, Washington could start its own educational campaign to
 20 inform minors and their parents about the State’s views on counseling. *E.g.*, 44
 21 *Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 507 (1996) (citing “educational
 22 campaigns” as alternative to First Amendment restrictions); *NIFLA*, 585 U.S. at
 23 775, (describing a “public-information campaign”). Or it could provide a state-
 24 approved list of counselors who provide the State’s preferred counseling on these
 25 topics. *Cf. United States v. Alvarez*, 567 U.S. 709, 729 (2012) (plurality) (describing
 26 “Government-created database”). Washington could even offer this counseling itself.

27 That Washington never “explored” these options “before resorting to the

drastic step of restricting speech” is enough to sink its case. *IMDb.com*, 962 F.3d at 1125; *see also McCullen*, 573 U.S. at 494 (holding that the state failed to show that it “seriously undertook to address the problem with less intrusive tools readily available to it”).

* * *

The only other federal courts that applied strict scrutiny to materially identical laws held that those laws failed. *See, e.g., Otto*, 981 F.3d at 868; *Catholic Charities*, 162 F.4th at 696. *Otto*, for example, noted the APA’s concessions that there is a “‘complete lack’ of ‘rigorous recent prospective research’ on SOCE,” and that the organization’s “equivocal conclusions can[not] satisfy strict scrutiny.” 981 F.3d at 868, 869. And *Catholic Charities* found no proof of a “direct causal link” between the stated harms and the restricted speech. 162 F.4th at 696 (quoting *Brown*, 564 U.S. at 799). Here too, Washington’s law is not “one of the first-ever content-based restrictions on speech to survive strict scrutiny”—much less “the first-ever viewpoint-discriminatory restriction to do so.” *Id.*

II. The remaining factors favor granting the preliminary injunction.

In constitutional cases like this one, the likelihood of success is the most important factor. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). So showing likely success “will almost always demonstrate ... irreparable harm.” *Id.* at 1042.

This is no mere theoretical harm either—Washington has trampled on Tingley’s free-speech rights for years. Because of Washington’s law, Tingley has declined at least six clients and refrained from expressing certain views about counseling on his website. Tingley Suppl. Decl. ¶¶ 23–40. As a result, his business has suffered. *Id.* ¶ 46. Even worse, Tingley has also avoided conversations about gender identity and sexual orientation that his clients ask for. *Id.* ¶ 28. And when he does discuss those issues, he modifies his speech to avoid violating the law. *Id.*

1 This has affected the content of his counseling. *Id.* ¶¶ 28–35. Without an injunction,
 2 both Tingley and his clients will continue to suffer these irreparable harms.

3 The balance of equities and public interest favor Tingley too. *See supra* at pp.
 4 16, 19–23. “[I]t is always in the public interest to prevent the violation of a party’s
 5 constitutional rights.” *Baird*, 81 F.4th at 1040, 1042. Washington’s law violates not
 6 only Tingley’s rights but also the First Amendment rights of his clients to receive
 7 information. *Brown*, 564 U.S. at 794–95; *Erznoznik*, 422 U.S. at 213–14. Those
 8 clients and their families know best what counseling they need. And science backs
 9 them up. Indeed, increasing evidence shows that pushing gender-dysphoric kids to
 10 identify as the opposite sex likely puts them on the path to medical interventions
 11 with many serious risks and known consequences, including sterilization. Kaliebe
 12 ¶¶ 146–53; *Skrmetti*, 605 U.S. at 522. Tingley’s counseling could help these young
 13 people avoid “lifelong medical dependency” and regret. Kaliebe ¶ 151.

14 CONCLUSION

15 Children and adolescents are coming of age during an “epidemic of adolescent
 16 mental health deterioration.” Kaliebe ¶ 79. More than ever, kids and their families
 17 navigating issues related to sexuality and gender-related distress need counselors
 18 like Tingley who can help them. Tingley should be free to speak, and his clients
 19 should be able to receive the counseling they want. For these reasons, Tingley
 20 respectfully requests that this court issue a preliminary injunction prohibiting
 21 Defendants from enforcing Washington’s law against his counseling conversations
 22 until further order from this Court.

Certification

I certify that this motion contains 7,401 words, in compliance with Local Civil Rule 7(e)(4).

Respectfully submitted this 23rd day of June, 2026.

By: s/ Katherine L. Anderson

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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

DATED: June 23, 2026

s/ Katherine L. Anderson
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