AMERICANS UNITED
FOR SEPARATION OF CHURCH AND STATE

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Senator Rusty Crowe
Chair, Senate Health and Welfare Committee
301 6th Avenue North
Suite 8 Legislative Plaza
Nashville, TN 37243

Senator Joey Hensley
Vice-Chair, Senate Health and Welfare Committee
301 6th Avenue North
Suite 309 War Memorial Bldg
Nashville, TN 37243

Senator Bo Watson
Vice-Chair, Senate Health and Welfare Committee
301 6th Avenue North
Suite 13 Legislative Plaza
Nashville, TN 37243

Re: We oppose passage of SB 1556, which would allow counselors and therapists to discriminate against clients.

Dear Senator Crowe:

On behalf of our Tennessee members and chapter, Americans United for Separation of Church and State offers this written testimony opposing SB 1556, which would allow counselors and therapists to refuse to serve certain clients in the name of religion.

Freedom of religion is a fundamental American value that is protected by the First Amendment. It allows all of us the freedom to believe or not as we see fit, but it does not allow us to use religion as an excuse to harm or take away the rights of others. SB 1556, however, would create a sweeping religious exemption that would allow therapists and counselors to refuse serve certain clients. The blanket opt-out violates the American Counseling Association's (ACA) Code of Ethics, risks public health, and raises Establishment Clause concerns. The government should not permit counselors and therapists the use of religion to discriminate against others, including against their own counseling patients. Accordingly, we oppose this bill and urge the members of the Senate Health and Welfare Committee to reject it.

The State Should Not Attempt to Overturn Professional Standards

The ACA Code of Ethics encourages counselors to be aware of their own values, attitudes, and beliefs, but it prohibits them from imposing them on their clients.[1] The Code further states that counselors may not "condone or engage in discrimination based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital status/partnership, language preference, socioeconomic status, or any basis proscribed by law."[2]

These rules exist for the health and benefit of the clients. A counselor's refusal to serve a client could have a negative impact on the mental health of that client and could exacerbate the very issue for which he or she was seeking counseling. Refusal, even if accompanied by a referral, can cause harm to a client, especially if the client interprets the decision as a rejection.

SB 1556, however, seeks to nullify the ACA Code of Ethics, allowing counselors and therapists to ignore their professional responsibilities and refuse to serve clients for *any reason* that they believe violates their

[1] *Keeton v. Anderson*-Wiley, 664 F. 3d 865, 874 (11th Cir. 2011).
[2] *Id.* at 869.

sincerely held religious beliefs. The blanket exemption takes no account of the potential harm to clients or the profession as a whole.

SB 1556 Could Have Far Reaching Effects on Public Health

SB 1556 permits counselors and therapists to refuse to "counsel or serve a client as to goals, outcomes, or behaviors that conflict with a sincerely held religious belief." Thus, a counselor or therapist could refuse to serve a suicidal teenager because he is gay; a client seeking marriage counseling because he is in an interracial marriage; a mother because she is unwed; a woman in an abusive relationship because she is seeking to end her marriage; or a man who holds a faith contrary to that of the counselor. The grounds for refusal and the number of clients who could be affected are limitless, leaving clients with fewer mental health resources—and perhaps no services in an emergency situation—as well as the indignity of being refused treatment.

The goals, outcomes, or behaviors to which the counselors and therapists object might not be revealed before counseling a particular client begins. Thus, they could reject clients not just at the outset, but also in the midst of therapy. This could have even more damaging effects on clients as a relationship has been built and the counseling will be interrupted.

SB 1556 Raises Establishment Clause Concerns

Although the government may offer religious accommodations even where it is not required to do so by the Constitution,[3] the state's ability to provide religious accommodations is not unlimited: "At some point, accommodation may devolve into an unlawful fostering of religion."[4] Legislative exemptions for religious organizations that exceed free exercise requirements will be upheld only when they do not impose "substantial burdens on nonbeneficiaries" or they are designed to prevent "potentially serious encroachments on protected religious freedoms." To meet the confines of the Establishment Clause, "an accommodation must be measured so that it does not override other significant interests."[5] It may not place "unyielding weight" on the religious interest "over all other interests," including the interests of counselors and therapists.[6]

This blanket opt-out in SB 1556, however, is sweeping. It fails to consider the impact on clients, other counselors and therapists in a practice, and the counseling profession. Additionally, SB 1556 places the religious views of counselors and therapists above that of the client and patient, substantially burdening the interests of the client and patient. Many people who seek out therapy do so because they are in a vulnerable state. Passage of SB 1556 could put a client's mental health at risk.

That counselors and therapists must refer clients does not cure the Establishment Clause concern. As explained above, this still risks the health of clients, and places a burden on other counselors and therapists in a practice. Accordingly, Establishment Clause concerns dictate that this bill be rejected.

For all of the above reasons and more, Americans United opposes SB 1556 and urges the Senate Health and Welfare Committee to reject the bill.

Sincerely,

Amrita Singh
State Legislative Counsel

[3] Of course, in some instances exemptions may be constitutionally permissible but unwise public policy.

[4] *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327, 334-35 (1986) (internal quotation marks omitted).

[5] *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

[6] *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 704, (1985).