King v. Governor of New Jersey: Does the First Amendment Allow Counselors To Provide Harmful Therapy to Minors?

I. INTRODUCTION

Sexual orientation change efforts, more commonly known as reparative therapy, are a form of counseling that aims to eliminate a patient's same-sex attraction through talk therapy.[1] It is commonly religious in nature and focuses on enforcing a gender binary that conflates gender and sexual orientation.[2] On August 19, 2013, New Jersey enacted Assembly Bill A3371 (A3371),[3] which prohibits licensed counselors from "engag[ing] in sexual orientation change efforts with a person under 18 years of age."[4] A3371 specifically targets attempts to change any behavior and attractions that do not conform to gender-appropriate, heterosexual norms.[5]

A group of individuals and organizations that provide sexual orientation change efforts challenged the bill, claiming a violation of their First Amendment rights to free speech and religion.[6] The United States District Court for the District of New Jersey disagreed and denied the plaintiffs' motion for summary judgment.[7] They held that the plaintiffs' right to free speech was not implicated because A3371

1. King v. Governor of N.J., No. 13-4429, 2014 U.S. App. LEXIS 17545, at *3 (3d Cir. Sept. 11, 2014).
2. *Id.* at *3-4.
3. N.J. STAT. ANN. §§ 45:1-54, 55 (West 2013). In his opinion, Circuit Judge Smith repeatedly refers to the piece of legislation as A3371 and that will be followed in this note in the interest of consistency.
4. *Id.* § 45:1-55(a).
5. *Id.* § 45:1-55(b).
6. *King*, 2014 U.S. App. LEXIS 17545, at *7. The plaintiffs further claimed that A3371 violated their minor clients' First and Fourteenth Amendment rights and the parents' Fourteenth Amendment rights. The district court held that the plaintiffs did not have standing to sue on behalf of their clients and their parents. *King*, 2014 U.S. App. Lexis 17545, at *9-10.
7. *Id.* at *12.

regulated conduct rather than speech.[8] Additionally, the district court found that A3371 did not violate the plaintiffs' right to free exercise of religion because it was a "neutral law of general applicability."[9] The plaintiffs subsequently appealed.[10] The United States Court of Appeals for the Third Circuit *held* that the ban on sexual orientation change efforts by licensed counselors does not violate the counselors' First Amendment rights to free speech and exercise of religion. *King v. Governor of New Jersey*, No. 13-4429, 2014 U.S. App. LEXIS 17545 (3d Cir. Sept. 11, 2014).

II. BACKGROUND

The First Amendment serves to guarantee the right to free speech and the free exercise of religion from government interference.[11] These rights, however, are not absolute and can be regulated through legislation.[12] In determining the validity of laws that restrict the right to free speech, the courts apply differing levels of scrutiny depending on whether the expression is conduct or speech and what level of protection, if any, this expression warrants.[13] If the regulated expression is only conduct with an incidental effect on speech, the statute will only be subject to rational basis review.[14] If the statute is neutral as to the content that is being regulated, it will be subject to intermediate scrutiny.[15] If the statute regulates by content or viewpoint, it will be subject to strict scrutiny.[16] When the government exercises its regulatory powers on a profession where the primary form of expression is vocal communication, however, the distinctions between conduct and speech blur.

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8. *Id.* at *10.
9. *Id.* at *10.
10. *Id.* at *12.
11. U.S. CONST. amend. I.
12. *See* Cohen v. California, 403 U.S. 15, 19 (1971) ("[F]or the First and Fourteenth Amendments have never been thought to give absolute protection to every individual to speak whenever or wherever he pleases, or to use any form of address in any circumstances that he chooses."); McTernan v. City of York, 577 F.3d 521, 532 (3d Cir. 2009) ("[A]lthough the free exercise clause does protect religious expression, it does not afford absolute protection.").
13. *See* Texas v. Johnson, 491 U.S. 397, 403 (1989) (noting that less stringent standards apply when conduct is regulated).
14. *See* Pickup v. Brown, 740 F.3d 1208 (9th Cir. 2013).
15. *See* Holder v. Humanitarian Law Project, 561 U.S. 1 (2010).
16. *See Pickup*, 740 F.3d at 1226.

A. First Amendment: Conduct or Speech?

The First Amendment protects expressions that are classified as speech, but not necessarily those that are classified as conduct.[17] This provision of protection becomes less clear when the expression being regulated is conduct that is performed primarily through speech. In *Holder v. Humanitarian Law Project*, the United States Supreme Court heard a challenge to legislation that banned the provision of material support to a specified list of terrorist groups.[18] Material support was defined as training, advice, or assistance.[19] The Court held that the regulated expression was ultimately speech because the banned conduct "consist[ed] of communicating a message."[20]

The United States Court of Appeals for the Ninth Circuit addressed a similar issue as the noted case in *Pickup v. Brown*.[21] The challenged statute was similar to A3371 in that it banned licensed counselors from conducting sexual orientation change efforts for minors.[22] The Ninth Circuit held that the legislation only affected conduct and therefore only rational basis review was required.[23] The *Pickup* dissent, however, noted that to define verbal treatment as conduct creates an unclear standard for categorization.[24] Banning treatment that is expressed through verbal counseling is akin to banning support given as advice in *Humanitarian Law Project*; both statutes ultimately regulate speech and should be analyzed as such.[25] Speech that "occurs during [therapy] is entitled to constitutional protection."[26]

Not all speech is entitled to full First Amendment protection, however. The Supreme Court has long held that it is within the State's power to regulate professions as part of its responsibility to protect its citizens from incompetence or manipulation.[27] This power extends to professions that are primarily practiced through speech. The Ninth

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17. U.S. CONST. amend. I.
18. *Holder*, 561 U.S. 1 (2010).
19. *Id.* at 12, 14.
20. *Id.* at 23.
21. 740 F.3d 1208 (9th Cir. 2013)
22. *Id.* at 1221.
23. *Id.* at 1229, 1231.
24. *Id.* at 1215-16 (O'Scannlain, J., dissenting).
25. *Id.* at 1218.
26. *Id.* at 1219.
27. *See* Watson v. Maryland, 218 U.S. 173, 176 (1910) ("It is too well settled to require discussion at this day that the police power of the states extends to the regulation of certain trades and calling, particularly those which closely concern the public health."); Goldfarb v. Va. State Bar, 421 U.S. 773, 792 (1975) ("States have a compelling interest in the practice of professions within their boundaries.").

Circuit has held that "where a professional is engaged in a public dialogue, First Amendment protection is at its greatest . . . . [Yet] within the confines of a professional relationship, First Amendment protections of a professional's speech is somewhat diminished."[28] In *Moore-King v. County of Chesterfield, Virginia*, the United States Court of Appeals for the Fourth Circuit heard a challenge to a regulatory scheme that required fortune tellers to obtain a license prior to conducting business.[29] The Fourth Circuit rejected the State's contention that their regulatory powers extended to the fortune-telling industry because it was inherently deceptive.[30] That is not to say that the state cannot regulate, but that "the relevant inquiry to determine whether to apply the professional speech doctrine is whether the speaker is providing personalized advice in a private setting to a paying client or instead engages in public discussion and commentary."[31] The Fourth Circuit held that because the fortune teller provided "spiritual counseling" for paying customers, that particular form of verbal communication constituted professional speech.[32] The United States Court of Appeals for the Eleventh Circuit similarly held that regulation prohibiting physicians from asking about gun ownership only implicated speech within their professional capacity and did not violate their First Amendment rights.[33]

B. Intermediate Scrutiny Analysis of Speech

If the speech that is regulated falls under the professional speech doctrine, the courts will analyze the statute with intermediate scrutiny. In *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, the Supreme Court provided a useful guide in its analysis of the level of First Amendment protection that commercial speech warranted.[34] The Court noted that it is within society's best interests to allow some degree of protection for commercial speech so that consumers can obtain information to make knowledgeable decisions, rather than allow the state to have the ultimate authority as to what is and is not acceptable.[35] However, this must be balanced with the potential

28. *Pickup*, 740 F.3d at 1227-28.
29. 708 F.3d 560 (4th Cir. 2013).
30. *Id.* at 567.
31. *Id.* at 569.
32. *Id.* at 569.
33. Wollschlaeger v. Governor of Fla., 760 F.3d 1195, 1218-20 (11th Cir. 2014).
34. 447 U.S. 557 (1980).
35. *Id.* at 561-62.

dangers that consumers face when relying on experts.[36] Thus, for a statute limiting commercial speech to be constitutionally valid, it must directly advance the state's substantial interest and the "regulatory technique must be in proportion to that interest."[37] The statute would not be subject to strict scrutiny if the state's interest in regulating that particular type of speech coincided with the general justification given to explain why the state's regulatory power extended to that class of speech at all.[38] For example, the state may choose to place stricter advertising regulations on an industry it perceives to have a greater threat of fraud because the risk of fraud is an accepted reason for state regulation of commercial speech.[39] There is little concern that such a statute would impermissibly discriminate based on viewpoint or content.[40]

Under intermediate-scrutiny analysis, a statute is constitutionally valid if it directly advances the state's substantial interest and if it is not more extensive than necessary.[41] As mentioned before, the state has a valid interest in protecting its citizens through the regulation of professions, particularly in the areas of public health.[42] The statute must be narrowly tailored to satisfy the state's interest, but it does not need to be the least restrictive means possible.[43]

In determining whether the statute directly advances the state's interest, the state must prove that their characterization of the harm, without the enacted regulations, is based upon fact.[44] The state must also prove that the regulations will directly remedy or reduce the harm.[45] In *Nixon v. Shrink Missouri Government PAC*, the Supreme Court heard a challenge of a Missouri statute that limited campaign contributions to politicians.[46] The state justified their interest in reducing political corruption with evidence of a number of suspiciously large donations and testimony from experts linking large donations with a concrete

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36. *Id.* at 563 (suggesting that the government more leeway in regulating deceptive, harmful, or illegal commercial speech).

37. *Id.* at 564.

38. *See* R.A.V. v. City of Saint Paul, Minn., 505 U.S. 377, 388 (1992).

39. *See* Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc., 425 U.S. 748, 771-72 (1976).

40. *Id.* at 388.

41. *See Cent. Hudson Gas & Elec. Corp.*, 447 U.S. at 564.

42. *See* sources cited *supra* note 27.

43. *See* Bd. of Trs. v. Fox, 492 U.S. 469, 480 (1989).

44. *See* Turner Broad. Sys. Inc. v. F.C.C., 512 U.S. 622, 664 (1994).

45. *See id.* at 664; *see also* United States v. Playboy Entm't Grp., 529 U.S. 803, 822-23 (2000) (holding that while the government is not required to provide absolute proof, they must have "more than anecdote and suspicion").

46. 528 U.S. 377 (2000).

danger of buying votes in the legislature.[47] The Court accepted the reasoning and its implications as enough to show that the regulation directly advanced the state interest.[48]

C. Vagueness or Overbreadth

In *Hill v. Colorado*, the Court addressed the matter of whether a statute creating a buffer zone around health care facilities was unconstitutionally vague and overbroad.[49] The Court stated that the statute would not be overbroad if it was only a reasonable restriction on protected speech and if it was similarly applicable to individuals other than those challenging the statute.[50] The Court held that the statute was generally applicable as opposed to targeting a particular group or type of speech.[51] "The comprehensiveness of the statute is a virtue . . . because it is evidence against there being a discriminatory governmental motive."[52]

For a statute to be deemed unconstitutional for vagueness, it must either fail to give notice to a reasonable person that certain conduct is prohibited or it must allow arbitrary enforcement.[53] However, there is no requirement that the statute's language be exact or certain.[54] Additionally, allegations of vagueness cannot be pure speculation and must be accompanied by a showing that the statute is unclear in its intended applications.[55] The *Hill* Court held that the statute was not unconstitutionally vague due to its scienter requirement and because any grey areas regarding enforcement were to allow for police discretion, not arbitrariness.[56]

III. COURT'S DECISION

In the noted case, the Third Circuit declined to follow the Ninth Circuit's analysis in *Pickup* and applied a heightened standard of review. The Third Circuit focused primarily on the plaintiffs' free speech claim, holding that A3371 regulated speech and was therefore allotted some protection under the First Amendment.[57] However, because A3371 only

47. *Id.* at 392-93.
48. *Id.* at 394-95.
49. 530 U.S. 703 (2000).
50. *Id.* at 731-32.
51. *Id.* at 731.
52. *Id.*
53. *Id.* at 732.
54. *Id.* at 733 (quoting Grayned v. City of Rockford, 408 U.S. 104, 110 (1972)).
55. *Id.*
56. *Id.*
57. King v. Governor of N.J., No. 13-4429, 2014 U.S. App. LEXIS 17545, at *12 (3d Cir. Sept. 11, 2014).

regulated professional speech, that constitutional protection is diminished.[58] Accordingly, the statute should be reviewed with intermediate scrutiny.[59] In this instance, A3371 "directly advances the state's substantial interest in protecting its citizens from harmful or ineffective professional practices and is not more extensive than necessary to serve that interest."[60] The Third Circuit quickly dismissed the plaintiffs' free expression of religion claim, holding that the statute was neutral on its face, generally applicable, and only subject to rational basis review.[61] Because the Third Circuit had already found that A3371 passed a higher standard of review, the statute also passed rational basis review.[62]

The Third Circuit began its analysis by holding that A3371 prohibited speech as opposed to conduct.[63] Drawing heavily on the Supreme Court's ruling in *Holder*, the Third Circuit stated that although the language of the statute identified an action that was to be regulated, that action was ultimately providing verbal communication.[64] To hold otherwise would create a grey area of the law where some speech might arbitrarily be considered conduct, for no principled reason.[65]

Second, the Third Circuit held that while a counselor's speech was entitled to First Amendment protection, because it fell within the professional speech doctrine, that protection is diminished and the state may regulate it.[66] The Third Circuit recognized that the state has long had the power to regulate the practice of professions in the interest of protecting its citizens and the power is not removed merely because speech is involved.[67] The rationale is that licensed professionals often have an expertise that their clients may want to access and that their clients' own lack of specialized knowledge forces them to trust these professionals.[68] This is particularly so in the areas of public health, and to remove the state's ability to regulate treatment simply because it is given through verbal communication undermines the state's protection of its

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58. *Id.* at *12-13.
59. *Id.* at *13.
60. *Id.*
61. *Id.* at *62.
62. *Id.* at *63.
63. *Id.* at *12-13.
64. *Id.* at *15.
65. *Id.* at *20-23 (drawing on Judge O'Scannlain's dissent in *Pickup* that the distinction is arbitrary).
66. *Id.* at *12, *34, *40.
67. *Id.* at *26-29.
68. *Id.* at *33.

citizens.[69] Drawing on *Moore-King*, *Pickup*, and *Wollschlaeger*, the Third Circuit concluded that professional speech cannot be given full protection from government regulation.[70] It is clear that counseling for sexual orientation change efforts falls under the umbrella of professional speech, as it is administered by a licensed professional in the course of their professional capacity.[71] The state may regulate professional speech, and New Jersey did exactly that: A3371 restricted only what the counselors may say during therapy and did not extend to their personal lives.[72]

Third, the Third Circuit found that A3371 warranted intermediate scrutiny.[73] In its analysis, the Third Circuit compared professional speech with commercial speech, which the Supreme Court held to be subject only to intermediate scrutiny in *Central Hudson Gas & Electric Corp.*[74] Both areas of speech "occurs in an area traditionally subject to government regulation,"[75] have an inherent value due to its function,[76] and "serves as an important channel for communication of information."[77] There is also a clear and obvious difference between speech within the scope of professional capacity and protected forms of speech, which implies that strict scrutiny is not appropriate.[78] The Third Circuit made it clear, however, that this analysis would be void and the statute would have been subject to strict scrutiny if A3371 was meant to further interests outside of protecting clients.[79]

Finally, the Third Circuit scrutinized the statute and concluded that A3371 did not violate the plaintiffs' First Amendment right to free speech.[80] New Jersey clearly had an interest in protecting its citizens, even more so because these clients were minors.[81] Additionally, New Jersey's legislative record demonstrated a wealth of reputable research that supported their finding that sexual orientation change efforts were dangerous to minors.[82] The record included reports from psychological,

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69. *Id.* at *34.
70. *Id.* at *30-32, *36.
71. *Id.* at *36.
72. *Id.*
73. *Id.* at *37.
74. *Id.* at *37-39.
75. *Id.* at *38 (quoting Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y., 447 U.S. 557, 562 (1980)).
76. *Id.*
77. *Id.* at *39.
78. *Id.* at *40.
79. *Id.* at *41.
80. *Id.* at *55.
81. *Id.* at *48-49.
82. *Id.* at *50.

psychiatric, and pediatric licensing bodies as well as various health organizations.[83] The Third Circuit held that there was enough substantial evidence for the New Jersey legislature to infer that the harm that sexual orientation change efforts presented to minors was more than just speculation or conjecture.[84] There is no requisite for conclusive evidence because that may delay legislative action that is designed to protect them from serious harm.[85] However, the statute must also be narrowly tailored to address those particular concerns.[86] The Third Circuit places the burden of proof on the plaintiffs to demonstrate that a less restrictive method would also achieve the legislature's goals.[87] Because the plaintiffs could not, the Third Circuit held that A3371 directly advanced New Jersey's stated interest and was narrowly tailored to achieve those interests.[88] Therefore, A3371 did not unconstitutionally violate the plaintiffs' right to free speech.[89]

The Third Circuit quickly discarded the plaintiffs' claim that the statute is vague and overbroad.[90] It is expected that legislatures will be unable to draft statutes that account for all possibilities or to be exact, because the nature of language makes that impossible.[91] The plaintiffs contended that the term "sexual orientation change efforts" was vague.[92] The Third Circuit rejected their reasoning, noting that the statute listed a number of examples that demonstrated the type of speech that was prohibited.[93] This is compounded by the fact that sexual orientation change efforts counseling is a definitive area of practice within the profession.[94] Furthermore, the Third Circuit rejected the plaintiffs' claim that A3371 was overbroad because the plaintiffs were unable to articulate a suitable argument.[95]

The plaintiffs' second First Amendment claim was that A3371 violated their right to free expression of religion.[96] The Third Circuit easily dismissed this claim, noting that the language of A3371 was

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83. *Id.* at *50-51.
84. *Id.* at *51.
85. *Id.* at *52.
86. *Id.* at *53.
87. *Id.* at *54-55 (concluding that because plaintiffs could not offer better suggestions, A3371 is sufficiently tailored).
88. *Id.* at *53, *55.
89. *Id.* at *55.
90. *Id.*
91. *Id.* at *55-56.
92. *Id.* at *56.
93. *Id.* at *56-57.
94. *Id.* at *57.
95. *Id.* at *58-59.
96. *Id.* at *59.

neutral as to religion and did not single out a target group in its application.[97] Thus, A3371 is only subject to rational basis review.[98] The Third Circuit held that because A3371 passed intermediate scrutiny, "it follows *ipso facto* that this law is rationally related to a legitimate government interest."[99]

IV. ANALYSIS

Although both courts came to the same conclusion, the Third Circuit properly rejected the Ninth Circuit's analysis, holding that A3371 regulated speech and therefore should be subjected to intermediate scrutiny. In doing so, the Third Circuit affirmed New Jersey's compelling interest in protecting the physical and psychological well-being of children and upheld the statute banning sexual orientation change efforts.[100]

The Ninth Circuit, in *Pickup v. Brown*, specifically rejected the application of *Holder v. Humanitarian Law Project* in determining whether talk therapy constituted conduct or speech, interpreting *Holder* as addressing only political speech and narrowing the application of its holding to only communication of a political message.[101] The prohibition on sexual orientation change efforts was a ban on practicing a particular type of therapy, not on political speech within the public sphere, and thus did not trigger heightened scrutiny.[102]

However, this analysis is flawed for two reasons. First, the Ninth Circuit mistakenly applies *Humanitarian Law Project* to only political speech. The Supreme Court explicitly noted that the primary issue in the case was whether the state can prohibit an activity that is expressed in the form of any type of speech, not just political speech.[103] The Third Circuit correctly applied the Supreme Court's holding to the noted case, whereas the Ninth Circuit unnecessarily argued that the relevant statute was apolitical.[104] Even if the Ninth Circuit were correct in its interpretation, it is a stretch to characterize training, legal advice, and assistance to terrorist organizations as political speech yet deny that therapy geared

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97. *Id.* at *60.
98. *Id.* at *62.
99. *Id.* at *63.
100. *See* New York v. Ferber, 458 U.S. 747, 757 (1982) (citing Globe Newspaper Co. v. Super. Ct., 457 U.S. 596, 607 (1982)).
101. Pickup v. Brown, 740 F.3d 1208, 1229-30 (9th Cir. 2013).
102. *Id.*
103. Holder v. Humanitarian Law Project, 561 U.S. 1, 14-15, 28 (2010).
104. *Pickup*, 749 F.3d at 1230; King v. Governor of N.J., No. 13-4429, 2014 U.S. App. LEXIS 17545, at *14-17 (3d Cir. Sept. 11, 2014).

towards changing a minor's sexual orientation has any political implications.

Second, the Ninth Circuit misinterprets the Supreme Court's analysis in *Humanitarian Law Project* as to the distinction between conduct and speech. The Court noted that when a generally applicable prohibition of conduct is applied to an individual because of the content of their speech, then heightened scrutiny must be used.[105] Under this analysis, the *Pickup* Court should have characterized the prohibition on sexual orientation change efforts as a regulation of speech, as the Third Circuit correctly did. The prohibitions on sexual orientation change efforts kept counselors from communicating with their patients about a particular subject.[106] Although the statue's language only specified conduct, it was clearly speech that was implicated. Instead, the Ninth Circuit ignored this holding and argued that prohibiting talk therapy was no different than banning a pharmaceutical drug, which constituted conduct.[107]

The Ninth Circuit's holding would only create confusion and arbitrary decision making. Describing speech in a manner that equates it to conduct does not transform that expression into conduct. For example, statutes that mandate what a teacher can or cannot teach in the classroom implicate their First Amendment right to free speech.[108] Although the statute can be phrased as regulating the act of teaching, it is undeniable that it is ultimately regulating what is said in the classroom. Additionally, it leaves too much discretion in the hands of the judiciary to decide what is speech, and therefore deserving of heightened scrutiny, and what is conduct. In the case of ambiguous expressions, courts could choose to imbue more or less First Amendment protections based on their personal preferences. The *Pickup* Court does not provide any criteria by which to make this distinction.[109]

Notwithstanding the Third Circuit's correct ruling, it noticeably does not address the issue of parental agency. The Supreme Court has traditionally allowed parents to determine the appropriate way to raise their child and has assumed that the parents' interests represent those of

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105. *Holder*, 561 U.S. at 27-28 (holding that although the statute focuses on conduct, it effectively regulates whether the plaintiffs can speak depending on what they say).

106. *Id.* at 27 (using similar language in holding that statue prohibited speech not conduct).

107. *Pickup*, 740 F.3d at 1229.

108. *See* Ward v. Hickey, 996 F.2d 448, 453 (1st Cir. 1993) (implying that school curriculums fall within free speech analysis).

109. *See Pickup*, 740 F.3d at 1215-16 (O'Scannlain, J., dissenting).

the child.[110] A3371 implicates this parental right, yet the Third Circuit makes no mention of it. While in the noted case, the plaintiffs were only practitioners of sexual orientation change efforts and were not the clients' parents, it is worth questioning why the Third Circuit is choosing to depart from the courts' traditional deference to parental agency and allowing the state to interfere with parental authority.[111] The *Pickup* Court disregarded the notion that parents should be allowed to subject their children to harmful treatment and stated that the "parents' judgment may be clouded by this emotionally charged issue."[112]

However, considering this factor as a justification for state interference can be problematic. It leaves the door open for other "emotionally charged issues" to warrant government intrusion on parental rights if the state's interests conflict with the parents' interests.[113] Yet, it is unlikely that this justification will be used for unnecessary encroachments on parental authority. The ban on sexual orientation change efforts presents a unique situation where the state's compelling interest is buttressed by the medical profession's almost unilateral opinion that such therapy causes significant harm.[114] It is more akin to the state proscribing child abuse than mandating dietary regimens, for example.[115]

Although the Third Circuit and the Ninth Circuit analyzed the issue using two different methods, both courts ultimately came to the correct conclusion in prioritizing the health and well-being of minors with same-sex attraction. Hopefully, this represents a growing trend among both state legislatures and courts in recognizing the danger that sexual orientation change efforts present and prohibiting its use on minors.

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110. *See* David Friedman, Legislative Note, *The Right To Stay Gay: SB 1172 and SOCE*, 25 STAN. L. & POL'Y REV. 193, 200 (2014).

111. *See Pickup*, 740 F.3d at 1225.

112. *Id.* at 1232 & n.8.

113. *See* Friedman, *supra* note 110, at 201.

114. *See* King v. Governor of N.J., No. 13-4429, 2014 U.S. App. LEXIS 17545, at *5-7 (3d Cir. Sept. 11, 2014).

115. *See* Karolyn Ann Hicks, Comment, *"Reparative" Therapy: Whether Parental Attempts To Change a Child's Sexual Orientation Can Legally Constitute Child Abuse*, 49 AM. U. L. REV. 505, 526-29 (1999) (arguing that the ineffectiveness and risks of reparative therapy should expose parents to potential criminal liability).

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