RELIGIOUS LIBERTY AND THE COUNSELING PROFESSION: A CONFLICT OF RIGHTS

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I. INTRODUCTION

In 1993, President Clinton enacted the Religious Freedom Restoration Act of 1993 ("RFRA").[1] This Act was designed to prohibit the federal government from "substantially burdening" a person's exercise of religion.[2] When the Supreme Court declared that RFRA was inapplicable to the states, states enacted their own RFRAs and devised constitutional provisions, which in many ways were "intended to echo the federal RFRA."[3] Following the states' enactment of these laws and

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1. Religious Freedom Restoration Act of 1993 (RFRA), Pub. L. No. 103–104, 1993 U.S.C.C.A.N (107 Stat.) 1488, *invalidated by* City of Boerne v. Flores, 501 U.S. 507 (1997).

2. *Id.*; *see also* Ray Sanchez, *Why the Onslaught of Religious Freedom Laws?*, CNN (Apr. 7, 2016), http://www.cnn.com/2016/04/06/us/religious-freedom-laws-why-now/. For purposes of this Note, the phrases "exercise of religion" and "religious exercise" shall mean, "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc–5(7)(A) (2012).

3. *State Religious Freedom Restoration Acts*, NAT'L CONF. OF ST. LEGISLATURES (Oct. 15, 2015), http://www.ncsl.org/research/civil-and-criminal-justice/state-rfra-statutes.aspx; *see also* David Johnson & Katy Steinmetz, *This Map Shows Every State With Religious-Freedom Laws*, TIME (Apr. 2, 2015), http://time.com/3766173/religious-freedom-laws-map-timeline/. *See generally* City of Boerne v. Flores, 521 U.S. 507 (1997); MICHAEL MCCONNELL, THOMAS BERG & CHRISTOPHER LUND, RELIGION AND THE CONSTITUTION 189 (4th ed. 2016).

As of 2015, 21 states now have their own Religious Freedom Restoration Act . . . These acts mostly parallel the federal RFRA, by creating a compelling-

constitutional revisions, courts heard issues regarding the counseling profession.[4] Specifically, courts examined whether those in counseling graduate programs may use their religious objections to avoid counseling gays, lesbians, or same-sex couples,[5] and whether they may impose their personal religious beliefs on these groups of individuals.[6] Additionally, courts evaluated the permissibility of graduate programs expelling these students for the aforementioned reasons.[7] This Note takes the position that, while a counselor's[8] exercise of religion is a critical entitlement that our nation must embrace and support, they should be prohibited from discriminating against, or imposing their personal and religious values on, LGBT clients due to the nature of their profession and the adverse effects such behavior is likely to have on said clients.

II. BACKGROUND

A. History of Religious Liberty

The First Amendment of the United States Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."[9] Additionally, it contains two provisions regarding the relationship between governance and religion: the Establishment Clause and the Free Exercise Clause.[10] The former precludes government from "establishing" an official national religion and strictly prohibits any display of preferential treatment of one faith

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interest standard. Some require a showing of a "substantial burden" before the compelling interest test kicks in (as the federal RFRA does). Others merely require a "burden." Still others do not speak in terms of burden at all, requiring that "restrictions on religious liberty" meet the compelling-interest test.

Id. "In addition to the 21 states with state RFRAs, approximately another 11 sates have interpreted their state constitutions to create the same kind of compelling-interest test." *Id.* at 198.

4. *See* Ward v. Polite, 667 F.3d 727 (6th Cir. 2012); Keeton v. Anderson-Wiley, 664 F.3d 865 (11th Cir. 2011); Cash v. Hofherr, No. 2016-CV-03155 (W.D. Mo. Apr. 19, 2016), http://www.plainsite.org/dockets/2ylm06d9z/missouri-western-district-court/cash-v-hofherr-et-al/.

5. Ward v. Polite, 667 F.3d 727 (6th Cir. 2012).

6. Keeton v. Anderson-Wiley, 664 F.3d 865 (11th Cir. 2011).

7. *Id.*; *Ward*, 667 F.3d 727.

8. For purposes of this Note, "counselors" and "therapists" shall be used interchangeably and shall mean any "person trained to give guidance on personal, social or psychological problems." *Counselor*, NEW OXFORD AMERICAN DICTIONARY (2016).

9. U.S. CONST. amend. I; *see also* MCCONNELL, BERG & LUND, *supra* note 3, at 1.

10. *First Amendment and Religion*, U.S. CTS., http://www.uscourts.gov /educational-resources/educational-activities/first-amendment-and-religion.

over another.[11] The latter "protects citizens' right to practice religion as they please, so long as the practice does not run afoul of 'public morals' or a 'compelling' governmental interest."[12]

In *Sherbert v. Verner*,[13] the Supreme Court established criterion for examining free exercise challenges: (1) the government is precluded from substantially burdening an individual's religious exercise unless it can demonstrate "that the government action is necessary to protect a compelling state interest,"[14] and (2) even if the government can show the presence of a compelling state interest, it must prove that "no alternative forms of regulation" are available to achieve the state's goal.[15] The *Sherbert* test suggested that the government is prohibited from burdening an individual's exercise of religion, and thereby is required to provide exemptions from generally applicable laws to enable religious practices, unless it can illustrate a compelling interest to burden such exercise.[16]

In 1990, the Supreme Court in *Employment Division v. Smith* produced a new evaluation for determining government violations of

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11. *Id.*

12. *Id.*

13. Sherbert v. Verner, 374 U.S. 398 (1963).

14. *Id.* at 406; Maureen E. Markey, *The Price of Landlord's "Free" Exercise of Religion: Tenant's Right to Discrimination-Free Housing and Privacy*, 22 FORDHAM URB. L.J. 699, 708 (1995). In *Sherbert*, Justice Brennan claimed that "no showing merely of a rational relationship to some colorable state interest" was enough; rather, "only the gravest abuses, endangering paramount interests, give occasion for permissible limitation." *See also* MCCONNELL, BERG & LUND, *supra* note 3, at 110–15.

15. *Sherbert*, 374 U.S. at 407. Wisconsin v. Yoder, 406 U.S. 205 (1972), is also a Supreme Court case that implemented the compelling-interest standard created by *Sherbert*. *Yoder* examined whether Amish parents were able to end their children's education after eighth grade, despite a state law that required attendance in school until age sixteen. The parents argued that secondary school exposed students to ideals they deemed objectionable, and that their children ought to learn and focus on Amish beliefs favoring manual labor and self-reliance at home. The Court held that the Amish interest in the free exercise of religion outweighed the state's interests in compelling school attendance beyond eighth grade. *See also* MCCONNELL, BERG & LUND, *supra* note 3, at 118–22.

16. Eugene Volokh, *Religious Exemptions—A Guide for the Confused*, WASH. POST (Mar. 24, 2014), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/03/24/religious-exemptions-a-guide-for-the-confused/?utm_term=.da5729f3d4e0. While *Sherbert* suggested this notion, *Yoder* is the case that truly stands for the proposition that the "Free Exercise Clause bars enforcement even of laws that are 'neutral on their face,' if they conflict with religious exercise and fail to serve a sufficiently important governmental interest." MCCONNELL, BERG & LUND, *supra* note 3, at 122. The authors acknowledge that the court's embrace of religious exemptions, as outlined in the two cases, may be misleading because although some religious claimants had success in lower courts under the compelling-interest standard, most free exercise claims lost in court. *Id.* at 123.

individual religious expression.[17] Any state law that did not explicitly discriminate against religious practices or beliefs, but rather was neutral and generally applicable to all people irrespective of their faith, was deemed compliant with the First Amendment.[18] In *Smith*, the respondents had used peyote as part of a religious ritual and were thereby fired from their jobs.[19] When they applied for unemployment compensation, the petitioner denied their request because they had been discharged for work-related "misconduct."[20] The Court, by a six-to-three vote, declared that the State of Oregon was within its authority, and did not interfere with its citizen's free exercise of religion, when it denied the respondents' unemployment benefits.[21] It reasoned that the government is permitted to burden an individual's exercise of religion through valid and nondiscriminatory laws of general applicability.[22] Consequently, the respondents were unable to receive a religious exemption from Oregon's neutral law prohibiting peyote use.[23] The new criteria abrogated *Sherbert*'s compelling governmental interest standard, making it more challenging for religious believers to receive exemptions for their religious exercise.[24]

B. Religious Freedom Restoration Acts at the Federal and State Level

In response to *Employment Division v. Smith*, Congress enacted the Religious Freedom Restoration Act of 1993 ("RFRA").[25] RFRA was passed by a unanimous vote in the House and by a ninety-seven-to-three

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17. *See* Emp't Div. v. Smith, 494 U.S. 872 (1990); Lani Domagalski, Note *The Affordable Care Act and* Burwell v. Hobby Lobby Stores, Inc.*: How Far Will it Go and at What Cost?*, 61 WAYNE L. REV. 405, 413 (2016); *see also* Peter Steinfels, *Clinton Signs Law Protecting Religious Practices*, N.Y. TIMES (Nov. 17, 1993), http://www.nytimes.com/1993/11/17/us/clinton-signs-law-protecting-religious-practices.html. After *Sherbert* and *Yoder* and until *Smith*, the Supreme Court "never again ordered a free exercise exemption outside the narrow context of unemployment benefits." MCCONNELL, BERG & LUND, *supra* note 3, at 123.

18. *Smith*, 494 U.S. at 879, 894 (1990); *see also* MCCONNELL, BERG & LUND, *supra* note 3, at 137–42. Stating that "[f]or the most part, the Court held [in *Smith*], religious believers have no constitutional entitlement to religious exemptions—no matter how much they burden religious exercise, no matter how significant the government's interest" *Id.*

19. *Smith*, 494 U.S. at 874.

20. *Id.*

21. *Id.* at 882.

22. *Id.; see* Domagalski, *supra* note 17 at 413.

23. *Smith*, 494 U.S. at 890.

24. *See* Johnson & Steinmetz, *supra* note 3.

25. GOVTRACK, https://www.govtrack.us/congress/votes/103-1993/s331 (last visited Nov. 8, 2016); *see also* Steinfels, *supra* note 17; Domagalski, *supra* note 17, at 413.

vote in the Senate to overturn *Smith*.[26] According to this Act, the "[g]overnment shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless the burden is "in furtherance of a compelling government interest; and is the least restrictive means of furthering that compelling governmental interest."[27] At the time of RFRA's enactment, President Clinton noted the difficulty of meeting the compelling governmental interest standard, which suggested the leeway religious observers had in their exercise of religion.[28]

In the 1997 case *City of Boerne v. Flores*, the Supreme Court declared that RFRA solely applied to the federal government because the Act contradicted "vital principles necessary to maintain separation of powers and the federal balance." [29] Consequently, Congress enacted the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), which restored the compelling governmental interest test as applied at the state and local level, but only in the context of land use and institutionalized persons.[30] Additionally, and perhaps most importantly, RLUIPA amended the definition of "exercise of religion" in RFRA. Instead of referencing the First Amendment, Congress defined the phrase "exercise of religion" to include all exercises of religion, whether or not required by or crucial to religious beliefs.[31] "By explicitly prescribing that the centrality of a religious belief is immaterial to whether or not that belief constitutes 'religious exercise,' and by definitionally equating land use with 'religious exercise,'" RULIPA furnished a standard that was vastly distinct from that of "Free Exercise Clause jurisprudence."[32]

As a result, states began enacting their own RFRAs to provide equal or heightened religious freedom protections to those outlined in the

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26. *See* GOVTRACK, *supra* note 25.

27. Religious Freedom Restoration Act of 1993, Pub. L. No. 103–104, 1993 U.S.C.C.A.N (107 Stat.) 1488, *invalidated by* City of Boerne v. Flores, 501 U.S. 507 (1997).

28. Erin Mcclam, *Religious Freedom Restoration Act: What You Need to Know*, NBC NEWS (Mar. 30, 2015), http://www.nbcnews.com/news/us-news/indiana-religious-freedom-law-what-you-need-know-n332491.

29. City of Boerne v. Flores, 521 U.S. 507, 536 (1997); *see* Johnson & Steinmetz, *supra* note 3.

30. Burwell v. Hobby Lobby Stores Inc., 134 S. Ct. 2751, 2761-62 (2014) (citing 42 U.S.C. § 2000bb(a)(4)); *see also* MCCONNELL, BERG & LUND, *supra* note 3, at 150.

31. *Hobby Lobby*, 134 S. Ct. at 2761–62.

32. Elsinore Christian Ctr. v. City of Lake Elsinore, 270 F. Supp. 2d 1163, 1170 (C.D. Cal. 2003), *vacated by* 291 F. Supp 2d 1083 (C.D. Cal 2003), *rev'd by* 191 Fed. App'x 718 (9th Cir. 2006).

federal RFRA.[33] The laws arose out of a variety of conflicts between individual religious exercise and pervasive regulation, and, until gay marriage victories, few, if any, related to gays, lesbians, or same-sex couples' rights.[34]

One critical moment in the gay rights movement that likely spurred hostilities between states and the LGBT community was Judge Vaughn R. Walker's rejection of Proposition 8, California's ban on same-sex marriage, in the Northern District of California.[35] The ruling served as a pivotal event for the gay rights effort, and plausibly acted as an influential backdrop for New York's passage of the Marriage Equality Act in 2011, and future Supreme Court decisions.[36]

Additionally, President Obama's declaration that he and his administration would no longer defend the Defense of Marriage Act, "the 1996 law that bars federal recognition of same-sex marriages,"[37] predictably impacted state RFRAs and their effect on the gay community. The President's statement, along with achievements made throughout the preceding years, paved the way for the Supreme Court's monumental 2015 decision in *Obergefell v. Hodges*, in which the Court declared that same-sex couples are guaranteed the fundamental right to marry.[38]

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33. *See* Johnson & Steinmetz, *supra* note 3.

34. Juliet Eilperin, *31 states have heightened religious freedom protections*, WASH. POST (Mar. 1, 2014), https://www.washingtonpost.com/news/the-fix/wp/2014/03/01/where-in-the-u-s-are-there-heightened-protections-for-religious-freedom/; *see also* Jeff Guo, *How religious freedom laws were praised, then hated, then forgotten, then, finally, resurrected*, WASH. POST (Apr. 3, 2015), https://www.washingtonpost.com/blogs/govbeat/wp/2015/04/03/how-religious-freedom-laws-were-praised-then-hated-then-forgotten-then-finally-resurrected/?tid=hybrid_collaborative_3_na (explaining the anxiety religious communities felt after gay marriage victories).

35. Perry v. Schwarzenegger, 591 F.3d 1147 (9th Cir. 2010); Jessie McKinley & John Schwartz, *Court Rejects Same-Sex Marriage Ban in California*, N.Y. TIMES (Aug. 4, 2010), http://www.nytimes.com/2010/08/05/us/05prop.html?pagewanted=all&_r=0.

36. *See generally* Daniel Fisher, *Supreme Court Rejects DOMA, Sets Same-Sex Marriage On Path To Equality*, FORBES (June 26, 2013, 1:24 PM), http://www.forbes.com/sites/danielfisher/2013/06/26/supreme-court-rejects-doma-sets-same-sex-marriage-on-path-to-equality/#5959aac449ef; Richard Socarides, *Would The Justices Rather Not Rule on Prop 8?*, NEW YORKER (Mar. 26, 2013), http://www.newyorker.com/news/news-desk/would-the-justices-rather-not-rule-on-prop-8.

37. Charlie Savage & Sheryl Gay Stolberg, *In Shift, U.S. Says Marriage Act Blocks Gay Rights*, N.Y. TIMES (Feb. 23, 2011), http://www.nytimes.com/2011/02/24/us/24marriage.html?pagewanted=all.

38. Obergefell v. Hodges, 135 S. Ct. 2584 (2015). *See generally* Molly Ball, *How Gay Marriage Became a Constitutional Right*, THE ATLANTIC (July 1, 2015),

While these changes increased the anxiety felt by religious communities, the Supreme Court assuaged some of their concerns in *Burwell v. Hobby Lobby*.[39] The Court held that the federal RFRA presented closely held corporations with the ability to exempt themselves from certain Affordable Care Act provisions, specifically those requiring businesses employing more than fifty employees to supply health insurance that "includes birth-control coverage, or else pay a fine."[40] *Hobby Lobby* produced a new RFRA interpretation, as it expanded the scope of RFRA protection from individuals and non-profit companies to for-profit closely held companies and provided a relatively vague description of a religious objector's requirement under RFRA to demonstrate that a law imposes a "substantial burden" on their religious exercise.[41]

The legal and policy triumphs experienced by the gay community prompted many states to either enact their own Religious Freedom Acts or amend current acts to specifically target gay, lesbian, and same-sex couple's rights.[42] These laws present businesses with a strong legal defense if they deny individuals services due to their "sincerely held

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http://www.theatlantic.com/politics/archive/2015/07/gay-marriage-supreme-court-politics-activism/397052/; Fisher, *supra* note 36.

39. Burwell v. Hobby Lobby Stores Inc., 134 S. Ct. 2751 (2014); *see also* Guo, *supra* note 34.

40. Jeffrey Toobin, *On* Hobby Lobby, *Ginsburg Was Right*, NEW YORKER (Sep. 30, 2014), http://www.newyorker.com/news/daily-comment/hobby-lobbys-troubling-aftermath; *see Hobby Lobby*, 134 S. Ct. 2751.

41. *Hobby Lobby*, 134 S. Ct. 2751; *see also* Jonathan Oosting, *House-approved Michigan Religious Freedom Restoration Act: A license to discriminate?*, MLIVE (Dec. 9, 2014), http://www.mlive.com/lansing-news/index.ssf/2014/12/proposed_michigan_religious_fr.html. The *Hobby Lobby* court interpreted the federal RFRA in a way that furnished an extraordinary and an unprecedented amount of protection to religion and religious exercise. Micah Schwartzman, Richard Schragger, & Nelson Tebbe, *The New Law of Religion*, SLATE (July 3, 2014), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/07/after_hobby_lobby_there_is_only_rfra_and_that_s_all_you_need.html.

> By reading RFRA as creating a total break from decades of First Amendment jurisprudence, the court has freed itself from any precedent that would otherwise have blocked the outcome in *Hobby Lobby*. Before the *Smith* decision and the adoption of RFRA, every single free-exercise suit brought by a business was rejected by the court.

Id. Likewise, this decision extends religious protections, which were once predominantly proffered to churches and religious non-profit organizations, to for-profit businesses and entities in the corporate realm.

42. *See* Sanchez, *supra* note 2; *see also* Emma Green, *When Doctors Refuse to Treat LGBT Patients*, THE ATLANTIC (Apr. 19, 2016), http://www.theatlantic.com/health/archive/2016/04/medical-religious-exemptions-doctors-therapists-mississippi-tennessee/478797/.

religious beliefs or convictions."[43] Some of the services that have been subjects of dispute include counseling, photography, wedding planning, and adoption.[44] *Hobby Lobby* opened the floodgates to this acceptable form of discrimination, ultimately permitting states such as Indiana and Mississippi to cloak their prejudicial legislation under the guise of religious expression.[45]

C. The Counseling Profession

The counseling field in particular has been affected by state RFRAs and the accommodation of religious exercise.[46] According to the American Counseling Association (ACA), counseling is a "professional relationship that empowers diverse individuals, families, and groups to accomplish mental health, wellness, education, and career goals."[47] The profession places great emphasis on embracing diversity and individual uniqueness, protecting and preserving the counselor-client relationship, promoting social justice, and practicing both competently and ethically.[48] Similar to legal or medical fields, the counseling discipline is guided by a code of ethics, precisely the ACA Code of Ethics, which serves six purposes: (1) to provide "ethical obligations of ACA members and" direction in the professional practice; (2) to outline ethical ruminations for members and counselors-in-training; (3) to clarify the "nature of the ethical responsibilities held in common by its members;" (4) to aid members in formulating a plan that best serves each client's needs and establish expectations of professional counselors; (5) to support the ACA mission; and (6) to assist in the "processing of inquiries and ethic complaints" regarding ACA members.[49]

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43. Green, *supra* note 42.

44. *Id.*

45. *Id.*; *see also* Sanchez, *supra* note 2; Marina Fang, *Counselors in Tennessee Can Now Legally Refuse LGBT Patients*, HUFFINGTON POST (Apr. 28, 2016), http://www.huffingtonpost.com/entry/tennessee-anti-lgbt-counselors-law_us_57212b06e4b01a5ebde46cbd. *See generally* Domenico Montanaro, *Indiana Law: Sorting Fact From Fiction From Politics*, NPR (Apr. 1, 2015), http://www.npr.org/sections/itsallpolitics/2015/04/01/395613897/sorting-fact-from-fiction-from-politics-on-the-indiana-law.

46. Greg Lipper, *Do Counselors-in-Training Have the Right to Discriminate Against LGBTQ People?*, REWIRE (July 26, 2016), https://rewire.news/article/2016/07/26/counselors-training-right-discriminate-lgbtq-people/.

47. *2014 ACA Code of* Ethics, AM. COUNSELING ASS'N 3, http://www.counseling.org/docs/ethics/2014-aca-code-of-ethics.pdf?sfvrsn=4 (last visited Nov. 8, 2016) [hereinafter, *ACA Code of Ethics*].

48. *Id.*

49. *Id.*

Moreover, the ACA Code of Ethics imposes various requirements on its members. One of those requirements is to "respect the dignity and to promote the welfare of clients."[50] Dignity, according to the Merriam-Webster Dictionary, is "the quality or state of being worthy, honored, or esteemed."[51] Such a requirement demands that counselors place each client at the center of their care and show consideration for client differences. Likewise, counselors are instructed to be cognizant of their own beliefs, and avoid imposing those that are "inconsistent with counseling goals" and the wellbeing of their clients on these individuals.[52] This necessitates that counselors with strong personal religious beliefs set them aside so that they can best serve their clients and their clients' needs. Along similar lines, counselors are prohibited from denying services to a client due to that individual's culture, ethnicity, "gender, gender identity, sexual orientation, [and] marital/partnership status," among other characteristics.[53] They are further disallowed from referring prospective or current "clients based solely on the counselor's personally held values, attitudes, beliefs, [or] behaviors."[54] The ACA believes that counselors gain imperative skills by working with a diverse clientele.[55] The aforementioned rules illustrate the counseling profession's guiding principle that client needs are of the utmost importance, which is a universally taught tenet in counselor education.[56]

Despite these comprehensive and universally applied principles, courts have recently heard cases involving counseling graduate programs and their students who possess religious beliefs and whose behaviors diverge from them.[57] *Keeton v. Anderson-Wiley* is one such case, which the Eleventh Circuit heard in 2011.[58] Plaintiff, Jennifer Keeton, was a

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50. *Id; see also* Glenda R. Elliott, *When Values and Ethics Conflict: The Counselor's Role and Responsibility*, 37 ALA. COUNSELING ASS'N J., No. 1, http://files.eric.ed.gov/fulltext/EJ954289.pdf.

51. *Dignity*, MERRIAM-WEBSTER ONLINE DICTIONARY (2016), http://www.merriam-webster.com/dictionary/dignity.

52. *ACA Code of Ethics*, *supra* note 47, at 5; *see also* Elliott, *supra* note 50, at 40–41.

53. *ACA Code of Ethics, supra* note 47, at 9.

54. *Id.* at 6.

55. *Id.* at 8.

56. *Tennessee Advances Bill That Tells Counselors to Discriminate*, AM. COUNSELING ASS'N (Mar. 24, 2016), https://www.counseling.org/news/updates/2016/03/24/tennessee-advances-bill-that-tells-counselors-to-discriminate.

57. *See* Ward v. Polite, 667 F.3d 727 (6th Cir. 2012); Keeton v. Anderson-Wiley, 664 F.3d 865 (11th Cir. 2011); Cash v. Hofherr, No. 2016-CV-03155 (W.D. Mo. Apr. 19, 2016); *see also* Walden v. CDC & Prevention, 699 F.3d 1277 (7th Cir. 2012) (involving a counselor who was terminated from work due to his religious beliefs).

58. *Keeton*, 664 F.3d 865.

student enrolled in the graduate counseling program at Augusta State University (ASU), who sought a master's degree in school counseling.[59] Keeton believed that "sexual behavior is the result of personal choice for which individuals are accountable, not inevitable deterministic forces; that gender is fixed and binary (i.e., male or female), not a social construct or personal choice subject to individual change; and that homosexuality is a lifestyle, not a 'state of being.'"[60]

Throughout her time in the counseling program, Keeton shared these convictions with her professors and fellow classmates and claimed a desire to convert homosexual students into heterosexuals.[61] When answering a faculty member's hypothetical and while conversing with her classmates, Keeton admitted her intention to inform future gay clients that their behavior "is morally wrong," and to attempt to personally alter their behavior.[62] She continued by asserting that if her efforts were unsuccessful, "she would refer [her gay clients] to someone practicing conversion therapy."[63] Keeton's objectives and beliefs were clear violations of several sections of the ACA Code of Ethics.[64]

ASU officials became aware of Keeton's beliefs and requested that she participate in a remediation plan.[65] They feared that Keeton lacked an "ability to be a multiculturally competent counselor, particularly with regard to working with gay, lesbian, bisexual, transgender, and queer/questioning (GLBTQ) populations."[66] Such an insufficiency violated the graduate program's requirement that all students act in accordance with the ACA Code of Ethics.[67]

Participation in the remediation plan did not require Keeton to abandon her beliefs, but rather that she learn to separate them from those of her clients to ensure compliance with the ACA Code of Ethics.[68] However, the plan did necessitate Keeton's consent to one-on-one student counseling, and an addendum to the plan stated that Keeton's failure to complete the plan constituted reason for dismissal from the graduate program.[69]

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59. *Id.* at 867.
60. *Id.* at 868.
61. *Id.*
62. *Id.* at 868–69.
63. *Id.* at 869.
64. *Id.*
65. *Id.* at 867–68.
66. *Id.* at 867.
67. *Id.* at 874.
68. *Id.* at 871.
69. *Id.* at 867, 869–71; see also *Keeton v. Anderson-Wiley et al.*, ACLU OF GA., https://www.acluga.org/en/cases/keeton-v-anderson-wiley-et-al, (last visited Dec. 29, 2017).

Keeton brought suit against ASU officials and the school's board of regents for violating her "First Amendment free speech and free exercise rights."[70] Additionally, "Keeton filed a motion for preliminary injunction to prevent [the school] from dismissing her from the [counseling] program if she did not complete the remediation plan."[71] Responding to Keeton's suit, "[t]he ACLU of Georgia and the ACLU LGBT and AIDS project filed an amicus brief supporting ASU," which contended that the central issue of the case was failure to "comply with professional, and ethical standards for counselors, rather than free speech or the free exercise of religion."[72]

The U.S. District Court for the Southern District of Georgia denied Keeton's preliminary injunction and Keeton appealed to the Court of Appeals for the Eleventh Circuit.[73] The Court of Appeals upheld the district court's decision, holding that a public university graduate program, which constitutes a nonpublic forum, "may impose restrictions on speech that are reasonable and viewpoint neutral." [74] Therefore, a graduate program can require its students to act in accordance with the ACA Code of Ethics, and a student's failure to comply with such a requirement constitutes acceptable grounds for dismissal from the program.[75]

Another case concerning counseling and religious objections is *Ward v. Polite*, which the Sixth Circuit heard in 2012.[76] Plaintiff Julia Ward was a student enrolled in Eastern Michigan University's (EMU) graduate counseling program, and training to become a school counselor.[77] Ward, like Keeton, possessed religious convictions that prevented her from supporting the "homosexual behavior" of counseling patients.[78] While these beliefs often led Ward to disagree with her professors, they did not hinder her academic performance in the program.[79]

Ward enrolled in the required counseling practicum, which enabled students to employ their acquired knowledge via one-on-one counseling sessions with real clients.[80] Ward counseled her first two clients in the

70. *Keeton*, 664 F.3d at 867.
71. *Id.*
72. *See* ACLU OF G.A., *supra* note 69.
73. *Keeton*, 664 F.3d at 867–68.
74. *Id.* at 872 (quoting Pleasant Grove City v. Summum, 555 U.S. 460, 470 (2009)).
75. *Id.* at 880; *see also* ACLU OF G.A., *supra* note 69.
76. *Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012).
77. *Id.* at 730; *see* Lipper, *supra* note 46.
78. *Ward*, 667 F.3d at 730.
79. *Id.*
80. *Id.*

practicum with ease.[81] It was not until Ward reviewed the file for her third client, an individual seeking counseling regarding a same-sex relationship, that her religious beliefs became problematic.[82] Consequently, Ward contacted her faculty supervisor and inquired, "(1) whether she should meet with the client and refer him only if it became necessary—only if the counseling session required Ward to affirm the client's same-sex relationship—or (2) whether the school should reassign the client from the outset."[83] Although Ward's faculty advisor reassigned the client, it was the first time in twenty years of teaching that she had been asked to do so.[84] Ward then participated in a review with her faculty advisor and an academic supervisor.[85] It was during this review that both faculty members deemed a remediation plan to be futile.[86] As a result, "Ward [was given] two options: withdraw from the counseling program or seek a formal review."[87] Ward chose the latter and was ultimately expelled from her program for violating two provisions of the ACA Code of Ethics.[88]

Similar to Keeton, Ward filed suit claiming that the university violated her free speech and free exercise rights under the First and Fourteenth Amendments.[89] The district court dismissed the case,[90] holding that Ward's speech and religious beliefs were not targeted due to the university's "neutral and generally applicable curricular requirement."[91] Ward appealed and the Sixth Circuit returned the case to the district court.[92] It found that Ward did not violate the ACA Code of Ethics by requesting a referral, and that a reasonable jury could find that Ward was expelled due to "hostility toward her speech and faith."[93] Therefore, the Sixth Circuit reversed the trial court's grant of summary judgment in favor of the defendants.[94]

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81. *Id.*
82. *Id.* at 731.
83. *Id.*
84. *Id.* at 730.
85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.* at 731–32.
89. *Id.* at 732.
90. *See* Lipper, *supra* note 46.
91. *Ward*, 667 F.3d at 732.
92. *Id.* at 734, 742.
93. *Id.*; *see also* Ashley Thorne, *Eastern Michigan University Settles with Expelled Counseling Student Julea Ward*, NAT'L ASS'N OF SCHOLARS (Dec. 12, 2012), https://www.nas.org/articles/eastern_michigan_university_settles_with_expelled_counseling_student_julea.
94. *Ward*, 667 F.3d at 732.

The latest anti-gay counseling case, *Cash v. Hofherr*, was dismissed with prejudice on December 27, 2016 by the Missouri Western District Court.[95] In September 2007, Cash, "a Christian with sincerely-held beliefs," participated in a graduate counseling program at Missouri State University (MSU).[96] He decided to fulfill his clinical internship requirement, which necessitated 240 hours of one-on-one client contact, at Springfield Marriage and Family Institute (SMFI), a Christian-based counseling agency.[97] As part of the internship, Cash was instructed to prepare a class presentation related to the field of counseling.[98] Cash chose "Christian counseling and its unique approach and value to the Counseling profession" as his presentation topic, and Cash's supervisor at SMFI gave the presentation in April 2011.[99] Following this presentation, Cash met with MSU's Counseling Department's internship coordinator.[100] She was concerned about Cash's intention to discriminate against gays and violate the ACA Code of Ethics.[101] It was during their meeting that the internship coordinator removed SMFI from the counseling department's approved site and supervisor list and Cash from his SMFI placement.[102] After disputes between Cash and MSU regarding the fifty-one hours Cash tendered while at SMFI, and their applicability towards his required 240 hours, Cash was placed on a remediation plan and subsequently expelled in November 2014 from the master's program.[103] Cash filed suit in April 2016 claiming that the university's board of governors, president, counseling department internship coordinator, counseling department head, and remediation plan supervisor violated his rights to "freedom of thought, speech, religion, and association, and denigrated his personal and professional abilities."[104]

These cases demonstrate the apparent clash between the sincere moral convictions held by counselors with religious beliefs and discrimination against gays, lesbians, or same-sex couple clients. A

95. *See* Lipper, *supra* note 46; Complaint at 1, Cash v. Hofherr, No. 2016-CV-03155 (W.D. Mo. Apr. 19, 2016), http://www.plainsite.org/dockets/2ylm06d9z/missouri-western-district-court/cash-v-hofherr-et-al/; *see also* PACERMONITOR, https://www.pacermonitor.com/public/case/11244913/Cash_v_Hofherr_et_al (last visited Nov. 8, 2016).

96. Lipper, *supra* note 46.

97. *Id. See* Complaint, *supra* note 95, at 4–5.

98. Complaint, *supra* note 95, at 5.

99. *Id.*

100. *Id.*

101. *Id.* at 5–6.

102. *Id.* at 5.

103. *Id.* at 7–8.

104. *Id.* at 9.

violation of the ACA Code of Ethics has proven to be legitimate grounds for counseling programs to expel students.[105] However, some states, such as Tennessee, are proposing legislation that would protect licensed (and unlicensed) professional counselors "from civil lawsuits, criminal prosecution or 'any other action by [the] state or a political subdivision of [the] state'" if they too refuse counseling services by reason of their religious beliefs.[106] If enacted, this form of legislation could have a detrimental effect on the counseling profession, those who seek counseling, and citizens of the states with these laws.[107]

III. ANALYSIS

Allowing counselors to turn away gay, lesbian, and same-sex couples due to their sincerely held religious beliefs injures those seeking help.[108] Despite numerous victories for, and the growing cultural acceptance of, the gay community, many LGBT people experience "oppression, discrimination, and marginalization."[109] Such intolerance and prejudice encountered in the public realm and private sphere can lead to "depression, anxiety, [and] substance abuse," along with a variety of other mental health issues.[110] Research shows that young individuals who identify as being part of the gay community are at a greater risk of "suicidal ideation and self-harm."[111] This is precipitated by negative reactions from coming out to one's family as well as physical and verbal bullying in schools.[112] Moreover, LGBT adults are likely to experience

105. *See* Keeton v. Anderson-Wiley, 664 F.3d 865, 880 (11th Cir. 2011).

106. *See* Billy Hallowell, *Sparks Fly Over Bill that Would Protect Counselors From Treating People with 'Behaviors That Conflict With a Sincerely Held Religious Belief'*, THE BLAZE (Apr. 7, 2016), http://www.theblaze.com/stories/2016/04/07/religious-freedom-battle-heats-up-tennessee-legislature-passes-controversial-bill-that-would-protect-counselors-from-treating-people-with-behaviors-that-conflict-with-a-sincerely-held-religious-bel/; *see also* Fang, *supra* note 45; *Tennessee Advances Bill That Tells Counselors to Discriminate*, *supra* note 56.

107. *See* Laurie Meyers, *License to Deny Seervices*, COUNSELING TODAY (June 27, 2016), http://ct.counseling.org/2016/06/license-deny-services/.

108. *LGBTQ Issues / Gender Identity and Sexual Orientation*, GOODTHERAPY.ORG, http://www.goodtherapy.org/learn-about-therapy/issues/lgbt-issues (last updated July 29, 2016); *see also Answers to Your Questions: For a Better Understanding of Sexual Orientation and Homosexuality*, AM. PSYCHOL. ASS'N (2008), http://www.apa.org/topics/lgbt/orientation.pdf..

109. *See LGBTQ Issues / Gender Identity and Sexual Orientation*, *supra* note 108.

110. *Id.*

111. *Id.*

112. *Id.*; *see also* Michael Friedman Ph.D., *The Psychological Impact of LGBT Discrimination*, PSYCHOLOGY TODAY (Feb. 11, 2014), https://www.psychologytoday.com /blog/brick-brick/201402/the-psychological-impact-lgbt-discrimination.

discrimination in the workplace, which may result in heightened psychological distress and health-related problems, as well as a decrease in job satisfaction, and discrimination with regard to housing and education.[113] These individuals are likely to seek counseling due to such displacement and hatred.[114]

Should a counselor refuse to provide services to a client due to profound religious convictions, that counselor's actions, according to the ACA, will have a "deleterious effect" on the client.[115] Ryan Thomas Neace, an ACA member and counselor practicing in St. Louis, has argued, "[b]y the time many of my LGBTQ+ clients show up at my office, they've already been hounded by unsupportive, and often abusive, friends, family, religious communities and sadly, professionals. [The Tennessee law] makes the sacred space that we offer as counselors less sacred and less spacious."[116] Consequently, LGBT patients may become less inclined to seek help or identify themselves as LGBT to doctors, which, according to the American Medical Association, can result in a failure to investigate, diagnose or "treat important medical problems."[117]

Perhaps equally as detrimental to LGBT clients is the diluted pool of available mental health counselors, especially in rural areas where counseling services may be limited, which lessens an LGBT client's likelihood of receiving help.[118] Upon analysis, it is evident that furnishing religious freedom protections to counselors by allowing them to withhold their services and refer these clients does little more than create and/or exacerbate the grave mental issues for which clients seek counseling.[119]

In addition to injuring clients by refusing to counsel them, counselors can harm clients by imposing their own personal religious beliefs on them.[120] In 2007, a task force of the American Psychological Association

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113. Friedman, *supra* note 112.

114. *See LGBTQ Issues / Gender Identity and Sexual Orientation*, *supra* note 108; *see also Answers to Your Questions: For a better understanding of sexual orientation and homosexuality*, *supra* note 108.

115. *See Tennessee Advances Bill That Tells Counselors to Discriminate*, *supra* note 56.

116. Meyers, *supra* note 107.

117. *See* Green, *supra* note 42.

118. *See* Emma Margolin, *Tennessee Enacts 'Religious Freedom' Measure*, MSNBC (Apr. 28, 2016, 5:12 PM), http://www.msnbc.com/msnbc/tennessee-enacts-religious-freedom-measure.

119. *See generally LGBTQ Issues / Gender Identity and Sexual Orientation*, *supra* note 108; *Answers to Your Questions: For a better understanding of sexual orientation and homosexuality*, *supra* note 108.

120. *See* Meyers, *supra* note 107.

performed research on the effectiveness of conversion therapy.[121] Their findings indicated the presence of little "methodologically sound research on sexual orientation change efforts (SOCEs) and that the 'results of scientifically valid research indicate that it is unlikely that individuals will be able to reduce same-sex attractions or increase other-sex sexual attractions through SOCE.'"[122] Conversely, there was ample evidence to illustrate medical, psychological and other harms that such efforts produce on LGBT clients.[123] Not only are conversion efforts contrary to research, they are also not taught at universities.[124] The Eleventh Circuit in *Keeton* explained that the university insists "all students be competent to work with all populations, and that all students not impose their personal religious values on their clients, whether . . . they believe that persons ought to be Christians rather than Muslims, Jews or atheists, or that homosexuality is moral or immoral."[125] As noted above, LGBT clients frequently seek counselors due to their feelings of exclusion and rejection.[126] Thus, if counselors perpetuate their clients' feelings of alienation, they become part of the problem and not part of the solution.[127]

A counselor's ability to discriminate against or impose their religious beliefs on their LGBT clients also opens the door for said counselors to link any of their discriminatory or unprofessional behavior to religious convictions, which may then be characterized as acceptable due to

121. *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, HUMAN RIGHTS CAMPAIGN, http://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy (last visited Jan. 3, 2017).

122. *Id.*

123. *Id.*

124. Keeton v. Anderson-Wiley, 664 F.3d 865, 874 (11th Cir. 2011).

125. *Id.*

126. *See LGBTQ Issues / Gender Identity and Sexual Orientation*, *supra* note 108.

127. Opponents to these claims might argue that counselors who have negative beliefs and attitudes towards gays, lesbians, or same-sex couples, may not only be less helpful to the clients, but they may be harmful to them as well, as they "may attribute their clients' developmental or psychological difficulties to the clients' sexual orientation, perhaps resulting in misdiagnosis." Steve Rainey & Jerry Trusty, *Attitudes of Master's-Level Counseling Students Toward Gay Men and Lesbians*, COUNSELING & VALUES (Oct. 1, 2007), https://www.highbeam.com/doc/1G1-169715668.html. However, according to the ACA Code of Ethics, section E.5.d., counselors must refrain from making and or reporting a diagnosis they view would be harmful to their client. *ACA Code of Ethics*, *supra* note 47. Thus, if a counselor recognizes that they have fundamentally different beliefs than their client and that they may be unable to provide an accurate diagnosis, it would behoove the counselor to seek a second opinion.

exemptions for religious expression.[128] One of America's incredible qualities is that it is an amalgamation of beliefs, backgrounds, religions, and ethnicities.[129] This being the case, it is impossible, and unreasonable for one to believe or expect, that our nation will embody every principle to which each citizen abides. Instead, as noted by American political philosopher John Rawls, reasonable Americans "are willing to propose and abide by mutually acceptable rules, given the assurance that others will also do so. They will honor these rules, even when this means sacrifice to their own particular interests."[130] According to Rawls, an unreasonable person, on the other hand, is an individual who disagrees with "the principles of the original position and is unwilling to abstract from his personal interests when advocating for laws or policies."[131] Rawls proposed that while each citizen closely holds their personal beliefs, our nation is comprised of a diverse population, and therefore some convictions must be put aside for the greater good.[132]

Rawls' proposition speaks directly to the internal conflict that religious counselors face when they are presented with clients whose sexual orientation and/or way of life are incompatible with their personal convictions. These counselors are required to choose between adhering to their beliefs and upholding their profession's code of ethics, or honoring their client's desire to be heard, respected and treated fairly. From Rawls' perspective, the choice counselors ultimately make will determine whether they fit the definition of "reasonable" or "unreasonable."[133] With this being said, if our nation permits certain likeminded religious individuals to become unreasonable, in their attempt to "force . . . reasonable citizens to live by [their] truth," where

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128. *See* Ben Caldwell, *How This Year's Religious Freedom Bills Impact Therapists*, PSYCHOTHERAPY NOTES (Feb. 23, 2016), http://www.psychotherapynotes.com/how-this-years-religious-freedom-bills-would-impact-therapists/.

129. *See* Dan Keating & Laris Karklis, *The Increasingly Diverse United States of America*, WASH. POST (Nov. 25, 2016), https://www.washingtonpost.com/graphics/national/how-diverse-is-america/ (showing diversity statistics through maps of the United States); *see also* Braunfeld v. Brown, 366 U.S. 599, 606 (1961). Chief Justice Warren explaining that "we are a cosmopolitan nation made up of people of almost every conceivable religious preference." *Id.*

130. John Rawls, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Sept. 24, 2012), https://plato.stanford.edu/entries/rawls/.

131. Jerome C. Foss, PhD, *John Rawls: Theorist of Modern Liberalism*, THE HERITAGE FOUNDATION (Aug. 13, 2014), http://www.heritage.org/research/reports/2014/08/john-rawls-theorist-of-modern-liberalism.

132. *See generally id.*

133. Accordingly, counselors who choose to act in the best interests of their client will be considered "reasonable" and those who abide by their religious convictions will be viewed as "unreasonable." *Id.*

do we draw the line?[134] Do religious truths become more important than all other truths? Allowing counselors to act on their prejudices against the LGBT community sets the stage for enabling discrimination against other minority groups such as Jews, Muslims, and Buddhists.[135] Counselors should provide unbiased and nonjudgmental care. Permitting religion to play a role in this helping, service-oriented relationship ultimately damages not only the process but also, and more importantly, the patients.

Moreover, enabling counselors to discriminate against, or impose their personal and religious values on, LGBT clients is antithetical to the ACA Code of Ethics.[136] As previously stated, the counseling profession's Code of Ethics outlines rules and guidelines to which its members must comply.[137] Similarly, code violations are commonly deemed unprofessional, and the ACA has policies and procedures for addressing such violations.[138]

Lastly, as explained by Linda Darling-Hammond, an educational policy researcher, professionals are obligated to act in the best interests of their client, which oftentimes may prove to be more difficult or inconvenient for the professional, or contrary to the client's wants.[139] Authorizing religious counselors to discriminate against a current or potential client is contrary to the standard of accepted practice and violates the ACA Code of Ethics. If the counseling profession excuses and justifies ethical violations, how can our nation continue to view it with reverence?

Despite the ACA Code of Ethics and other guidelines that require impartial and nonjudgmental behavior and an unwavering commitment to the counseling profession, there will nevertheless be counselors whose

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134. John Rawls, *supra* note 130.

135. *See* Roy Speckhardt, *Twisting Religious Liberty Into Religious Discrimination*, HUFFINGTON POST BLOG (June 13, 2014), http://www.huffingtonpost.com/roy-speckhardt/twisting-religious-libert_b_5489714.html.

136. *See generally ACA Code of Ethics*, *supra* note 47.

137. *Id.* at 8 § C.1. Declaring that "[c]ounselors have a responsibility to read, understand and follow the *ACA Code of Ethics* and adhere to applicable laws and regulations." *Id.* This language, along with other sections in the code, demonstrates the compulsory nature for compliance.

138. *See* Todd DeMitchell, David Hebert, & Loan Phan, *The University Curriculum and the Constitution: Personal Beliefs and Professional Ethics in Graduate School Counseling Programs*, 39 J.C. & U.L. 303, 311 (2013). *See generally ACA Policies and Procedures for Processing Complaints of Ethical Violations*, https://www.counseling.org/docs/ethics/policies_procedures.pdf?sfvrsn=2 (last visited Jan. 14, 2017); *ACA Code of Ethics*, *supra* note 47 at 18–19.

139. *See* Linda Darling-Hammond, *Accountability for Professional Practice*, 91 TEACHERS C. REC. 59, 67 (1989); *see also* DeMitchell, Hebert & Phan, *supra* note 138.

religious convictions weigh heavily on their hearts and minds. How do we resolve the conflict between those who want to freely exercise their strong religious beliefs and those who deserve unbiased, competent and respectful counselors whose goal is to best serve the client and their needs? The following are three "ethically sound" solutions, from most to least preferable.[140] The first option is for counselors to place their beliefs, attitudes and values aside, and to focus on the wellbeing of their clients.[141] Such a solution would permit religious counselors to seek mentors who may facilitate their care and the process of achieving a favorable and acceptable solution between their and their client's conflicting interests.[142] The second option is to counsel in a "setting that does not require licensure and adherence to a code of ethics for licensed professional counselors."[143] This would allow counselors the ability to freely exercise their religion, and would give prospective clients a forewarning that the care they seek may and likely will not comply with ethical guidelines to which licensed counselors must adhere.[144] Option three is for religious objectors to choose an alternative profession.[145]

Counseling is a "professional relationship that empowers diverse individuals, families, and groups to accomplish mental health, wellness, education and career goals."[146] If counselors are unable or unwilling to serve and embrace a diverse population, while protecting and preserving

140. *See* Elliott, *supra* note 50. I rank these solutions in this way because I believe individuals should be able to practice the professions in which they are educated and about which they feel passionate. In my opinion, it is best if religious counselors can perform their jobs in areas that require licensure, and do so in accordance with the ACA Code of Ethics, which requires counselors to place their own personal biases and beliefs aside when serving clients. *ACA Code of Ethics*, *supra* note 47. Along these lines, if counselors are unwilling to follow such guidelines, their next option would be to practice in areas that do not require licensure. These areas would not require religious counselors to separate their professional practice from their religious views. Finally, the solution that religious counselors find an alternative occupation is one, for me, of last resort.

141. *Id.* (noting that some religious counselors have "cited their religious beliefs as a reason *not* to discriminate"); *cf.* Meyers, *supra* note 107.

142. Elliott, *supra* note 50, at 43

143. *Id.* at 40.

144. *Id.*

145. *Id.* at 43. While I recognize that this solution is extreme, I do acknowledge that it is the least preferable of the three provided. With this being said, the proposed solution demonstrates the importance of adhering to the ACA Code of Ethics and norms that are followed by the profession, as well as the unprofessionalism of violating the Code and such norms.

146. *ACA Code of Ethics*, *supra* note 47.

the counselor-client relationship, promoting social justice, and practicing both competently and ethically, they ought to find another occupation.[147]

IV. CONCLUSION

Permitting counselors to discriminate against, or impose their personal and religious values on, LGBT clients is not only in opposition to the ACA Code of Ethics, but it is likely to harm these clients who seek unbiased and nonjudgmental care from counselors on whom they hope to rely. These individuals solicit care for a multitude of reasons, however, they are all likely to have one reason in common: current or past feelings of "oppression, discrimination, and marginalization."[148] If counselors recognize incongruence with their religious beliefs and their client's sexual orientation or practices, these counselors ought to (1) place their values aside for the betterment of their client; (2) practice in an area that does not require licensure; or (3) pursue an alternative career where they are not required to comply with codes of ethics and professional standards.[149] Counseling is a helping relationship, whose practitioners have entered the field in order to promote respect for diversity, individual uniqueness, and dignity for those they are assisting.[150] Anything short of this is a failure on their part, as they are shirking their duties to their profession, and most importantly, to their clients.

147. Sheila Burke, *LGBT Community Braces For Impact of New Counseling Law*, THE BIG STORY (May 6, 2016), http://bigstory.ap.org/article/adb65b5a73fc47f183c9727a8e3e5c64/lgbt-community-braces-impact-new-counseling-law. Opining that

> I think it's a counselor's job to be there for people, to comfort people, and if someone is to the point in their life when they need counseling, they need to be accepted, to know that they can tell that counselor anything and the counselor will talk to them, guide them through it . . . [a]nd if the counselor can't do it, then maybe they're in the wrong profession.

Id.

148. *See LGBTQ Issues / Gender Identity and Sexual Orientation*, *supra* note 108.

149. *See* Elliott, *supra* note 50.

150. *ACA Code of Ethics*, *supra* note 47.