



Amrita Singh  
State Legislative Counsel

(202) 466-3234 x226  
(202) 898-0955 (fax)  
americansunited@au.org

1901 L Street, NW  
Suite 400  
Washington, DC 20036

April 14, 2016

The Honorable Bill Haslam  
State Capitol, 1st Floor  
600 Charlotte Ave  
Nashville, TN 37243

**Re: Please veto SB 1556, because it would allow counselors and therapists to discriminate against clients.**

Dear Governor Haslam:

On behalf of its Tennessee members and chapter, Americans United for Separation of Church and State urges you to veto SB 1556, which would allow counselors and therapists to use their own religious and moral beliefs to justify denying medical services to patients. No Tennessean who seeks counseling or therapy, however, should be discriminated against. If this bill becomes law, it could harm some of the most vulnerable Tennesseans: those in need of mental healthcare and treatment. At the same time, this legislation dishonors the constitutional guarantee of religious liberty.

**SB 1556 Could Have Far Reaching Effects on Public Health**

Many Tennesseans need mental health services, including to treat depression, deal with abusive relationships, or tensions within families. SB 1556, however, permits counselors and therapists to refuse to “counsel or serve a client as to goals, outcomes, or behaviors that conflict with the sincerely held principles of the counselor or therapist.” The grounds for refusal and the number of clients who could be affected are limitless. A counselor or therapist could refuse to serve a client because the client is a single mother, an LGBT person, part of an interracial couple, a woman who is leaving her abusive husband, or a person of a different faith than the therapist. This bill would leave clients with fewer mental health resources, as well as the indignity of being refused treatment.

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.

### **The State Should Not Attempt to Overturn Professional Standards that Protect Patients**

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.<sup>1</sup> 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.”<sup>2</sup>

These rules exist for the health and benefit of the clients. Clearly, a refusal to treat a client has significant potential to cause the client harm. Moreover, the client’s goals, outcomes, or behaviors to which the counselors and therapists object might not be revealed before the counseling relationship begins. Thus, a counselor could reject a client not just at the outset, but also in the midst of therapy. This could have even more damaging effects on a client as a relationship has been built and the counseling will be interrupted.

SB 1556, however, seeks to nullify the ACA Code of Ethics and takes no account of the potential harm to clients or the profession as a whole.

### **SB 1556 Raises Constitutional Concerns**

The state’s ability to create exemptions from the law for religious and moral beliefs is not unlimited: “At some point, [such an exemption] may devolve into an unlawful fostering of religion”<sup>3</sup> and run afoul of the Constitution. An exemption must not place “substantial burdens on nonbeneficiaries”<sup>4</sup> and “must be measured so that it does not override other significant interests.”<sup>5</sup>

The sweeping opt-out in SB 1556, however, fails to consider the impact on clients who are seeking mental health care, other counselors and therapists in a practice, and the counseling profession. SB 1556 places the religious and moral views of counselors and therapists above their clients’ best interests and the health care they are supposed to provide. 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 constitutional concern. As explained above, this still risks the health of clients, and places a burden on other counselors and therapists in a practice.

Nor does slightly altering the language of SB 1556 by changing the reference to “religious beliefs” to “principles” ameliorate constitutional concerns. The bill still serves an impermissible religious purpose. The Constitution requires that legislation must have a secular purpose,<sup>6</sup> which is determined by the entire legislative history—not just “the last in a series of governmental

---

<sup>1</sup> 2014 ACA CODE OF ETHICS § A.4.b (2014), available at <http://www.counseling.org/docs/ethics/2014-aca-code-of-ethics.pdf?sfvrsn=4>

<sup>2</sup> *Id.* at § C.5.

<sup>3</sup> *Corporation of the Presiding Bishop v. Amos*, 483 U.S. 327, 334-35 (1986) (internal quotation marks omitted).

<sup>4</sup> *Texas Monthly, Inc. v. Bullock*, 480 U.S. 1, 18 n. 8 (1989); see also *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 704, (1985).

<sup>5</sup> *Cutter v. Wilkinson*, 544 U.S. 709 (2005).

<sup>6</sup> *E.g., McCreary County v. ACLU of Ky.*, 545 U.S. 844, 845 (2005).

actions.”<sup>7</sup> When determining the purpose of SB 1556, one cannot “turn a blind eye to the context in which this policy arose,”<sup>8</sup> including the original wording and the discussion surrounding the bill.<sup>9</sup> This language change came late in the legislative process—after both the Tennessee Senate and the House Committee on Health had already approved language explicitly allowing a refusal based on a “sincerely held religious belief.” In fact, statements made during the Senate floor debate and the House Health Committee hearing clearly demonstrate that this legislation’s purpose is to permit counselors and therapists to refuse to provide services based on their religious beliefs and to allow their beliefs to trump the needs of patients seeking medical services.

\* \* \*

Freedom of religion is a fundamental American value that is protected by the First Amendment. It guarantees 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 exemption that would allow therapists and counselors to refuse serve certain clients based on their religious or moral beliefs. As a result, SB 1556 would actually harm religious freedom.

**For all of the above reasons and more, Americans United opposes SB 1556 and urges you to veto this bill.**

Sincerely,



Amrita Singh  
State Legislative Counsel

---

<sup>7</sup> *Id.* at 866.

<sup>8</sup> *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 315 (2000).

<sup>9</sup> *McCreary*, 545 U.S. at 862 (citing *Edwards v. Aguillard*, 482 U.S. 578, 586-588 (1987); *Wallace v. Jaffree*, 472 U.S. 38, 58-60 (1985)).