

**In the United States Court of Appeals
For the Eighth Circuit**

Wyatt Bury, LLC, et al.,

Plaintiffs-Appellants,

v.

City of Kansas City, Missouri, et al.,

Defendants-Appellees.

Appeal from the U.S. District Court for the Western District of Missouri
Case No. 4:25-cv-00084-RK

**BRIEF OF THE STATE OF MISSOURI AND 18 OTHER STATES
IN SUPPORT OF PLAINTIFFS-APPELLANTS SEEKING
REVERSAL**

CATHERINE L. HANAWAY
Missouri Attorney General

Louis J. Capozzi III, #77756(MO)
Solicitor General

Ryan Dugan, #77805(MO)
Assistant Solicitor General

207 W. High Street
Jefferson City, MO 65101
Tel. (573) 751-78785
Ryan.Dugan@ago.mo.gov

Counsel for Amicus Curiae

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STATEMENT OF INTEREST AND SUMMARY OF ARGUMENT

Missouri and the States of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, and West Virginia file this amicus brief as of right under Rule 29(a)(2) in support of the Plaintiff-Appellees. Amici States have a strong interest in ensuring that local regulations affecting state-licensed professionals comply with the First Amendment. Because Amici States license and oversee the practice of counseling, they have a direct interest in ensuring that professional speech is not subject to unconstitutional restrictions.

Kansas City and Jackson County's ordinances prohibit state-licensed counselors from offering talk therapy to minors that seeks to change a minor's sexual orientation or gender identity unless it supports a minor's decision to transition. The district court upheld these ordinances under rational basis review, treating it as a regulation of professional speech.

But this analysis departs from the Supreme Court's clear determination that prohibitions on professional speech must still withstand First Amendment scrutiny. Licensed professionals are not

exempt from the “fixed star in our constitutional constellation ... that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

Because the ordinances regulate speech based on viewpoint and are not narrowly tailored to a compelling interest, they fail strict scrutiny. This Court should reverse.

ARGUMENT

I. The ordinances are viewpoint based regulations on speech subject to strict scrutiny.

Kansas City and Jackson County enacted ordinances prohibiting speech “that seeks to change an individual’s sexual orientation or gender identity” unless it “provides support and assistance to a person undergoing gender transition” or “provides acceptance, support, [or] understanding.” Doc. 48 at 3. The unambiguous language of the ordinances condition a counselor’s liability on their viewpoint in a matter of “fierce scientific and policy debate[] ... in an evolving field.” *United States v. Skrmetti*, 145 S. Ct. 1816, 1837 (2025). The ordinances are therefore viewpoint based regulations on speech. *See Rosenberger v. Rector & Regents of Univ. of Va.*, 515 U.S. 819, 829 (1995) (“When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant”).

Viewpoint-based regulations are “an egregious form of content discrimination.” *Id.* “The general principle ... is that the First Amendment forbids the government to regulate speech in ways that favor

some viewpoints or ideas at the expense of others.” *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 780, 804 (1984). To that end, “[c]ontent-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

The district court instead applied a “professional-conduct exception” under which these regulations were not subject to heightened scrutiny. (Doc. 48 at 34-35.) But the Supreme Court has expressly refused to recognize any such exception. *Nat’l Inst. For Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 767-68 (2018); Tr. of Oral Arg., *Chiles v. Salazar*, No. 24-539, at 72:9-14 (remarks of Alito, J.) (Oct. 7, 2025).

While the Court has recognized two contexts where lesser scrutiny applies to professional speech, neither applies here. The ordinances do not require counselors to disclose factual, noncontroversial information in their “commercial speech.” *NIFLA*, 585 U.S. at 768 (citing *Zauder v. Off. of Disciplinary Couns. of the Sup. Ct. of Ohio*, 471 U.S. 626, 651 (1985)). Nor do they regulate conduct that is merely incidental to properly

regulated professional conduct, such as a requirement that a doctor obtain informed consent before performing a procedure. *Id.* at 769-70 (citing *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 844 (1992) (opinion of O'Connor, Kennedy, and Souter, JJ.)). No “professional-conduct exception” saves these ordinances from the exacting scrutiny required by the First amendment.

“[Governmental] labels cannot be dispositive of [the] degree of First Amendment protection.” *Riley v. Nat’l Fed’n for the Blind of N.C.*, 487 U.S. 781, 796 (1988). The district court’s order misapplies *NIFLA* to “relabel[] controversial speech as conduct” not subject to heightened scrutiny. *Otto v. City of Boca Raton*, 981 F.3d 854, 861 (11th Cir. 2020). The ordinances must be examined under strict scrutiny.

II. The ordinances are not narrowly tailored to achieve a compelling governmental interest.

Here, the ordinances violate the Appellant’s first amendment rights because they are not narrowly tailored to achieve a compelling government interest. The City and County claim “a compelling interest in protecting the physical and psychological well-being of minors, including but not limited to lesbian, gay, bisexual, transgender and/or

questioning youth, from exposure to the serious harms and risks caused by conversation therapy or reparative therapy by licensed providers.” Doc. 48 at 3.

Even assuming there is a compelling governmental interest in this case, the ordinances are not narrowly tailored to achieve any compelling interest. A content-based restriction on speech is narrowly tailored only if it is the least restrictive means of achieving the government’s compelling objective. *See Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). The City and County could have furthered their claimed interest in protecting the wellbeing of minors in less restrictive ways, such as through requiring informed consent before engaging in talk therapy or ensuring easier access to forms of counseling that “provide[] acceptance, support, [or] understanding.” Doc. 48 at 3. The ordinances are not the least restrictive means of achieving the City and County’s interest—they are not narrowly tailored. *See Ashcroft*, 542 U.S. at 666.

CONCLUSION

Kansas City and Jackson County enacted viewpoint based regulations on the speech of state-licensed professional counselors. Amici states have a significant interest in preventing such an infringement of the First Amendment rights of the counselors who live in their states and treat their citizens. Because the ordinances do not fit within either exception recognized in *NIFLA*, they are subject to strict scrutiny. The ordinances are not narrowly tailored to achieve a compelling governmental interest, therefore they violate the First Amendment rights of the Appellants. This Court should reverse.

Respectfully submitted,

CATHERINE L. HANAWAY

Missouri Attorney General

/s/ Ryan Dugan

Louis J. Capozzi III, #77756(MO)

Solicitor General

Ryan Dugan, #77805(MO)

Assistant Solicitor General

Office of the Missouri Attorney General

207 W. High Street

Jefferson City, MO 65101

Phone: (573) 751-8785

Ryan.Dugan@ago.mo.gov

Counsel for Amicus Curiae

Counsel for Additional Amici States

Steve Marshall
Attorney General
State of Alabama

Stephen J. Cox
Attorney General
State of Alaska

Tim Griffin
Attorney General
State of Arkansas

James Uthmeier
Attorney General
State of Florida

Christopher M. Carr
Attorney General
State of Georgia

Raúl Labrador
Attorney General
State of Idaho

Brenna Bird
Attorney General
State of Iowa

Kris W. Kobach
Attorney General
State of Kansas

Liz Murrill
Attorney General
State of Louisiana

Austin Knudsen
Attorney General
State of Montana

Michael T. Hilgers
Attorney General
State of Nebraska

Drew Wrigley
Attorney General
State of North Dakota

Dave Yost
Attorney General
State of Ohio

Gentner Drummond
Attorney General
State of Oklahoma

Alan Wilson
Attorney General
State of South Carolina

Marty J. Jackley
Attorney General
State of South Dakota

Ken Paxton
Attorney General
State of Texas

John B. McCuskey
Attorney General
State of West Virginia

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that Amicus Curiae's Brief complies with the typeface and formatting requirements of Fed. R. App. P. 29 and 32, in that it is written in Century Schoolbook 14-point font, and that it contains 1,052 words as determined by the word-count feature of Microsoft Word, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). The hard copies submitted to the clerk are exact copies of the CM/ECF submission.

/s/ Ryan Dugan
Ryan Dugan

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was electronically filed on October 24, 2025, with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit using the CM/ECF system; that all participants are registered CM/ECF users; and that service will be accomplished by the CM/ECF system.

/s/ Ryan Dugan
Ryan Dugan