

SENATE No. 2189

Senate, March 28, 2019 -- Offered by Senators Tarr, Fattman, deMacedo, Humason, O'Connor and Tran relative to the constitutionality of pending legislation.

The Commonwealth of Massachusetts



In the One Hundred and Ninety-First General Court
(2019-2020)

1 Whereas, On March 13, 2019, the House of Representatives engrossed, H.140 An Act
2 relative to abusive practices to change sexual orientation and gender identity in minors, by a vote
3 of 148 Yeas-8 Nays;

4 Whereas, On March 18, 2019, H.140 was received by the Senate and referred to the Senate
5 Committee on Rules;

6 Whereas, On March 25, 2019, the Senate Committee on Rules reported the bill be placed in the
7 Orders of the Day for Thursday, March 28, 2019 with an amendment, inserting in place of H.140
8 the text of S.2187;

9 Whereas, H.140 and S.2187 seek to regulate the manner in which state-licensed therapists
10 provide treatment for a minor seeking assistance with issues related to sexual orientation and
11 gender identity;

Whereas, Grave doubt exists as to the constitutionality of H.140 and S.2187 under Article 16 of the Massachusetts Declaration of Rights and the First Amendment of the United States Constitution;

Whereas, Grave doubt exists as to the constitutionality of H.140 and S.2187 in relation to the fundamental rights of parents and their interest in the care, custody and control of their children;

Whereas, The Supreme Court of the United States has long protected the First Amendment rights of professionals, most recently in the case of National Institute of Family and Life Advocates, dba NIFLA, et al v. Becerra, Attorney General of California, et al, 585 U.S. ____ (2018);

Whereas, The Supreme Court of the United States in Troxel v. Granville, 537 U.S. 57 (2000) reaffirmed that parents have a fundamental right to control the upbringing of their children;

Whereas, On January 30, 2019, the United States District Court for the Middle District of Florida, Tampa Division in the case of Robert L. Vazzo, David H. Pickup, Soli Deo Gloria International, Inc. d/b/a New Hears Outreach Tampa Bay v. City of Tampa, Case No. 8:17-cv-2896-T-02AAS held that a ban on conversion therapy in Tampa is partially blocked due to a violation of the therapists' free-speech rights under the First Amendment; and

Ordered, That the opinions of the Honorable Justices of the Supreme Judicial Court be required by the Senate upon the following important questions of law:

1. Does the bill as currently written violate the provisions of the First Amendment to the U.S. Constitution or Article 16 of the Massachusetts Constitution regarding Free Speech, as they pertain to the professional speech of health care providers such as mental health counselors?

32 2. Does the present language of the bill violate the constitutional rights of parents as defined in
33 Troxel v. Granville, 537 U.S.57 (2000)?

34 3. Does the present language of the bill violate any constitutional or statutory rights of privacy or
35 patient confidentiality?