

WILL: Warns Proposed La Crosse ordinance violates First Amendment

Posted on Monday, Aug 22, 2022

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The News: Attorneys at the Wisconsin Institute for Law & Liberty (WILL) issued a [public letter](#) to the La Crosse Common Council warning that a recently passed city ordinance violates free speech, religious liberty, and parental rights guarantees in the state and federal constitutions. The City of La Crosse is currently reconsidering the recently adopted [Ordinance No. 5220](#), which bans a significant amount of speech on issues of sex, sexual orientation, and gender identity. WILL's letter explains why the prohibitions in the ordinance unconstitutionally restrict the scope of speech from clergy, parents, or licensed mental-health counselors, are impermissibly vague, and are preempted by state law.

The Quote: WILL Deputy Counsel, Anthony LoCoco, said, "La Crosse's ordinance threatens parents, ministers, and counselors, among others, with punishment if they share sincerely-held views on issues of sex and gender with children in their care. It is black-letter law that the government has no right to simply penalize speech with which it disagrees. La Crosse needs to rethink its actions."

Background: City of La Crosse [Ordinance No. 5220](#) bans "any practices or treatments offered or rendered to consumers, including psychological counseling, that seeks [sic] to change a person's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender." At the same time it explicitly permits "counseling that provides assistance to a person undergoing gender transition, or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation

or gender identity.”

While purportedly a so-called “conversion therapy” ban, in effect the ordinance functions as a sweeping and vague prohibition on disfavored speech. Parents and ministers, for instance, could be punished simply for sharing their religious views on matters of gender. Indeed, at the May 31, 2022, meeting of the Judiciary & Administration Committee regarding the Ordinance, the City’s Assistant Chief of Police confirmed that if there were complaints about violations of the Ordinance the City’s Police Department would investigate the violation and, if appropriate, take enforcement action. The penalty for violation of the Ordinance is a fine of up to \$1,000 per day and the costs of prosecution.

WILL’s Letter: In a [letter](#) sent to the La Crosse Common Council, WILL President and General Counsel, Rick Esenberg, and deputy counsels, Anthony LoCoco and Luke Berg, provide in-depth analysis of the legal and constitutional flaws in La Crosse’s ordinance. They write, “the City of La Crosse has determined that the best use of limited municipal resources is to wade into some of the most profound ontological, moral, and religious debates of our age—the meaning and proper ends of sex, gender, and sexual attraction—declare one side the ‘winner,’ and investigate and punish those who dare to voice opposing views.”

For example, the La Crosse ordinance takes a side in the contested debate over minors and gender transitions. It allows counseling that affirms a gender transition but prohibits any counseling or guidance that seeks to help children find comfort with their biological sex. But this puts La Crosse at odds with the World Professional Association for Transgender Health (WPATH) that acknowledges that “[s]ocial transitions in early childhood” are “a controversial issue” and that “health professionals” have “divergent views” on this issue. WPATH [even recommends](#) that health professionals defer to parents “as they work through the options and implications,” even if they ultimately “do not allow their young child to make a gender-role transition.”

In fact, the La Crosse ordinance contains such a broad restriction on free speech that simple expressions of scripture or church doctrine may even violate the law.

Because the prohibitions in the ordinance are content-based and viewpoint-based, they violate the First Amendment’s free speech protections. And because religious adherents could face punishment for simply expressing the teachings of their faiths, the ordinance violates religious liberty guarantees. But those are not the

ordinance's only legal flaws. Parents' rights to educate their children are unconstitutionally burdened; the letter illegally interferes with pre-existing, state-level regulation of counseling; and the ordinance is too poorly-drafted to provide adequate notice of what is actually prohibited, consistent with the requirements of due process.

WILL's letter urges the City of La Crosse to abandon its effort and repeal the ordinance, which the City is currently reconsidering. If it does not, the City should expect a lawsuit.

Read More:

- [Letter to La Crosse Common Council](#), August 22, 2022