



Written by [Bob Adelman](#) on March 31, 2023

## Washington State's Law Banning "Conversion Therapy" Likely Headed to Supreme Court

When [Brian Tingley](#), a Christian marriage and family counselor in Tacoma, Washington, learned that his state passed a law in 2018 banning him from advising his clients to affirm their biological sex, he knew he was in trouble.

During counseling sessions with people "confused" about their sex, he would clearly state his recommendations that they follow the Scriptures regarding sexual identity. In some cases, he would recommend something called "conversion therapy," whereby an individual (perhaps born a biological female but thinking (or "identifying") that she was a male) would work to reestablish belief in his or her biological sex.

As Alliance Defending Freedom (ADF), the public-interest law firm taking his case to the Supreme Court, [noted](#), the Washington state law "put another person in the room" with Tingley:

Today, there's a third person in the room.

It's a representative of the state government.

Reluctantly, you start talking with your counselor. But every time the conversation turns to a particular topic, the representative interrupts, saying, "This conversation is prohibited!"...

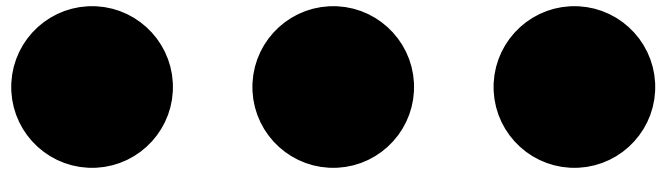
This may seem like a radical hypothetical. But it is essentially what could happen under a new state law in Washington. The law permits the government to intrude on confidential counseling sessions and dictate what counselors and clients can discuss.

Under that law, counselors such as Tingley can't talk about gender, sexual orientation, sexual behavior, or gender identity in any way that isn't in line with the state's views. And those views prohibit any suggestion that an individual might be a candidate for counseling supporting his biological sex and reversing the brainwashing the culture now forces onto citizens.

Representing Tingley, ADF filed suit in 2021, complaining that the state law violated both Tingley's right to free speech under the First Amendment to the U.S. Constitution and his freedom of religion.

A district court tossed Tingley's complaint.

ADF appealed to the Ninth Circuit Court of Appeals, where a three-judge panel affirmed the lower



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court's ruling.

ADF appealed again, asking for a full Ninth Circuit Court review. The court denied the appeal.

This week, [ADF appealed the case](#) to the Supreme Court. Based on a recent decision in a similar case, the Court is likely to decide in Tingley's favor and toss Washington State's ban.

As ADF wrote:

For government officials to insert themselves into confidential counseling sessions—and determine what goals counselors and their clients can pursue and what topics they can discuss—is a radical violation of both free speech and religious freedom.

It's the client's choice to pursue a specific goal through counseling, not the government's.

Similarly, it's up to counselors like Brian Tingley to determine how best to help their clients achieve their counseling goals during their sessions.

The government has no business telling counselors what topics they can and cannot discuss during these sessions.

The Ninth Circuit's three-judge panel said that Washington state had the power to override Tingley's First Amendment rights because his conversation fell under the guise of "professional conduct" that might involve "speech" and therefore could be restricted.

Unfortunately for the Ninth Circuit, and fortunately for Tingley, the Supreme Court has already seen through this façade and ruled that the First Amendment takes precedence. As one of the Ninth Circuit's senior judges stated in the case (even though he wasn't on the panel):

The panel here applied [a previous but no longer valid] precedent to conclude that Tingley's talk therapy was conduct [and] not speech, thereby putting him at risk of professional discipline....

But the Supreme Court has already ruled: The First Amendment cannot be evaded by regulating speech "under the guise" of regulating conduct....

[In *National Institute of Family and Life Advocates v. Becerra*, or NIFLA, the Supreme Court] rejected recategorizing speech as professional conduct merely because it took place in a professional context.

The senior judge defended Tingley's right under the First Amendment to enjoy his freedom of religion. He called out the two who ruled against the counselor:

While there is no longstanding tradition of regulating therapeutic speech, there IS a constitutional tradition relevant here: namely, that of protecting religious speech.

Unfortunately, the panel did not consider it.

The lone dissenter on the panel reminded the other two panel members of Tingley's religious freedom guarantees under the First Amendment:

[W]e also cannot ignore that conversion therapy is often grounded in religious faith.



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According to plaintiff Brian Tingley, a therapist licensed by the State of Washington, his practice of conversion therapy is an outgrowth of his religious beliefs and his understanding of Christian teachings. Tingley treats his clients from the perspective of a shared faith, which he says is conducive to establishing trust.

And as part of his therapeutic treatment, Tingley counsels his clients to live their lives in alignment with their religious beliefs and teachings.

He added:

It is a “bedrock principle” of the First Amendment that the government cannot limit speech “simply because society finds the idea itself offensive or disagreeable.”

While I recognize that the speech here may be unpopular or even offensive to many Americans, it is in these cases that we must be most vigilant in adhering to constitutional principles.

Those principles require a heightened review of Tingley’s Free Speech claim.

It may be easier to dismiss this case under a deferential review to Washington’s law, but the Constitution commands otherwise.

If the high court takes Tingley’s case, it will hear arguments in the fall and rule on the matter next summer.



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