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Eric H. Burns  
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Re: Proposed West Lafayette Ordinance No. 31-21

Dear Mr. Burns:

We have been asked by Faith Church, which has long offered counseling grounded in its religious convictions to persons who voluntarily seek such counseling, to review proposed West Lafayette Ordinance No. 31-21 (the Proposed Ordinance). The Proposed Ordinance would penalize certain counseling about sexual orientation and related issues, if provided by anyone not licensed by the Indiana Professional Licensing Agency “who provides counseling and/or psychotherapy.” The type of counseling by “unlicensed” persons that the Proposed Ordinance would penalize is based on the content and viewpoint on which the counseling is grounded.

We believe the Proposed Ordinance, if enacted, would be constitutionally invalid on its face, and also as applied to penalize faith-based counseling by Faith Church (and others) to persons who voluntarily seek such counseling. The reasons include:

- The Proposed Ordinance penalizes speech based on its content and viewpoint. This directly contravenes the Free Speech Clause of the First Amendment to the United States Constitution,
- The Proposed Ordinance specifically targets the expression of religious views, on a matter about which someone may have voluntarily sought such counseling, by the speakers whom the Proposed Ordinance would penalize for expressing those views. This directly contravenes the First Amendment’s Free Exercise Clause.
- The Proposed Ordinance raises additional Free Exercise Clause issues by preventing persons from obtaining the very type of counseling they may have sought because of *their own* religious views.

- These core constitutional failings are exacerbated by the extraordinary scope of the Proposed Ordinance, which would penalize expression of the disfavored views by virtually anyone—including a parent, a teacher, a coach, a trusted adult friend—to whom someone might voluntarily turn for advice and counseling. The Proposed Ordinance thus chills expression of its disfavored views by the very individuals whom the person seeking counseling may trust the most, and who in turn may have the deepest concern for that person’s happiness and well-being.

For these and other reasons, we believe that if the Proposed Ordinance were enacted, its constitutionality would be promptly and successfully challenged in appropriate judicial proceedings initiated by Faith Church and others whose rights it violates, and that enforcement of the Proposed Ordinance would be judicially enjoined.

Sincerely,

*Peter J. Rusthoven*

*John R. Maley*