

**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; and
Pamela Eisenreich,**

Plaintiffs,

v.

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

Defendants.

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

**Plaintiffs' Suggestions in
Support of Their Renewed
Preliminary Injunction Motion**

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Introduction

Plaintiffs Wyatt Bury, Pamela Eisenreich, and their counseling practices (the Counselors) offer talk-based counseling to minors and adults. They counsel according to their belief that people flourish when they live by God’s design. For the Counselors, that means encouraging their clients to live consistent with their God-given sex and reserving sexual activity for marriage between a man and a woman. But ordinances in Kansas City and Jackson County regulate their speech on these topics. Those ordinances either compel them to promote messages in counseling that contradict their faith or restrict their speech about identity and sexuality. So the Counselors challenged the ordinances in this Court.

Last year, this Court dismissed the Counselors’ free-speech-related claims and mostly denied their requested preliminary injunction. But that ruling came before *Chiles v. Salazar*, 146 S. Ct. 1010 (2026). There, the Supreme Court resolved a circuit split and reaffirmed that the First Amendment applies in full force to a counselor’s conversations with his or her clients. It also held that governments cannot regulate counselors’ speech just because it disfavors their views. If a law does so, the Court held, it must pass at least strict scrutiny and may be per se unconstitutional. Following *Chiles*, the Eighth Circuit reversed this Court’s dismissal and preliminary-injunction denial and remanded the case for this Court to consider the Counselors’ claims and preliminary-injunction request “in light of *Chiles*.” *Wyatt Bury, LLC v. City of Kansas City, Missouri*, No. 25-2566, 2026 WL 1906073, (8th Cir. July 2, 2026).

Chiles resolves this case in the Counselors’ favor. Even so, the City and County still think they can enforce their ordinances against the Counselors. So the Counselors still need an injunction. They ask this Court to apply *Chiles* and enjoin the City and County from enforcing their ordinances against them as this case proceeds.

Factual Background

This Court identified most of the relevant factual background. *See Wyatt Bury, LLC v. City of Kansas City*, 804 F. Supp. 3d 939 (W.D. Mo. 2025). This section recounts those facts and offers additional information where relevant.

The Counselors are licensed counselors whose Christian faith informs their practice. Verified Complaint (VC) ¶¶ 41–51, ECF No. 1. Their minor and adult clients “voluntarily participate[]” in counseling. *Wyatt Bury, LLC*, 804 F. Supp. 3d at 951; VC ¶¶ 52–71. They counsel on identity and sexuality by speaking—asking “probing questions” and offering “advice” and “suggestions.” *Wyatt Bury, LLC*, 804 F. Supp. 3d at 951; VC ¶¶ 52–71; Bury Decl. ¶¶ 31, 37–39, ECF No. 9-1; Eisenreich Decl. ¶ 26, ECF No. 9-2. But they cannot provide any counseling that violates their faith. So they can neither affirm nor facilitate the idea that someone’s sex can be changed, nor encourage same-sex marriages or relationships. VC ¶¶ 82–94.

The Counselors hope to offer counseling to help minor clients align their identity with their sex or to avoid unwanted same-sex behaviors when that is the client’s desired goal. VC ¶¶ 61–79. The Counselors’ approach tracks science. After all, as the County admits, minors’ gender identity and sexual orientation can change. Cnty. Answer ¶ 99, ECF No. 53 (admitting complaint paragraph 99). Studies have shown a “strong net psychological benefit” for the type of counseling the Counselors desire to offer, especially when religious beliefs motivate the individual. Sullins Decl. ¶¶ 99–112, ECF No. 31-2. “[M]ultiple studies” have shown that “juvenile” gender dysphoria “does not persist through puberty” for “the large majority” of minors—roughly 90% according to one study. Levine Decl. ¶¶ 133–49, ECF No. 31-1. By contrast, no reliable studies show that voluntary counseling conversations cause harm. Levine Decl. ¶¶ 16(j), 175–219; Sullins Decl. ¶¶ 119–30.

The Counselors have encountered these issues. Bury has seen a minor who had thoughts that “contradicted” the client’s “understanding of biblical views of

sexual ethics.” Wyatt Decl. ¶¶ 45–49. Bury also receives calls from parents asking him to help their minor children with inappropriate sexual behaviors and struggles with gender identity. VC ¶¶ 216–227. And clients or prospective clients have asked Eisenreich to draft a letter diagnosing a minor with gender dysphoria so that he could begin medical procedures to alter his body and to provide counseling that would have affirmed a same-sex relationship. VC ¶¶ 181, 289; Eisenreich Decl. ¶ 43. Consistent with her belief, Eisenreich declined these requests.

But the City and County have ordinances that regulate the Counselors’ speech. The County’s Counseling Ordinance ban Bury—who offers counseling in an area of the City “located in” the County, Bury Decl. ¶ 6—from seeking to “change,” “eliminate,” or “reduce” a minor’s gender expression or same-sex behaviors or attraction.¹ Cnty. Ord. § 5575.1(a). But the ordinance allows counselors to assist “a person undergoing gender transition.” *Id.* And counselors can support a person’s “identity exploration and development” so long as it “does not seek to change an individual’s sexual orientation or gender identity.” *Id.* This Court found that the ordinance applies to speech. *Wyatt Bury, LLC*, 804 F. Supp. 3d at 959 n.6. And the County admitted that its ordinance regulates counseling that “involve[s] only “conversations.” Cnty. Answer ¶ 138 (admitting complaint paragraph 138).

Next, the City’s Public Accommodation Ordinance’s Accommodation Clause prohibits the Counselors from “refus[ing], withhold[ing] from, or deny[ing]” services “on account of” sexual orientation and gender identity. K.C. Ord. § 38–113(a). This

¹ After *Chiles* and the Counselors’ appeal, the City repealed its Counseling Ordinance. Neihart Decl., Ex. A. Only the City’s Counseling Ordinance—not the County’s—and Public Accommodation Ordinance apply to Eisenreich because she only meets with clients in a part of the City that is in a different county. VC ¶ 36; Eisenreich Decl. ¶ 5. So only Bury seeks a preliminary injunction against the County’s Counseling Ordinance while both Counselors seek a preliminary injunction against the City’s Public Accommodation Ordinance. Both also reserve their right to request other prospective and retrospective relief later.

clause forces the Counselors to provide counseling to affirm same-sex relationships and gender transition efforts because they provide counseling to affirm opposite-sex relationships and other identity-related topics. VC ¶¶ 239–57; *Wyatt Bury, LLC*, 804 F. Supp. 3d at 958. The clause also prevents the Counselors from asking about those topics before agreeing to the counseling. VC ¶¶ 294–95. The City admitted counselors must provide counseling upon request, even if they disagree with “the substance” of the counseling. Tr. 78, ECF No. 61.

The City’s Public Accommodation Ordinance’s Publication Clause makes it unlawful for public accommodations to “publish” any written material that states any “accommodations” (i) “will be refused, withheld from or denied” (Denial Clause) or (ii) that “the patronage” of any person “is unwelcome or objectionable or not acceptable” (Unwelcome Clause) because of a protected trait. K.C. Ord. § 38–113(a). This stops the Counselors from posting statements on their websites, from referring requests for counseling they cannot provide, and from explaining their religious beliefs on marriage, sexuality, and gender identity. VC ¶¶ 287, 304–23.

These ordinances impose severe penalties. They include \$1,000 fines, loss of City-issued business licenses, other damages, fees, and costs, and even jailtime. Cnty. Ord. § 5575.3; K.C. Ord. §§ 38-35, 38-101(a), 38-206(a)-(b).

To avoid these penalties, the Counselors have censored themselves. Bury declines requests for advice on sexuality and refers those requests to others. VC ¶¶ 213–29, Bury Decl. ¶¶ 48–49. Bury also refrains from asking minor clients questions that could lead to discussions of sexuality. Bury Decl. ¶¶ 42–46. And the Counselors have refrained from posting statements to explain their reasons for declining to offer counseling that affirms identities and relationships that contradict their religious beliefs to avoid the City’s Public Accommodation Ordinance. VC ¶¶ 304.

Argument

The Counselors need a preliminary injunction to stop ongoing First Amendment violations because they (1) are likely to succeed on the merits; (2) suffer irreparable harm without an injunction; (3) show the equities favor them; and (4) prove an injunction serves the public. *See Rodgers v. Bryant*, 942 F.3d 451, 455 (8th Cir. 2019) (listing factors). The Counselors meet the first factor because they have shown at least a “fair chance” of success. *Cigna Corp. v. Bricker*, 103 F.4th 1336, 1343 (8th Cir. 2024) (citation modified). Because the Counselors meet that factor, the others “are deemed to have been satisfied.” *Rodgers*, 942 F.3d at 456 (citation modified). Even so, the Counselors meet those factors too.

I. The Counselors are likely to succeed on their free-speech claims because the ordinances regulate their speech based on content and viewpoint.

The Counselors are likely to succeed on the merits because (A) the ordinances apply to their speech; (B) the County’s Counseling Ordinance restricts Bury’s speech; (C) the City’s Accommodation Clause compels their speech; (D) the City’s Publication Clause chills their speech; and (E) the ordinances fail strict scrutiny.

A. The ordinances apply to the Counselors’ speech.

The First Amendment prohibits the government from “abridging ... the freedom of speech.” U.S. Const. amend. I. The first question is whether the counseling here qualifies as speech. It does. It involves “the spoken word [which] is perhaps the quintessential form of protected speech.” *Chiles*, 146 S. Ct. at 1023. That kind of talk therapy “with clients” is “exactly the kind of expression” the First Amendment protects. *Id.*

The Counselors communicate with their minor clients. VC ¶¶ 66–71. They listen to them and ask questions. *Id.* They discover the minor and adult clients’ “personal goals.” *Id.* at ¶ 68. They exchange ideas and suggestions about how they

can help the clients meet their goals and flourish. *Id.* at ¶¶ 66–71, 162–92; Bury Decl. ¶¶ 31, 37–39; Eisenreich Decl. ¶ 26. The Counselors decide what they say in counseling sessions and control their own speech. Bury Decl. ¶ 34; Eisenreich Decl. ¶ 21. And the Counselors “do not engage in aversive techniques.” VC ¶ 139. With this background, the County admits that its ordinance bans counseling that consists of “only conversations.” Cnty. Answer ¶ 138 (admitting complaint paragraph 138).

So the Counselors “seek[] to engage only in speech” here. *Chiles*, 146 S. Ct. at 1023. They do not “prescribe medication, use medical devices, or employ any physical methods” when counseling about identity or sexuality. *Id.* Even so, the ordinances, “as applied to” them, “regulate[] what [they] may say.” *Id.* In that way, the ordinances burden their speech, not their conduct. *Id.* Their speech does not “become conduct just because it can also be described as a ‘treatment.’” *Id.* And the ordinances operate as a direct burden on their speech—not a regulation of speech that is “incident to conduct.” *Id.* at 1026. The ordinances do not restrict speech that “bears a close causal connection to some separately unlawful conduct.” *Id.* Nor do the City and County “seek to regulate” their “speech for reasons unrelated to its content.” *Id.* Instead, they regulate “speech as speech.” *Id.* (citation modified).

The City and County admitted that *Chiles* resolves “the interplay between the First Amendment, the protection of professional conduct that involves speech, and” the County’s ordinance. Neihart Decl., Ex. B ¶ 6. That is a plain reading of *Chiles*. And it is consistent with other decisions addressing this issue. *See Cath. Charities of Jackson, Lenawee, & Hillsdale Ctys. v. Whitmer*, 162 F.4th 686, 695 (6th Cir. 2025) (counseling using “spoken words” was speech); *Otto v. City of Boca Raton*, 981 F.3d 854, 863–68 (11th Cir. 2020) (same).

Before the benefit of *Chiles*, this Court held “that the Public Accommodation Ordinance as applied to Counselor Plaintiffs’ counseling likely does not regulate pure speech[.]” *Wyatt Bury, LLC*, 804 F. Supp. 3d 939 at 968 (citation modified).

This Court also distinguished between cases addressing free-speech challenges to “laws banning conversion therapy—*Chiles*, *Otto*, or *Tingley*”—from those cases with “a free-speech challenge to a public accommodation anti-discrimination law.” *Id.* at 978 n.26. But *Chiles* confirmed that the Free Speech Clause protects “the spoken word” between counselors and their clients. 146 S. Ct. at 1023. That conclusion applies equally to the Public Accommodation Ordinance. An activity that qualifies as speech receives First Amendment protection when expressed by a public accommodation. *303 Creative LLC v. Elenis*, 600 U.S. 570, 588–92 (2023) (holding custom website design was protected expression). That is why the Eighth Circuit also remanded the Counselors’ “free speech challenge to the Public Accommodation ordinance” to be reconsidered “in light of *Chiles*.” *Wyatt Bury*, 2026 WL 1906073, at *2. As the remand order acknowledges, *Chiles*’s speech analysis applies to the County’s Counseling Ordinance and the City’s Public Accommodation Ordinance.

B. The County’s Counseling Ordinance restricts the Counselors’ speech based on its content and viewpoint.

The County’s Counseling Ordinance triggers at least strict scrutiny because it restricts Bury’s speech to minors based on its content and viewpoint.

The County conceded its ordinance is “functionally identical” to Colorado’s law. Neihart Decl., Ex. B ¶ 4. Like in *Chiles*, the County’s ordinance discriminates against speech by “dictat[ing] what particular opinion or perspective individuals may express on” identity and sexuality. *Chiles*, 146 S. Ct. at 1021 (citation modified). That is viewpoint discrimination. *Id.*

Recall that the ordinance allows counselors to speak messages “support[ing]” or “assist[ing]” a “gender transition.” Cnty. Ord. § 5575.1(a). But the ordinance forbids counseling that “seeks to change” a minor’s “gender identity” to align with her biological sex. *Id.* On sexual orientation, counselors can help a minor “cop[e]” with his or her sexual orientation. *Id.* But Bury cannot “change” sexual orientation

or help “eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender,” even when the client desires that goal. *Id.*

This censorship “prescrib[es] what views” Bury “may and may not express.” *Chiles*, 146 S. Ct. at 1024. The ordinance accepts certain views—and only those views. It promotes the idea that identity can change, but only towards a “gender transition,” and not towards a minor accepting his or her sex. Cnty. Ord. § 5575.1(a). And it adopts the view that “sexual orientation is immutable.” *Cath. Charities*, 162 F.4th at 692–93 (holding similar counseling restriction was viewpoint-based); *Otto*, 981 F.3d at 863–64 (similar). The ordinance explicitly rejects the idea that sexual orientation is “curable”—i.e., changeable. Cnty. Ord. § 5575.1(e). The ordinance adds another layer of viewpoint discrimination by only prohibiting counseling that reduces “attractions” to people “of the same gender,” but not to people of the opposite gender. *Id.* at § 5575.1(a).

Because the ordinance is viewpoint-based, it is also content-based. Viewpoint discrimination “represents an even more egregious form of content regulation.” *Chiles*, 146 S. Ct. at 1021 (citation modified). The ordinance is also content-based for another reason: it “regulates how [Bury] may respond” based on the subject matter of the speech—gender identity or sexuality. *Id.* at 1023. But the ordinance does not control other subjects. So the County’s Counseling Ordinance is a “clear” “regula[tion]” of the “content” of speech. *Id.*

For these reasons, the ordinance is “presumptively unconstitutional,” and triggers at least strict scrutiny. *Id.* at 1021.

C. The Accommodation Clause compels the Counselors to speak messages about sexuality and gender to which they object.

The First Amendment also protects speakers’ “autonomy to choose the content of [their] own message.” *Hurley v. Irish-Am. Gay, Lesbian, and Bisexual Group of Boston*, 515 U.S. 557, 573 (1995). So governments may not (1) compel

someone to speak (2) a message that affects their desired expression. *E.g., id.* at 572–73. The Accommodations Clause violates this principle as applied to the Counselors by forcing them to promote certain ideas and goals about gender identity and sexual orientation that contradict their religious beliefs.

The Accommodation Clause requires public accommodations to provide the same “services, privileges, [or] advantages” to persons because of their sexual orientation, gender identity, or other characteristics. K.C. Ord. §§ 38–1(24), 38–113(a). These businesses may not “refuse, withhold from or deny,” or “discriminate against any person” in providing these benefits. *Id.* In the counseling arena, the City interprets this clause to mean that counselors cannot decline a request if “the substance” of the request relates to a protected category. Tr. 78. For example, a counselor must “treat and counsel” a client even if he lacks the ability to relate to the client’s experiences. *Id.* at 79. And he cannot “refer” that client “out.” *Id.*

That burdens the Counselors who have a policy and practice of counseling their clients—both adults and minors—consistent with their religious beliefs. *E.g.,* VC ¶¶ 49–52. So, for example, when clients share the Counselors’ beliefs, the Counselors often offer advice “rooted in biblical principles,” encourage couples “to live according to God’s design for their sexes,” and help clients to identify consistent with their sex. Bury Decl. ¶¶ 38, 41; Eisenreich Decl. ¶¶ 24–36. And, based on their religious views, the Counselors provide counseling that (1) only encourages sexuality and marriage in the context of the union of one man and one woman and (2) only promotes identities that harmonize an individual’s gender identity with his or her biological sex. *E.g.,* VC ¶¶ 82–89.

The City calls the Counselors’ policy an “admitted desire to discriminate” that violates the Accommodation Clause. Defs.’ Suggestions in Opp’n to Pls.’ Mot. for Prelimin. Inj. (Defs.’ Opp’n) at 2, ECF No. 20; *id.* at 9, 30 (same). The City believes, for example, that counseling to encourage opposite-sex and same-sex marriage

“should be the same.” Defs.’ Opp’n at 29. And, it says, if the Counselors offer marital counseling for opposite-sex couples to “help [the] married couples who have problems in their relationship,” the Counselors must offer that same help to support a same-sex relationship. *Id.* at 28. The City takes this position even though the Counselors gladly provide counseling to clients who identify as LGBT to address anxiety, career goals, and various other issues. VC at ¶¶ 92–93. The City considers the Counselors’ practice to be conduct (not speech) that discriminates on account of sexual orientation or gender identity. Defs.’ Opp’n at 26–29.

But counseling that promotes same-sex relationships or encourages the idea that one’s sex can be changed violates the Counselors’ views on marriage, sexuality, and identity. And because their counseling involves “the spoken word,” *Chiles*, 146 S. Ct. at 1023, the City forces them to express messages they oppose. The City even admitted that this clause compels the Counselors to “offer[] advice” they find “sinful”—such as counseling that promotes views on marriage that conflict with their faith. Tr. at 77. In other words, the City treats the Counselor’s speech as the service being offered. *See* Defs.’ Opp’n at 28. This “peculiar” application has “the effect of declaring” the Counselors’ speech itself “to be the public accommodation.” *Hurley*, 515 U.S. at 572–73.

In turn, the City compels speech by forcing the Counselors to counsel in support of same-sex marriages and relationships and to promote sexual attractions or gender identities contrary to their religious beliefs. This is “a content-based regulation of speech” because it “alters the content” of their desired speech by requiring them to support messages they would otherwise oppose. *Nat’l Inst. of Fam. and Life Advocates v. Becerra (NIFLA)*, 585 U.S. 755, 776 (2018) (citation modified). It is also content-based because it “treat[s]” the Counselors’ “choice to talk about” some topics—opposite-sex marriage, sexuality, and gender identity—“as a trigger for compelling them to talk about” other topics—e.g., promoting same-sex

marriage, same-sex attraction, and gender transitions. *Telescope Media Group v. Lucero (TMG)*, 936 F.3d 740, 753 (8th Cir. 2019). But that alters the content of their desired speech on these topics. VC ¶¶ 277–84.

The clause also compels speech based on viewpoint by only prohibiting views on marriage and gender that the City disfavors. *See 303 Creative*, 600 U.S. at 597 (noting “the very purpose” of a similar state law was “eliminating ideas that differ[ed]” from the State’s (citation modified)). The Counselors can support opposite-sex and same-sex marriages through counseling. They can endorse the idea that people can change their sex. They just cannot provide counseling that supports *only* opposite-sex unions or opposes the notion that sex is changeable. In this way, the City prefers some views on sexuality and gender over others by blessing counselors who endorse its opinion and threatening counselors who don’t.

So the Counselors face a choice: speak against their beliefs to avoid violating the ordinance or speak as they wish under the threat of punishment. That choice is “an impermissible abridgement of the First Amendment’s right to speak freely.” *Id.* at 589. The City’s effort to compel speech must satisfy at least strict scrutiny.

D. The Publication Clause restricts the Counselors’ speech.

What’s more, the Publication Clause—both its Denial Clause and Unwelcome Clause—restricts the Counselors’ speech. The Denial Clause prohibits “written or printed communication[s]” indicating any accommodation “will be refused, withheld from or denied to any person” because of a protected characteristic. K.C. Ord. § 38–113(a). The Unwelcome Clause also bans “written or printed communication[s]” that make “any person” feel “unwelcome or objectionable or not acceptable” at a public accommodation. *Id.* Because of their credible fear of prosecution under the Publication Clause’s Denial Clause and Unwelcome Clause, the Counselors have refrained from posting their desired statements to avoid penalties. VC ¶¶ 304–23.

The Publication Clause operates together with the Accommodation Clause. The former prohibits speech about activities that violate the latter. Because the Accommodation Clause requires the Counselors to provide counseling promoting certain views on sexuality and identity, the Publication Clause prohibits the Counselors from publicizing their inability to provide that counseling or referring requests for that counseling to others. But the Counselors have a First Amendment right to counsel consistent with their beliefs. So they have a reciprocal right to publicly explain why they made this choice. The City “cannot compel” the Counselors “to speak, so it cannot force them to remain silent either.” *TMG*, 936 F.3d at 757 n.5. By taking a contrary view, the City uses the Publication Clause to ban the Counselors’ speech about their constitutionally protected activities.

And it does so based on content and viewpoint. The Publication Clause singles out speech because of the “subject matter” and “the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). The clause only bans speech on sexual orientation, gender identity, and a few other protected classes. K.C. Ord. § 38–113(a). Any other topic is fair game. The Counselors wouldn’t run afoul of the clause if they posted their hours or rates, explained or critiqued techniques like cognitive behavioral therapy, blogged about hobbies that promote mental health, or commented on other matters. The line between permission and prohibition hinges on the content of the Counselor’s published statements.

The Publication Clause also regulates speech based on viewpoint because the “rationale” for the restriction “is the specific motivating ideology or the opinion or perspective of the speaker.” *Gerlich v. Leath*, 861 F.3d 697, 705 (8th Cir. 2017) (citation modified). Counselors can post statements supporting same-sex marriage and identities that contradict a person’s sex. But the Counselors cannot publish statements objecting to these messages in counseling. *Id.* at 705–06 (finding

viewpoint discrimination because one student group with disfavored views was treated worse than groups with different views).

The Unwelcome Clause has more problems. It bans statements indicating that a person's "patronage or presence" is "unwelcome, objectionable, unacceptable, or undesirable" or "not acceptable, desired, or solicited" because of sexual orientation or gender identity. K.C. Ord. § 38–113(a). So it allows "positive" statements about sexual orientation or gender identity, but not statements that some may view as "derogatory," "offensive," or contrary to "society's sense of decency or propriety." *Iancu v. Brunetti*, 588 U.S. 388, 393–94 (2019) (citation modified). That ban turns on the viewpoint. And "viewpoint discriminations" are "blatant" First Amendment violations. *Gerlich*, 861 F.3d at 715.

E. The ordinances trigger, but cannot satisfy, strict scrutiny.

The County's Counseling Ordinance and the City's Public Accommodation Ordinance compel and restrict speech based on content and viewpoint. Viewpoint discrimination is "nearly always" unconstitutional, *Chiles*, 146 S. Ct. at 1021, and typically "end[s] the matter," *Iancu*, 588 U.S. at 399. So does a judicial finding of compelled speech on ideological topics. *See 303 Creative*, 600 U.S. at 602–03 (holding law compelled speech without means-ends scrutiny). At a minimum, strict scrutiny applies to content and viewpoint-based speech regulations. *See Chiles*, 146 S. Ct. at 1021 (making this point). The government must prove the law "is narrowly tailored to serve compelling state interests." *Id.* (citation modified). The Supreme Court has "only" upheld a law triggering strict scrutiny "once." *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 484 (2025) (citing a case involving "material support to a foreign terrorist organization").

For compelling interest, the government must prove that the laws "address a real problem." *U.S. v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 822 (2000). To do so, it

must produce tangible evidence—not “anecdote and supposition.” *Id.* And, when defining the problem, the government must engage in a “precise analysis,” *Fulton v. City of Phila.*, 593 U.S. 522, 541 (2021), that looks at “the actual speech being regulated, rather than how the law might affect others who are not before the court,” *TMG*, 936 F.3d at 754. For narrow tailoring, the government must show that applying the laws is “the least restrictive means to further” their interests and that “less restrictive alternative[s] would be ineffective.” *Playboy Ent. Grp., Inc.*, 529 U.S. at 813, 824.

Neither the Counseling Ordinance nor the City’s Accommodation Ordinance meets these standards. Strict scrutiny looks for the “rare” needle; the ordinances are the haystack. *Chiles*, 146 S. Ct. at 1021.

1. The County’s Counseling Ordinance fails strict scrutiny here.

The County claims the Counseling Ordinance promotes an interest in avoiding “serious harms” to minors. Defs.’ Opp’n at 3. But a “public health and safety” interest cannot be used to “enforce orthodoxy in thought or speech in this country.” *Chiles*, 146 S. Ct. at 1029. That is especially true when applied to the “precise” issue here—Bury’s speech to minor clients with the client’s consent. *Fulton*, 593 U.S. at 541; Bury Decl. ¶ 36 (explaining how he confirms consent).

On that score, the County needs to show “a direct causal link” between Bury’s speech with willing minors and the County’s interest. *Brown v. Ent. Merchants Ass’n*, 564 U.S. 786, 799 (2011); accord *Interactive Digit. Software Ass’n v. St. Louis Cnty.*, 329 F.3d 954, 959 (8th Cir. 2003) (requiring “empirical support” for assertion that video games “cause psychological harm to minors”). The County has no such evidence. The County admits it is “not aware of any delineation of the data versus -- voluntary versus involuntary.” Tr. 69. The County admits there is “ongoing debate within the medical field and society about how to best treat children who identify as

a gender contrary to their sex.” Cnty. Answer ¶ 98 (admitting complaint paragraph 98). And the County admits that “minor’s gender identity, sexual orientation, and sexual behavior can and sometimes do change over time.” *Id.* at ¶ 99 (admitting complaint paragraph 99). Even the County’s key evidence—the American Psychological Association’s 2009 report, Defs.’ Opp’n at 4–6—conceded that “recent studies do not provide valid causal evidence of the efficacy of [sexual orientation change efforts] or of its harm,” Am. Psychological Ass’n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (APA Report) 42 (Aug. 5, 2009), <https://perma.cc/KX75-3KW4>.

In fact, the County’s ordinance undermines its interest in preventing harm. The ordinance cuts off distressed kids and their families from the counseling they seek. VC ¶ 62. And the ordinance allows counselors to “support” minors in “undergoing gender transition,” Cnty. Ord. § 5575.1(a), which often leads minors to alter their bodies and become lifelong medical patients. Levine Decl. ¶¶ 150–58. The ordinance pushes minors down this path even though there is “no good evidence on the long-term outcomes of [these] interventions to manage gender-related distress.” Hilary Cass, *Independent Review of Gender Identity Services for Children and Young People: Final Report* 13 (2024), <https://tinyurl.com/bdk6j9r6>. The ordinance also has this result even though “juvenile” gender dysphoria “does not persist through puberty” for “the large majority” of minors with a roughly 90% desistance rate according to one study. Levine Decl. ¶¶ 16(f), 133–49.

On the other hand, the County’s evidence agrees that the type of counseling Bury seeks to provide offers benefits. The APA explains that some attested that “they ... benefited” from counseling that “helped them live in a manner consistent with their faith,” and that they have found a “fulfilling” life by “resolv[ing] the tension between values and sexual orientation by choosing celibacy.” APA Report, 3, 43, 61. Other studies confirm these benefits. Sullins Decl. ¶¶ 113–18. And helping

minors match their sex with their identity can help avoid a “conveyor belt’ path” that typically leads to hormones and procedures that make minors “‘patient[s] for life’ with complex medical implications.” Levine Decl. ¶¶ 152–73.

The County’s interests are also not compelling because the ordinance is underinclusive—it allows other activities that undermine its asserted interests. *See Brown*, 564 U.S. at 802 (noting underinclusivity “raises serious doubts about” the government’s sincere interests). For example, the Counseling Ordinance applies only to licensed “providers.” Cnty. Ord. § 5575.1(d). Countless people who influence minors—like unlicensed therapists and peers—are unregulated. Even the definition of “provider” contains gaps: it includes professionals licensed under Chapters 334 and 337 of Missouri law but excludes other professionals who often interact with minors—teachers, school personnel, coaches, and clergy, to name a few. Mo. Rev. Stat. §§ 334.010(4), 337.505(2), (6), (9). By exempting professionals who have a significant influence on minors, the County defines “providers” in an underinclusive way. If speech seeking to change sexual orientation and gender identity were as harmful as the County believes, it would prohibit these conversations too. These exceptions eviscerate any asserted interest here.

Nor is the ordinance narrowly tailored. It is overinclusive. The County does not articulate the type of so-called conversion therapy it finds harmful to minors, so it is “virtually impossible to determine if the statute is narrowly drawn to regulate only that” type of therapy. *Video Software Dealers Ass’n v. Webster*, 968 F.2d 684, 689 (8th Cir. 1992) (citation modified). A more “precise law” that “defin[es] key terms” and excludes expression “would be less burdensome.” *Id.* If the County were concerned with conduct—like aversive techniques—it could prohibit those practices only. Or if it feared involuntary counseling of minors, it could have targeted *that* counseling. But the ordinance prohibits counseling where *speech is the therapy* and where minors seek or consent to the counseling. That shows the ordinance sweeps

too broadly by preventing minors from getting the counsel they desire—i.e., speech that cannot possibly be considered harmful. *See Brown*, 564 U.S. at 800, 804 (law was overinclusive when it presumed intended beneficiaries of restriction “ought to want” the restriction).

Less restrictive alternatives exist, too. *First*, the County could sponsor a publicity campaign to express its views on counseling or post a list of approved counselors. *See NIFLA*, 585 U.S. at 774–75 (suggesting similar approach). *Second*, it could exempt discussions of the “client’s moral or religious beliefs or practices” like Independence, Missouri. Independence Ord. § 12.06.008(A)(1)(f). *Third*, it could protect counselors from engaging in speech that violates their religious beliefs. *E.g.*, I.C. § 54-3416 (Idaho). *Fourth*, it could rely on existing state laws that forbid counselors from engaging in “misconduct, fraud, misrepresentation or dishonesty,” require counselors to get “informed consent,” and ban “exploitative relationship[s].” *See Mo. Rev. Stat. § 337.525(5), (13), (15); 20 CSR 2095-3.010(2), (8), (9); 20 CSR 2095-3.015(1)*. In short, other avenues exist to protect minors from non-expressive conduct. The County needed to have “considered different methods that other jurisdictions have found effective” and then produce evidence to show that the alternatives “would fail to achieve” its “interests.” *McCullen v. Coakley*, 573 U.S. 464, 494–95 (2014) (holding buffer zone was overbroad because the state’s interest could be achieved through other local and state laws). There is no evidence that the County considered alternatives and rejected them as ineffective.

2. The City’s Public Accommodation Ordinance also fails strict scrutiny here.

The City claims an interest in “eliminating discrimination and protecting persons of differing sexual orientations and gender identities.” Defs.’ Opp’n at 2. But that interest is too “broadly formulated.” *Fulton*, 593 U.S. at 541 (citation modified). And it’s not applicable. The Counselors gladly provide—and have

provided—counseling services to clients who identify as gay, lesbian, or transgender on anxiety, trauma, and many other issues. VC ¶¶ 53, 92–94. The Counselors’ decision to take on a client always turns on the *what*, not the *who*—what counseling they’re being asked to provide, not who asks. This is a legitimate “status and message” distinction. *303 Creative*, 600 U.S. at 595 n.3. While the government may prevent “status-based discrimination unrelated to expression,” it may not infringe on “a speaker’s right to control her own message.” *Id.* Because the ordinance does the latter here, the City’s ordinance serves no “legitimate interest” as applied to the Counselors’ speech. *Hurley*, 515 U.S. at 578.

The City also cannot have a compelling interest because its ordinance is underinclusive. It exempts certain lodging accommodations and associations and clubs with less than two hundred and fifty members. K.C. Ord. §§ 38–1(a)(25)(g), 38–105(g). These entities can discriminate without consequence. That undermines the City’s interest more than the Counselors’ expression.

Next, the ordinance lacks narrow tailoring because less restrictive alternatives exist. *First*, the City could apply its ordinance to stop actual status discrimination rather than regulating speech. *See 303 Creative*, 600 U.S. at 591–92 (explaining distinction); *TMG*, 936 F.3d at 754–56 (same). *Second*, the City could exempt counseling, just as it exempts other discrete categories of small lodging accommodations and clubs. K.C. Ord. § 38–1(a)(24)(a), (g). *Third*, the City could exempt businesses that primarily engage in constitutionally protected activities, as other jurisdictions have done. *See* Utah Code Ann. § 34A-5-111 (interpreting Utah’s law consistent with “the freedom of expressive association or the free exercise of religion”); Miss. Code § 11-62-5(5)(a) (exempting those who decline to create expression that violates their religious beliefs). That other jurisdictions achieve their goals while protecting expression in these ways proves the City’s ordinance is

not narrowly tailored. *See Ramirez v. Collier*, 595 U.S. 411, 428 (2022) (other states’ practices showed Texas “ban on audible prayer” was not narrowly tailored).

II. Bury is likely to succeed on his due process claim against the County’s Counseling Ordinance.

The Counseling Ordinance is also vague under the Due Process Clause. This Court previously held that this case was a “repackaging” of Bury’s free-speech challenge to the Counseling Ordinance. *Wyatt Bury*, 804 F. Supp. 3d at 987. This Court also held that the ordinance was clear “*as applied*” to Bury’s “particular conduct.” *Id.* at 986. To be sure, the ordinance prohibits Bury from offering counseling that “seeks to change an individual’s sexual orientation” when the change seeks to “eliminate or reduce sexual or romantic attractions or feelings towards individuals of the same gender.” Cnty. Ord. § 5575.1(a). But Bury has referred minor children struggling with inappropriate sexual behaviors—regardless of whether they involved same-sex or opposite-sex behaviors—because he did not know if attempts to change even opposite-sex sexual behaviors might violate the ordinance. VC ¶¶ 216–27. He is also unsure if the ordinance covers counseling about “sexual behaviors, including pornography [or] inappropriate opposite-sex relationships with minors.” *Id.* at ¶ 228. For these reasons, the vagueness claim requires separate treatment. *See Wyatt Bury*, 2026 WL 1906073, at *2 (remanding vagueness claim).

Vagueness. A law must give “adequate notice of the proscribed conduct.” *Parents Defending Educ. v. Linn Mar Cmty. Sch. Dist.*, 83 F.4th 658, 668 (8th Cir. 2023) (citation modified). But the ordinances use broad terms with undefined, subjective, and shifting meanings.

The County’s Counseling Ordinance prohibits “any practice or treatment that seeks to change an individual’s sexual orientation or gender identity, including efforts to change behaviors or gender expressions.” Cnty. Ord. § 5575.1(a). The

ordinance goes on to allow “sexual orientation-neutral treatment interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual’s sexual orientation or gender identity.” *Id.* And the ordinance permits counseling that “facilitates” an individual’s “identity exploration and development.” But it never defines “behaviors,” “sexual orientation-neutral treatment,” “unsafe sexual practices,” “facilitates,” “exploration,” or “development.” The words “transition,” “exploration,” and “development” connote “change”—but the ordinances neither define them nor offer any objective basis for distinguishing between them. And counselors’ views on “unsafe sexual practices” may range from anything besides abstinence to unprotected sex with multiple partners. “[S]exual orientation-neutral treatment interventions” is also vague, especially because it is linked to efforts “to prevent or address” other conduct. How can a counselor know if his advice is sufficiently “neutral” when it’s also meant “to prevent or address” specific sexual practices that he deems unsafe? The ordinance provides no answers.

Nor do the definitions provide clarity. “Sexual orientation” means “asexual,” “heterosexual,” and “other orientations.” Cnty. Ord. § 5575.1(e). But what if a counselor discourages a teenage boy from viewing heterosexual pornography? Is that changing sexual orientation by eliminating a heterosexual behavior? Or what if a counselor believes a teenager’s lack of interest in relationships stems from childhood trauma and encourages more openness to emotionally connecting with others? Is that impermissibly seeking to change the teenager’s “asexual” orientation?

Another question arises. “Sexual orientation” only includes “enduring” “physical, romantic, and/or emotional attraction[s].” Cnty. Ord. § 5575.1(e). But what counts as “enduring”? The County acknowledges that a minor’s sexual orientation can change, which itself seems to conflict with the ordinance’s insistence that it’s “enduring.” Cnty. Answer ¶ 99 (admitting complaint paragraph 99).

Without a clear definition of “enduring,” Bury is left to guess about whether counseling is an effort to change sexual orientation or affirm it. What may be an effort to change sexual orientation in one session may be an effort to affirm or support that same sexual orientation in the next.

These ambiguities have forced Bury to avoid asking certain questions during counseling sessions because he is unsure about how the ordinance applies. VC ¶¶ 193–230. And Bury has referred minor children struggling with inappropriate sexual behaviors to other counselors because he cannot tell if attempts to change those behaviors violate the ordinances. VC ¶¶ 213–29. In that way, the ordinance threatens him for what “the speaker actually intended to affect.” *FEC v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 468 (2007) (Roberts, C.J.). So he’s chilled his speech to “steer far wider of the unlawful zone” than if the ordinances were clear. *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972). This inflicts the harm the void-for-vagueness doctrine is designed to prevent: “self-censorship.” *Virginia v. Am. Booksellers Ass’n, Inc.*, 484 U.S. 383, 393 (1988).

Unbridled discretion. The above terms’ “lack of clarity” also make the ordinances “susceptible to arbitrary enforcement.” *Parents Defending Educ.*, 83 F.4th at 669. They are subject to “unpredictable,” “ad hoc,” and “subjective” “interpretations.” *Id.* (citation modified). True, *Holder v. Humanitarian Law Project* held that a plaintiff cannot win a vagueness challenge against a law that “clearly proscribe[]” their speech. 561 U.S. 1, 20 (2010). But, as explained above, the County’s ordinance does not clearly apply to all of Bury’s speech. And *Holder* never addressed whether the statute “grant[ed] too much enforcement discretion.” *Id.* So *Holder*’s “clearly proscribed” logic does not apply to Bury’s unbridled-discretion claim. See *Act Now to Stop War & End Racism Coal. & Muslim Am. Soc’y Freedom Found. v. District of Columbia*, 846 F.3d 391, 409–10 (D.C. Cir. 2017) (interpreting *Holder* this way). An injunction now would remedy that ongoing injury.

III. The Counselors are likely to succeed on their facial due process claim against the Unwelcome Clause.

The Publication Clause's Unwelcome Clause bans speech indicating someone's "patronage" is "unwelcome or objectionable or not acceptable." K.C. Ord. § 38–113(a). This language violates the First and Fourteenth Amendments because it is overbroad as applied to speech. To evaluate overbreadth, courts first "construe the challenged statute" and then determine whether that construction regulates "a substantial amount of protected expressive activity." *United States v. Williams*, 553 U.S. 285, 287, 297 (2008).

Step one. The Unwelcome Clause never defines "unwelcome," "objectionable," or "not acceptable." But the ordinance contains clues about what those terms mean. For example, the Denial Clause prohibits businesses from displaying statements about refusing, withholding, or denying a service to any person. K.C. Ord. § 38–113(a). Giving "effect" to each word and "presum[ing]" the City did not "enact meaningless provisions," unwelcome, objectionable, or not acceptable in the Unwelcome Clause must mean something different than refusing, withholding, or denying a service in the Denial Clause. *Dickemann v. Costco Wholesale Corp.*, 550 S.W.3d 65, 68 (Mo. 2018) (citation modified).

This Court recognized that "unwelcome, objectionable, or not acceptable" are "qualifiers" that "are different than a communication" that "goods or services of the public accommodation will be withheld or denied." *Wyatt Bury, LLC*, 804 F. Supp. 3d at 989. That is correct. The Denial Clause and Unwelcome Clause are separated by "or that." K.C. Ord. § 38–113(a). The word "or" "denotes an alternative to the preceding phrase." *Johnson v. Missouri Bd. of Prob. & Parole*, 359 S.W.3d 500, 504 (Mo. Ct. App. 2012). So the Denial Clause cannot apply to statements banned by the Unwelcome Clause because the clauses would be "superfluous and redundant." *Id.* at 505 (rejecting interpretation that resulted in "the second clause also appl[ing] to

the first clause”). But this Court previously interpreted the Unwelcome Clause as banning “messages of limited access to the goods and services of a public accommodation because of a patron’s protected status.” *Wyatt Bury, LLC*, 804 F. Supp. 3d at 989. (citation modified). That interpretation makes the Unwelcome and Denial Clauses “redundant” because they would “both serve the purpose” of banning statements that a good or service will be refused, withheld from, or denied to an individual. *Garland v. Dir. of Revenue*, 961 S.W.2d 824, 828 (Mo. 1998). Because those qualifiers are different, they must do something different than indicate a denial or limitation of services. Recognizing that difference also avoids a “conflict” between the “specific” and the “general.” *Wyatt Bury, LLC*, 804 F. Supp. 3d at 989. The clauses do not conflict because they each target specific communications.

Step two. Given that construction, the Unwelcome Clause silences a substantial amount of protected speech—it bans any speech that a “subjective listener” perceives as unwelcoming, objecting, or not accepting. *Chelsey Nelson Photography, LLC v. Louisville/Jefferson Cnty. Metro Gov’t*, 624 F. Supp. 3d 761, 803 (W.D. Ky. 2022). The City prohibits housing accommodations and employers from publishing some statements—but not unwelcoming ones. K.C. Ord. §§ 38–103(a)(4), 105(d)(3). This shows that the City can satisfy its interests without a broad ban on speech. Other courts have invalidated laws with similar language. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963) (ban on “objectionable” publications was overbroad). The Unwelcome Clause’s breadth prohibits a hardware store from displaying a Bible verse, a Halal market from posting a pro-Palestine window decal, or an amusement park from advertising about family day. *See 303 Creative LLC v. Elenis*, 6 F.4th 1160, 1214 (10th Cir. 2021), *rev’d in part*, 600 U.S. 570 (2022) (Tymkovich, T., dissenting) (collecting other examples); VC ¶¶ 66–67. One local government used a law with similar wording to prosecute a “plainly political” sign addressing gender identity. VC Ex. 4, ECF No. 1-4.

Consider the Counselors' statements. The Counselors' statements include their religious beliefs. VC Exs. 5–6, ECF Nos. 1-5, 1-6. “Some—including people who are agnostic, atheist, or share different views—find Christian statements on professional websites to be offensive.” VC ¶ 318. The Counselors' statements also include their beliefs about marriage and identity. VC Exs. 5–6. Couples in same-sex relationships or individuals who identify contrary to their sex may feel unwelcome by these beliefs. *See* GLAAD, *Guide to Anti-LGBTQ Online Hate and Disinformation*, <https://tinyurl.com/5xmfdxue> (last visited Aug. 3, 2026) (describing “biological male,” “biological female,” “biological pronouns,” and “unwanted same-sex attraction” as “[a]nti-LGBTQ hate speech”). So the Counselors' expression of their faith could make someone feel “unwelcome” “objectionable,” or “not accepted” based on religion, sexual orientation, or gender identity. K.C. Ord. § 38–113(a). Yet the First Amendment plainly protects that speech, so the Unwelcome Clause is overbroad.

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

The Counselors meet the three remaining injunction factors. *See Wyatt Bury, LLC*, 804 F. Supp. 3d at 984 (recognizing that the other factors “are deemed ... satisfied” after a likelihood of success finding).

First, the Counselors have chilled their speech by avoiding gender-identity and sexual-orientation topics during counseling sessions, referring prospective clients to other counselors, and refraining from posting statements about their faith-based approach to counseling. VC ¶¶ 189–238, 300–323. The Counselors tried to operate their counseling practices despite the ordinances' burdens, but kept receiving requests that put them at risk of violating the law. Wyatt Decl. ¶¶ 47–51; Eisenreich Decl. ¶¶ 46–53. So they filed this suit. The Counselors' “loss of First Amendment freedoms ... unquestionably constitutes irreparable injury.” *Mahmoud v. Taylor*, 145 S. Ct. 2332, 2364 (2025) (citation modified).

Second, “the balance of equities generally favors the constitutionally-protected freedom of expression.” *Rodgers*, 942 F.3d at 458 (citation modified).

Third, “it is always in the public interest to protect constitutional rights.” *Id.* (citation modified). Meanwhile, neither the City nor County suffers harm from an injunction that requires them to apply their ordinances constitutionally. They can continue to enforce their ordinances to prevent unlawful non-expressive conduct. They just cannot regulate the Counselor’s speech.

Conclusion

The Counselors want to help people through their struggles. They believe that their clients have the best chance to succeed by living consistently with certain truths. Their clients call them for that very help. But the City and County regulate the Counselors’ speech and thereby deprive their clients of the help they seek. The Counselors ask this Court to grant this motion to stop this irreparable harm.

Respectfully submitted this 11th day of August, 2026.

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Certificate of Service

I hereby certify that on the 11th day of August, 2026, 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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