

# CALIFORNIA GAY THERAPY BILL CENSORS SPEECH

There are many moral, legal, and professional issues involved in a California bill, AB 2943, which seeks to amend the state's consumer fraud laws by banning gay and transgender conversion therapy. Whether such therapy works or not, or is morally defensible, may not be as important as the free speech implications of this piece of legislation.

"Sexual orientation change efforts," the bill says, refer to "any practices that seek to change an individual's sexual orientation." It is the absolutist language—*any practices*—that is most troubling.

Though the bill's sponsors, such as Assemblyman Evan Low, argue that the bill does not ban people from selling conversion therapy books or talking about it, this position is not convincing. Moreover, it does little to calm fears by saying that the proposed law is limited to bans on advertising and the sale of conversion therapy.

The Human Rights Campaign, a leading gay rights organization, and the Southern Poverty Law Center, a prominent left-wing organization, have already sought to censor organizations that feature conversion therapy. Neither group has any standing in the mental health field. So it is not a matter of idle speculation what might happen if AB 2943 passes in the Senate—free speech will suffer.

The threat to the First Amendment has led the editorial board of the *Los Angeles Times* to say that the critics of the bill should be taken seriously. "It's possible that the critics of the bill are being alarmist," it said May 7, "but the language of the legislation is ambiguous enough to justify at least some of their concerns." It recommended that the Senate amend

the bill “to make it clear that it can’t be used against books or religious preaching or counseling about sexuality.” That is a reasonable request and should be honored.

What is making this issue needlessly complicated is the Ninth Circuit decision declaring conversion therapy to be conduct, not speech. This is absurd. In making this ruling, the appeals court removed this practice from First Amendment considerations.

To be sure, there are cases where expression can plausibly be seen as conduct. For instance, U.S. Supreme Court Justice Hugo Black identified himself as a First Amendment absolutist, yet he determined that flag burning was conduct, not speech, and was therefore subject to censorship (the practice was later ruled to be speech and was therefore entitled to First Amendment protection).

Counseling is clearly speech. The fact that the high court ruled that flag burning was not conduct—it is certainly more akin to conduct than counseling is—suggests that AB 2943 would not survive scrutiny by the Supreme Court.

This bill represents the politicization of the mental health profession. The subject of conversion therapy is the proper domain of professional licensing organizations, not lawmakers.

We are contacting the California Senate asking legislators to amend this bill. As it stands now, this bill would do serious damage to free speech, as well as to the autonomy of mental health practitioners.