UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHRISTOPHER DOYLE, LPC, LCPC, individually and on behalf of his clients,	)	
Plaintiff,	)	Civil Action No. 1:19-cv-00190-DKC
v.	)	**INJUNCTIVE RELIEF SOUGHT**
LAWRENCE J. HOGAN, JR., Governor of the State of Maryland, in his official capacity, and BRIAN E. FROSH, Attorney General of the State of Maryland, in his official capacity,	)	
Defendants.	)	

PLAINTIFF'S CONSOLIDATED MEMORANDUM IN OPPOSITION TO MOTIONS OF FREESTATE JUSTICE, INC. AND THE TREVOR PROJECT TO FILE BRIEFS AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS

Plaintiff, CHRISTOPHER DOYLE, LPC, LCPC ("Doyle"), pursuant to Local Rule 105, files this memorandum in opposition to the Motion of FreeState Justice, Inc. for Leave to File Brief as *Amicus Curiae* in Support of Defendants (Doc. 28, the "FreeState Motion") and The Trevor Project's Motion for Leave to File *Amicus Curiae* Brief in Opposition to Plaintiff's Motion for Preliminary Injunction (Doc. 31, the "Trevor Motion").

INTRODUCTION

The proposed amicus briefs of FreeState Justice, Inc. ("FreeState") and The Trevor Project ("Trevor") would be neither useful nor timely. Among the critical issues before the Court on Plaintiff's Motion for Preliminary Injunction (Doc. 2) is whether Maryland's counseling ban was constitutionally tailored to its asserted governmental interests **when enacted**. (Pl.'s Mot. Prelim. Inj., Doc. 2, at 25–31.) Proposed amici's outsider "perspective" on what Maryland could have, should have, or might have considered when enacting its counseling ban has no bearing whatsoever on the question of Maryland's actual constitutional tailoring (or complete lack thereof).

Proposed amici's motions should be denied also because they are attempting to put new, purportedly factual matter before the Court to prop up Defendants' case. They should not be allowed to introduce unverifiable "facts" into these proceedings. Their motions make clear that they are attempting to bolster Defendants' legislative record after-the-fact with their own "data" and "research," which Doyle will have no opportunity to investigate, cross examine, or rebut prior to the preliminary injunction hearing. The Court does not need such friends and should reject their attempts.[1]

I. THE AMICUS MOTIONS SHOULD BE DENIED BECAUSE THE INFORMATION PROFFERED IS NEITHER TIMELY NOR USEFUL.

Whether to grant or refuse leave to amicus parties is a matter of the Court's discretion, but "a motion for leave to file an *amicus curiae* brief . . . should not be granted unless the court deems the proffered information **timely and useful**." *Finkle v. Howard Cnty.*, 12 F. Supp. 3d 780, 783 (D. Md. 2014) (emphasis added) (modification in original) (citation and internal quotation marks omitted); *see also American Humanist Ass'n v. Maryland-National Capital park & Planning Comm.*, 303 F.R.D. 266, 270 (D. Md. 2014) (same); *Glynn v. EDO Corp.*, No. JFM-07-1660, 2010 WL 3294347, *2 n.4 (D. Md. Aug. 20, 2010) (same); *Tafas v. Dudas*, 511 F. Supp. 2dd 652, 659 (E.D. Va. 2007) (same); *Georgia Aquarium, Inc. v. Pritzker*, 135 F. Supp. 3d 1280, 1288 (N.D. Ga. 2015); *Waste Mgmt. of Pennsylvania, Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995). The proposed briefs are neither, and the Court should decline to accept them.

[1] Doyle responds herein only to proposed amici's motions for leave to file, and interacts with the substance of their proposed briefs only as necessary to oppose the Court's granting leave to file. If leave to file is granted, then Doyle will substantively respond to the briefs in due course.

A. The Proposed Amicus Briefs Are Not Useful.

Assuming Maryland's counseling ban statute, SB 1028, is not a viewpoint-based restriction on speech and therefore unconstitutional *per se* (which it is), Maryland still must prove its content-based counseling ban was narrowly tailored to its purported governmental interests **when enacted**. (Pl.'s Mot. Prelim. Inj., Doc. 2, at 18–31.) As the Supreme Court taught in *McCullen v. Coakley*, the First Amendment "demand[s] a close fit between ends and means." 134 S. Ct. 2518, 2534 (2014). But FreeState and Trevor provide no hint of a relevant connection between their proffered narratives and Maryland's enactment of its counseling ban, and proffer no information about what happened in Maryland leading to the ban's enactment. They certainly do not proffer any information about what less restrictive alternatives to the counseling ban Maryland considered. Accordingly, the information proposed amici proffer is not useful, and therefore does not meet the basic threshold for an amicus filing.

FreeState claims to provide "'a helpful, alternative viewpoint.'" (FreeState Mot., Doc. 2, at 2.) But when it gets to the point, it is clear FreeState wants to introduce untimely facts. Under the guise of "context" (FreeState Mot., Doc. 28, at 3), FreeState indulges in commentary about the source documents recited in the SB 1028 Preamble, and then misrepresents as research findings the mere suggestions of a new unempirical study article. The 2018 article, *Parent-Initiated Sexual Orientation Change Efforts with LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment* (Doc. 28-2), is not relevant to Maryland's narrow tailoring burden **because it did not exist when SB 1028 was enacted**. Moreover, FreeState misrepresents the article as scientifically supportive of Maryland's patently false but persistent causal narrative—that "conversion therapy" **causes** harm[2]—despite the "several limitations" self-identified by the article,

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[2] Pl.'s Mot. Prelim. Inj., Doc. 2, at 6–17.

including the most important: "**causal claims cannot be made**[!]" (Doc. 28-2 at ECF 13 (emphasis added).) A close second is the admission that only persons currently identifying as LGBT were recruited to participate in the study. (Doc. 28-2 at ECF 12–13.) Thus, the study excluded **by design** any person who positively experienced change as a minor and either never identified as LGBT or no longer identifies as LGBT as an adult. Finally, the title of the study itself (***Parent*-*Initiated Sexual Orientation Change Efforts***) demonstrates that it is inapplicable to what Doyle has done and wants to do in Maryland, which is to provide voluntary, client-centered counseling that his minor patients seek and wish to receive. (Pl.'s Mot. Prelim. Inj., Doc. 2, at 2–6.) In sum, the 2018 article offers the same unempirical, unrigorous aspersions already contained in the APA Report (Pl.'s Mot. Prelim. Inj., Doc. 2, at 6–17), and would not have justified SB 1028 even if Maryland could have considered it at the time of enactment.[3]

Moreover, FreeState has a far more relevant perspective that it **hides** from the Court, namely that **FreeState agrees with Plaintiff Doyle that SB 1028 was not necessary in the first place**. FreeState is the successor by merger to Equality Maryland[4], which publicly stated in 2014 that Maryland did not need a "conversion therapy" ban because Maryland's existing regulation of licensed mental health professionals provided minors and their advocates sufficient recourse against professionals who inflicted harm. Kevin Rector, *Gay 'Conversion Therapy' Bill*

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[3] FreeState also introduces another 2018 article as support for the general statement that "sexual minority youth are more than three times more likely to have attempted suicide than heterosexual youth." (FreeState Mot., Doc. 28-1, at 4.) FreeState does not make any attempt, however, to tie this asserted statistic to "conversion therapy" as prohibited by SB 1028, rendering it entirely irrelevant to SB 1028 and this case.

[4] *Who We Are*, FreeState Justice, https://freestate-justice.org/who-we-are/ (last visited Mar. 29, 2019) ("FreeState Justice was formed when FreeState Legal Project and Equality Maryland merged in the spring of 2016; the new name (an earlier name of Equality Maryland) was announced at an event in Baltimore on June 30, 2016.").

Withdrawn as Advocates Pursue Regulatory Oversight, The Baltimore Sun, https://www.baltimoresun.com/features/bs-xpm-2014-03-14-bs-gm-gay-conversion-therapy-bill-withdrawn-20140314-story.html (Mar. 14, 2014). Equality Maryland's statement was a joint statement with Maryland Delegate John Cardin, in connection with Del. Cardin's withdrawal of his 2014 proposed "conversion therapy" ban, because,

> in research for the bill, and in talking to "several organizations with expertise in regulatory protections for patients," they concluded that patients who feel they have been harmed by "conversion" or "reparative" therapy **already have avenues to complain to state health occupation boards**.
>
> "Minors or anyone advocating on their behalf can file a complaint with a board, triggering a vigorous investigation," the statement said. "If the investigation uncovers proof that a licensed health care professional violated the standard of care, then the board has an array of regulatory tools to keep this from happening again."
>
> The statement went on: "Delegate Cardin and Equality Maryland are **confident that the existing regulatory framework provides a precise tool to protect minors** from this harmful therapy, and we will work together and with other advocates to ensure that the process for filing complaints against anyone who engages in these practices is transparent and widely disseminated."
>
> Carrie Evans, Equality Maryland's executive director, said the organization will "work to ensure LGBT youth and their parents have the information they need to file complaints."

Id. (emphasis added). Notably, that SB 1028 was not necessary because minors were adequately protected by existing regulations, that were less restrictive of speech, is one of Plaintiff Doyle's central contentions in this lawsuit. (V. Compl., Doc. 1, at 13–14, 16, ¶¶ 53–60, 76; Pl.'s Mot. Prelim. Inj., Doc. 2, at 30.) But FreeState chooses to hide the ball on the one issue that it could shed helpful light on.

Nevertheless, in offering its "perspective" to the Court regarding SB 1028, FreeState does not disclose (nor can it) how Maryland's professional regulations were less able in 2018, when SB

1028 took effect, to vindicate complaints of harm by minors and their advocates.[5] And given FreeState's undoubtedly effective activism, the absence of any complaints of harm from "conversion therapy" in Maryland since FreeState's 2014 promise to promote the complaint procedure compels the conclusion that there has been no harm to complain about.

FreeState claims to have "played an integral role in advocating for the passage and subsequent enactment of [SB 1028]." (FreeState Mot., Doc. 28, at 2.) FreeState presumably said all it wanted during the legislative process, and those comments are in the public record, which Maryland can proffer to this Court if it deems them relevant. It is too late now for FreeState to attempt to supplement Maryland's legislative record to save the counseling ban from Maryland's lack of narrow tailoring.

Trevor, for its part, seeks to foist on the Court a parental-rejection narrative (Trevor Mot., Doc. 31, at 4) that is already memorialized in SB 1028 (Doc. 1-1 at 4), **but that Maryland has now admitted is not true** in the context of the counseling Doyle has provided and wants to provide. In response to Doyle's request for admission, **Defendants admitted**,

> **no third-party empirical study, research, investigation, resolution, or position paper in the Legislative Record of SB 1028 identified or provided causal evidence of family rejection from, or a causal attribution of family rejection to, voluntary SOCE counseling**, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive.

(Defs.' Resp. Pl.'s Req. Admis. (copy attached hereto as Exhibit A) at 7 (emphasis added).) Falsity is the epitome of uselessness in an amicus filing.

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[5] Maryland's Rule 30(b)(6) representative testified at the State's deposition on March 28, 2019 (transcript pending) that nothing has changed since 2014 in Maryland's regulatory process for handling complaints against licensed mental health professionals.

Furthermore, proposed amici's offers of an "alternative viewpoint" and "unique and important perspective" are illusory. (FreeState Mot., Doc. 28, at 2; Trevor Mot., Doc. 31, at 3–4.) In light of Maryland's unequivocal and strident condemnation of SOCE counseling and all its practitioners in SB 1028, proposed amici offer nothing close to an "alternative" or "unique" viewpoint. Rather, FreeState and Trevor offer only to pile on with more of the same. In these tightly scheduled proceedings, the Court does not need such friends. Granting proposed *amici's* motions will open the floodgates for "alternative viewpoints" which are hopelessly indistinguishable from the viewpoint being presented by Maryland as its justifying interest in enacting its counseling ban. Additionally, if the Court allows these proposed *amici*, the Court will have to allow the same number or more *amici* in support of Doyle to obtain a truly "alternative viewpoint."

B. The Proposed Amicus Briefs Are Not Timely.

Closely related to the constitutional uselessness of proposed amici's proffered information is its untimeliness. Not only is proposed amici's help untimely because it proffers information months after enactment of the counseling bans, but also because their proposed briefing will disrupt the current preliminary injunction proceedings. Indeed, their amicus motions have already disrupted the taut schedule for these proceedings, requiring Doyle's response by March 29, pulling Doyle's counsel away from preparing for the depositions of Doyle (March 26) and Defendants' Rule 30(b)(6) designee (March 28). Granting proposed amici leave to file briefs will create the necessity for Doyle to respond to them prior to the preliminary injunction hearing, unduly interfering with an already crowded schedule.

II. THE AMICUS MOTION SHOULD BE DENIED BECAUSE FACTUAL ARGUMENT SHOULD NOT BE WELCOMED IN AN AMICUS FILING.

Proposed amici's motions should be denied for another critical reason: "[A]n *amicus* who argues facts should rarely be welcomed . . . ." *Strasser v. Doorley*, 432 F.2d 567, 569 (1st Cir. 1970); *see also Bryant v. Better Bus. Bereau of Greater Md., Inc.*, 923 F. Supp. 720, 728 (D. Md. 1996) ("Traditionally, the role of amici has been to act as a friend of the court, providing guidance on **questions of law**. 'At the trial level, where issues of fact as well as law predominate, the aid of amicus curiae **may be less appropriate** . . . .'"); *Finkle v. Howard Cnty.*, 12 F. Supp. 3d 780, 783 (D. Md. 2014) (same); *SEC v. North Star Fin., LLC*, GJH-15-1339, 2017 WL 4407955, *1 n.1 (D. Md. Aug. 4, 2017) (noting standard is whether amicus can provide helpful and relevant analysis of the law); *Washington Gas Light Co. v. Prince George's Cnty. Council*, No. DKC 08-0967, 2012 WL 832756, *3 (D. Md. Mar. 9, 2012) (same); *Waste Mgmt.*, 162 F.R.D. at 36 ("An *amicus* cannot initiate, create, extend, or enlarge issues."). Under the guise of "perspective" and "context," proposed amici are attempting to create an *ex post facto* evidentiary record to bolster Maryland's counseling ban enactment. The Court should see through and reject their improper attempt.

Trevor also reveals that its proposed after-the-fact evidentiary assistance will be based on the content of "confidential" (and presumably anonymous) telephone calls, instant messages, and text messages from its constituents. (Trevor Mot., Doc. 31, at 2.) There is, of course, no indication that any of these unidentified communicants have a connection to Maryland, or received counseling from Doyle. To be sure, Maryland has not identified a single individual claiming to have been harmed by voluntary SOCE counseling in Maryland. In any event, allowing Trevor to introduce anonymous hearsay "facts" would work a profound prejudice on Plaintiffs because Plaintiffs would have no opportunity to investigate or rebut such "facts."

Even if the Court were to disregard proposed amici's improper, purportedly factual submissions, their proposed legal arguments are no more helpful. FreeState leads its legal argument with *Nat'l Inst. for Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) (hereinafter, "*NIFLA*"). Doyle and Defendants are more than capable of arguing *NIFLA* to this Court and have done so. (Pl.'s Mot. Prelim. Inj., Doc. 2, at 19, 20, 22, 24, 31; Defs.' Mem. Opp'n Pl.'s Mot. Prelim. Inj., Doc., 25, at 14, 15, 17.) FreeState has not demonstrated it can offer legal insight on *NIFLA* beyond what Defendants are capable of arguing. Trevor's proposed 15-page brief does not cite a single legal authority until page 13, and then leads with two cases expressly **abrogated** by *NIFLA*, 138 S. Ct. at 2371–72: *King v. Governor of New Jersey*, 767 F.3d 216 (3d Cir. 2014), and *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2014). (Proposed Trevor Br., Doc. 31-1, at 13.) In short, proposed amici offer the Court no helpful or uniquely insightful legal analysis.

CONCLUSION

For all of the foregoing reasons, proposed amici's motions for leave to file amicus briefs should be denied.

/s/ John R. Garza
(signed by Roger K. Gannam
with permission of John R. Garza)
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been filed this March 29, 2019, through the Court's ECF system, which will send a notice of electronic filing to all parties and counsel of record, including the following:

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHRISTOPHER DOYLE, LPC, LCPC,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:19-cv-00190-DKC
v.	)	
	)	
LAWRENCE J. HOGAN, JR., *et al.*,	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS

Pursuant to the Federal Rules of Civil Procedure and this Court's Local Rules and Discovery Guidelines, the defendants, the Governor of Maryland and the Attorney General of Maryland, respond to the plaintiff's requests for admission. The defendants' responses are subject to the following general objections, incorporated as indicated in each response.

Objections to Definitions and Instructions

1. The defendants, the Governor of Maryland and the Attorney General of Maryland in their official capacities, object to Definition No. 7 as overly broad. The Governor and Attorney General will respond to these requests for admission based on information within their control to obtain. Neither has the authority to compel the legislative or judicial branch of the State of Maryland's government to provide information for these discovery responses. *See* Md. Declaration of Rights, Article 8.

2. The defendants, the Governor of Maryland and the Attorney General of Maryland in their official capacities, object to Definition No. 11 as overly broad. The Governor and the Attorney General construe the term "Legislative Record" to include only materials that are

EXHIBIT A

publicly available, all of which are listed below, and they will respond to these requests for admission based on these materials:

a. MD0001 – MD0096 – HB 902 Bill File
b. MD0097 – MD0164 – SB 1028 Bill File
c. MD0165 – HB 902 Summary
d. MD0166 – HB 902 Documents
e. MD0167 – MD0170 – HB 902 Fiscal and Policy Note
f. MD0171 – MD0176 – HB 902 First Reader
g. MD0177 – HB 902 Voting Record
h. MD0178 – HB 902 History
i. MD0179 – SB 1028 Summary
j. MD0180 – SB 1028 Documents
k. MD0181 – MD0184 – Proposed Amendments to SB 1028 First Reader
l. MD0185 – MD0187 – Proposed Amendments to SB 1028 Third Reader
m. MD0188 – MD0191 – SB 1028 Fiscal and Policy Note
n. MD0192 – MD0197 – SB 1028 First Reader
o. MD0198 – MD0203 – SB 1028 Third Reader
p. MD0204 – MD0209 – Ch. 685, 2018 Laws of Maryland
q. MD0210 – MD0220 – SB 1028 Voting Record
r. Recording of Health and Government Operations Committee Hearing on HB 902
s. Recording of Education, Health and Environmental Affairs Committee Hearing on SB 1028
t. Recordings of floor proceedings in House of Delegates and Senate

3. The defendants, the Governor of Maryland and the Attorney General of Maryland in their official capacities, object to Instruction No. 2 because it purports to obligate the defendants to obtain and disclose information protected by the legislative privilege, the attorney client privilege, and the attorney work product doctrine. The term "SB 1028 Proponents" is defined to mean those individuals involved in legislative activities related to SB 1028 (2018), HB 902 (2018), and Ch. 685, 2018 Laws of Maryland, all of whom are protected by a legislative privilege from having to provide information in discovery. *See, e.g., 2BD Associates Ltd. Partnership v. County Commissioners for Queen Anne's County*, 896 F. Supp. 528, 533 (D. Md. 1995). To the extent that either or both of the defendants were involved in the activities listed in the definition of "SB Proponents," they were engaged in legislative activities and are thus,

protected by the legislative privilege. *See Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998) (determine scope of legislative privilege by the nature of the act); *Baraka v. McGreevey*, 481 F.3d 187, 196 (3d Cir. 2007) (Governor's advocacy for a bill in the legislature and Governor's signing of bill "squarely within the sphere of legitimate, legislative activity"); *Mandel v. O'Hara*, 322 Md. 103, 122-34 (1990) (Governor's deciding whether to veto or sign a bill is legislative act). Furthermore, the Governor and the Attorney General have no authority to require members of the General Assembly or their staffs to provide information or documents for discovery in this matter. *See* Md. Declaration of Rights, Article 8.

4. The defendants, the Governor of Maryland and the Attorney General of Maryland in their official capacities, object to Instruction No. 8 regarding the provision of a Privilege Log. With respect to the legislative privilege, no privilege log is necessary. *See North Carolina State Conference v. McCrory*, 2015 WL 12683665, at *7 (M.D.N.C. Feb. 4, 2015). Furthermore, the defendants object to Instruction No. 8 to the extent that it purports to require a privilege log of communications and documents created after the filing of the complaint. *See Interstate Indemnity Co. v. Black,* 2003 WL 23269342, at *1 (M.D.N.C. Oct. 24, 2003).

5. The defendants, the Governor of Maryland and the Attorney General of Maryland in their official capacities, object to Instruction No. 12 regarding the date range applicable to these discovery requests. There is no basis for requiring the production of information or documents for any time before the start of the legislative session in 2018 – January 10, 2018 – or for any time after the lawsuit was filed on January 22, 2019.

Responses to Requests for Admission

REQUEST FOR ADMISSION 1:

Admit that the Legislative Record of SB 1028 does not include any Complaint that any Minor was harmed by any SOCE counseling provided within the State of Maryland.

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 1 as irrelevant and not likely to lead to the discovery of admissible evidence. There is no requirement that a legislature wait until it has evidence of actual harm before taking action to protect minors. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009); *King v. Governor of State of New Jersey*, 767 F.3d 216, 239 (3d Cir. 2014); *Otto v. City of Boca Raton, Florida*, 2019 WL 588645, *20 (S.D. Fla. Feb. 14, 2019). Without waiving any of these objections, Request for Admission No. 1 is denied.

REQUEST FOR ADMISSION 2:

Admit that the Legislative Record of SB 1028 does not include any Complaint that any Minor was harmed by any SOCE counseling provided within the State of Maryland against that Minor's wishes or without that Minor's consent.

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 2 as irrelevant and not likely to lead to the discovery of admissible evidence. There is no requirement that a legislature wait until it has evidence of actual harm before taking action to protect minors. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009); *King v. Governor of State of New Jersey*, 767 F.3d 216, 239 (3d Cir. 2014); *Otto v. City of Boca Raton, Florida*, 2019 WL 588645, *20 (S.D. Fla. Feb. 14, 2019). Furthermore, under Maryland law, a minor under 16 years of age does not have the capacity to consent to medical treatment, including mental health treatment, and a minor 16 or 17

years of age does not have the ability to refuse treatment to which his or her parent or guardian has consented. *See* Md. Code Ann., Health-Gen'l § 20-104. Without waiving any of these objections, Request for Admission No. 2 is denied.

REQUEST FOR ADMISSION 3:

Admit that, prior to enacting SB 1028, the State did not conduct or commission any empirical study, research, or investigation of its own to determine whether any Minor within the State of Maryland had been harmed by any SOCE counseling or had been subjected to any SOCE counseling against the Minor's wishes or without the Minor's consent.

[For the sake of clarity, this RFA is limited to empirical studies, research, or investigations that the State itself conducted or commissioned, as opposed to studies, research, or investigations conducted by third parties which the State may have reviewed, considered, discussed, or debated.]

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 3 as irrelevant and not likely to lead to the discovery of admissible evidence. There is no requirement that a legislature conduct or commission empirical studies, research, or investigation before taking action to protect minors. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009); *King v. Governor of State of New Jersey*, 767 F.3d 216, 239 (3d Cir. 2014); *Otto v. City of Boca Raton, Florida*, 2019 WL 588645, *20 (S.D. Fla. Feb. 14, 2019). Furthermore, under Maryland law, a minor under 16 years of age does not have the capacity to consent to medical treatment, including mental health treatment, and a minor 16 or 17 years of age does not have the ability to refuse treatment to which his or her parent or guardian has consented. *See* Md. Code Ann., Health-Gen'l § 20-104. Without waiving these objections, Request for Admission No. 3 is admitted.

REQUEST FOR ADMISSION 4:

Admit that, prior to enacting SB 1028, the State did not conduct or commission any empirical study, research, or investigation of its own to determine whether voluntary SOCE

counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive, is harmful to that Minor.

[For the sake of clarity, this RFA is limited to empirical studies, research, or investigations that the State itself conducted or commissioned, as opposed to studies, research, or investigations conducted by third parties which the State may have reviewed, considered, discussed, or debated.]

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 4 as irrelevant and not likely to lead to the discovery of admissible evidence. There is no requirement that a legislature conduct or commission empirical studies, research, or investigation before taking action to protect minors. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009); *King v. Governor of State of New Jersey*, 767 F.3d 216, 239 (3d Cir. 2014); *Otto v. City of Boca Raton, Florida*, 2019 WL 588645, *20 (S.D. Fla. Feb. 14, 2019). Furthermore, under Maryland law, a minor under 16 years of age does not have the capacity to consent to medical treatment, including mental health treatment, and a minor 16 or 17 years of age does not have the ability to refuse treatment to which his or her parent or guardian has consented. *See* Md. Code Ann., Health-Gen'l § 20-104. Without waiving these objections, Request for Admission No. 4 is admitted.

REQUEST FOR ADMISSION 5:

Admit that no third-party empirical study, research, investigation, resolution, or position paper in the Legislative Record of SB 1028 identified or provided causal evidence of harm from, or a causal attribution of harm to, voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive.

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 5 as irrelevant and not likely to lead to the discovery of admissible evidence. There is no requirement that a legislature wait until it

has evidence of actual harm before taking action to protect minors. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 519 (2009); *King v. Governor of State of New Jersey*, 767 F.3d 216, 239 (3d Cir. 2014); *Otto v. City of Boca Raton, Florida*, 2019 WL 588645, *20 (S.D. Fla. Feb. 14, 2019). Furthermore, under Maryland law, a minor under 16 years of age does not have the capacity to consent to medical treatment, including mental health treatment, and a minor 16 or 17 years of age does not have the ability to refuse treatment to which his or her parent or guardian has consented. *See* Md. Code Ann., Health-Gen'l § 20-104. Without waiving these objections, Request for Admission No. 5 is denied.

REQUEST FOR ADMISSION 6:

Admit that no third-party empirical study, research, investigation, resolution, or position paper in the Legislative Record of SB 1028 identified or provided causal evidence of family rejection from, or a causal attribution of family rejection to, voluntary SOCE counseling, which a Minor who experiences unwanted same-sex attraction or gender confusion requests, consents to, and/or wishes to receive.

RESPONSE:

The defendants incorporate by reference their objection to Definition No. 11. The defendants further object to Request for Admission No. 6 as irrelevant and not likely to lead to the discovery of admissible evidence. Under Maryland law, a minor under 16 years of age lacks capacity to consent to mental health treatment, and minors 16 or 17 years of age lack the ability to refuse to participate in mental health treatment to which their parent or guardian consents. *See* Md. Code Ann., Health-Gen'l § 20-104(b). Without waiving these objections, Request for Admission No. 6 is admitted.

REQUEST FOR ADMISSION 7:

Admit that there is no empirical study, research, investigation, resolution, or position paper in the Legislative Record of SB 1028 analyzing the ability or inability of Minors to consent to SOCE counseling.

RESPONSE:

The defendants incorporate by reference their objection to Definition No. 11. The defendants further object to Request for Admission No. 7 as irrelevant and not likely to lead to the discovery of admissible evidence. Under Maryland law, a minor under 16 years of age lacks capacity to consent to mental health treatment, and minors 16 or 17 years of age lack the ability to refuse to participate in mental health treatment to which their parent or guardian consents. *See* Md. Code Ann., Health-Gen'l § 20-104(b). Without waiving these objections, Request for Admission No. 7 is denied.

REQUEST FOR ADMISSION 8:

Admit that the Legislative Record of SB 1028 does not reflect any review, consideration, discussion, or debate of any alternative means of serving the State's interests recited in SB 1028 which would have been less restrictive on speech than SB 1028 as enacted.

RESPONSE:

The defendants incorporate by reference their objections to Definition Nos. 7 and 11. The defendants further object to Request for Admission No. 8 because it assumes that SB 1028 restricts speech, when it actually only prohibits a specific type of treatment and only for minors. Without waiving these objections, Request for Admission No. 8 is denied.

Respectfully Submitted:
Brian E. Frosh
Attorney General of Maryland

Kathleen . ell

Kathleen A. Ellis
Assistant Attorney General
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March 21, 2019

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2019, I caused a true and correct copy of the foregoing to be served by e-mail on the following:

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