

**No. 12-17681**

Oral Argument scheduled for the week of April 15, 2013

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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DAVID H. PICKUP, et al.,  
*Plaintiffs and Appellants,*

v.

EDMUND G. BROWN JR.,  
Governor of the State of California, et al.,  
*Defendants and Appellees.*

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Preliminary Injunction Appeal from the United States District Court  
Eastern District of California No. 2:12-cv-02497-KJM-EFB  
The Honorable Kimberly J. Mueller

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**BRIEF OF AMICI CURIAE  
Children's Law Center of California;  
Dependency Legal Group of San Diego;  
East Bay Children's Law Offices; Gaylesta;  
The LGBTQ-Affirmative Therapist Guild of Utah;  
Legal Advocates for Children and Youth; Legal Services for Children;  
Los Angeles Gay & Lesbian Center; Los Angeles Youth Network;  
Parents, Family and Friends of Lesbians and Gays; Public Counsel;  
The Trevor Project; and Truth Wins Out  
IN SUPPORT OF APPELLEES TO AFFIRM  
THE ORDER DENYING A PRELIMINARY INJUNCTION**

Hayley Gorenberg  
LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.  
120 Wall Street, Suite 1900  
New York, NY 10005  
(212) 809-8585

Shelbi D. Day  
LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.  
3325 Wilshire Blvd., Suite 1300  
Los Angeles, CA 90010  
(213) 382-7600

Brad W. Seiling  
Benjamin G. Shatz  
Justin Jones Rodriguez  
MANATT, PHELPS & PHILLIPS, LLP  
11355 W. Olympic Blvd.  
Los Angeles, CA 90064  
(310) 312-4000 Fax (310) 312-4224

*Counsel for Amici Curiae*

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c), *Amici Curiae* Children's Law Center of California; Dependency Legal Group of San Diego; East Bay Children's Law Offices; Gaylesta; The LGBTQ-Affirmative Therapist Guild of Utah; Legal Advocates for Children and Youth; Legal Services for Children; Los Angeles Gay & Lesbian Center; Los Angeles Youth Network; Parents, Family and Friends of Lesbians and Gays; Public Counsel; The Trevor Project; and Truth Wins Out state that they are all non-profit corporations, they have no parent corporations, and no publicly held company owns any stock in any of *Amici*.

February 6, 2013

Respectfully submitted by,

*s/Brad W. Seiling*

MANATT, PHELPS  
& PHILLIPS, LLP  
Brad W. Seiling,  
Benjamin G. Shatz and  
Justin Jones Rodriguez

*s/Hayley Gorenberg*

LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.  
Hayley Gorenberg  
and Shelbi D. Day

*Attorneys for Amici Curiae*

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici* are 13 public interest organizations and advocacy groups whose professional employees, leaders and members have experienced, observed, represented, and cared for lesbian, gay, bisexual, transgender, and questioning (“LGBTQ”) youth suffering the harms of sexual orientation change efforts (“SOCE”).<sup>2</sup> From community centers to therapists’ organizations to crisis hotlines and legal organizations, they have witnessed firsthand the casualties of baseless promises in the guise of “therapy” to change the sexual orientation or gender identity of minors. *Amici*’s contributions are testaments to lives lost to suicide, children scarred by self-inflicted cutting and painful head-banging triggered by SOCE, and ruptured families in which parents—falsely led to believe their children could change—shame and isolate their child to an extreme that all too often ends with the parents throwing their own children out of their homes for “failing” SOCE. Accordingly, *Amici* respectfully request that this Court allow California Senate Bill 1172 to take immediate effect to avert further harm to LGBTQ youth.

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<sup>1</sup> No party or party’s counsel authored any portion of this brief; no one other than *Amici* or their counsel contributed any money to fund this brief or aid in its preparation or submission.

<sup>2</sup> A description of each *amicus* is attached as Exhibit A.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

SB 1172 properly safeguards lives, family relationships, money, and time currently sacrificed on the altar of SOCE. The harms of SOCE, recounted by *Amici* concentrated in California but also elsewhere in the Ninth Circuit and nationwide, are completely consistent with published literature, reports, legislative history, and other expert materials submitted in this case, and many *Amici* provide the Court with accounts of their experiences with LGBTQ youth to further illuminate the very real harms of SOCE. For far too long the State of California criminalized same-sex sexual activity and promoted, mandated, or was complicit in SOCE. Given this history, including particularly egregious practices used on minors, SB 1172 is a wholly appropriate exercise of State power to safeguard LGBTQ youth.

## **ARGUMENT**

### **I Sexual orientation change efforts endanger youth**

Sexual orientation change efforts, which depend on the entirely unsupported premise that being LGBTQ is a chosen abnormality, endanger the people they purportedly seek to help. As described below, in excerpts from interviews conducted in January 2013, *Amici* have experienced and witnessed the aftermath of SOCE, including suicidality and other self-injury, irreparable schisms in families, homelessness, anxiety and depression, and aversion to real therapeutic help—not to mention a significant waste of time and money.

**A. Young people exposed to sexual orientation change efforts often do not survive unscathed, and, in too many cases, they do not survive at all**

Young people subjected to SOCE are far more suicidal and depressed than those who are not sent to SOCE; and those who experience high levels of family rejection are “8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse, compared with peers from families that reported no or low levels of these family rejecting behaviors.” Ryan Dec. ¶13 (citing Ryan, et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 *Pediatrics* 346 (2009), ¶15, 1-SER-61; see also *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 966 (N.D. Cal. 2010) (“No credible evidence supports a finding that an individual may, through conscious decision, therapeutic intervention or any other method, change his or her sexual orientation.”);<sup>3</sup>

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<sup>3</sup> In *Perry* two same-sex couples challenged Proposition 8, the California voter-enacted constitutional amendment restricting access to marriage to different-sex couples. 704 F. Supp. 2d 921 (N.D. Cal. 2010). The case followed a long fight for marriage equality in California that succeeded in state courts and was overturned via ballot initiative. See *In re Marriage Cases*, 183 P.3d 384 (Cal. 2008), *superseded by constitutional amendment*, Cal. Const. art. 1, § 7.5 (i.e., Proposition 8); see also *Strauss v. Horton*, 207 P.3d 48 (Cal. 2009) (upholding Proposition 8). In the federal court battle that ensued, this Court squarely rejected the notion that children need to be protected from exposure to gay people. See *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012) (upholding Judge Walker’s decision in *Perry v. Schwarzenegger* and detailing the stereotypes on which passage of Proposition 8 relied), *Perry v. Brown*, 681 F.3d 1065 (9th Cir. 2012) (denying



*Pederson v. Office of Personnel Mgmt.*, 2012 WL 3113883, \*24 (D. Conn. 2012) (sexual orientation change efforts do not work and are likely to have a risk of harm); Beckstead Dec. ¶¶10-12, 22-23, 34-37, 2-ER-183-84, 188, 191-93 (detailing myth that homosexuals have poor relationships with their same sex parent, harms associated with SOCE, and the particular vulnerability of minors to SOCE).

Phoenix Schneider, MSW, Program Director at The Trevor Project for the past five years, oversees paraprofessional volunteers who staff the Project's national crisis hotline. He reports that since 2006, The Trevor Project has received at least 140 calls that specifically referenced SOCE. "They're just terrified," says Schneider. Telephone Interview with Phoenix Schneider (1/29/2013). Some callers report being forced into SOCE or told they must engage in SOCE or leave home. Others call "very depressed," reporting self-injury following SOCE. "On behalf of the crisis services team at Trevor we can say [SOCE] has a very negative impact. Just knowing that this could be something a parent or guardian could consider doing is very scary." Schneider recounts recent crisis line examples (without identifying information):

- A 21-year-old caller is feeling suicidal. She went through SOCE two years ago. Following that she jumped into a relationship with a man. She talks a lot about abusive relationships. She feels worthless. She hates herself. She stopped the SOCE and acknowledges that she's gay, and nothing will change it. She has attempted suicide numerous times

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rehearing *en banc*), *Hollingsworth v. Perry*, 133 S. Ct. 786 (2012) (granting petition for certiorari).

with pills. She prays a lot. She prays that she will die in an accident. She doesn't believe that she deserves a loving relationship. She says she does not want to hold on much longer.

- A 20-year-old is considering and deciding whether to go through with SOCE. She feels pressured and influenced by family and friends. The bishop at her church is encouraging her to go through SOCE, and told her "it's better to be dead than gay." She says she doesn't want to but can't figure out another way to not feel the way she feels. She's been hiding her sexual orientation. She feels that she has to hide being gay because it is wrong. She discusses self-injury.
- A persistent caller, now in his 20s, came out at 13 and was sent by his mother for SOCE the next year. He reports he was instructed on how to be more masculine, told he could not engage in art activities, and threatened that "if [he] chose the gay lifestyle he would die from AIDS." He was made to snap a rubber band against his wrist when he thought of other boys and was punched when he acted like a "sissy." He reports flashbacks and wetting his bed at night, well into his teens. He is anxious and jumps when people come up behind him. He was self-injurious throughout his teens and was expelled from college after attempting suicide by combining alcohol and a friend's prescription medications. He reports banging his head against a wall or desk to deal with stress and anxiety.

Brian Goldman, Clinical Services Manager of Los Angeles Gay & Lesbian Center, recalls similar client profiles. In one example he encountered as a foster care worker three years ago, Goldman had a male client who came into the system at age 16 after his parents imposed SOCE:

The youth described daily phone calls with the SOCE therapist before school, and in-person "therapy" sessions every day after school for two to three hours. The client reported that he would get a stomachache every morning after talking to the therapist. As part of the therapy, he had to go into a small, closed room by himself to focus and meditate on "stopping his unnatural thoughts about men." His parents, who had objected when he told them he is gay, began ignoring him, at the behest of the SOCE therapist, in order to shun and isolate him until "gay thoughts" disappeared. The therapist told the youth's father to

buy him female pornography, and instructed the boy to masturbate to the images, so that his brain would begin to associate pleasure and ejaculation with women. At the therapist's instruction the parents ignored the child and shut him out anytime he displayed "bad" behavior, acted out, or refused therapy. Over time, the parents completely rejected and shut the child out. Physical abuse ensued, and the child began cutting himself. He became severely depressed, his grades dropped, and child welfare ultimately removed the boy from his home. He was placed in a residential facility, which was a complete shock to him and unlike anything he had ever experienced in his middle class suburban life.

In residential housing, the young man continued self-harm, including embedding objects deep into wounds he had self-inflicted using found items (soda cans, filed-down pieces of plastic, nails). He was hospitalized on multiple occasions because he was a safety risk to himself after expressing suicidal thoughts or for deep self-inflicted lacerations. After extensive therapy, the youth said that he cut himself to take away the emotional pain that he was feeling or to punish himself as he was taught to do.

Continuing down the path the therapist had led him, this young man's parents refused to even participate in the counseling session required for reunification. The mother would initially talk with him on the phone, but eventually that trickled off as well. They really stuck to their misguided notion that it was acceptable to completely reject their child unless he would renounce his sexual orientation and "fix himself" through reparative therapy.

Telephone Interview with Brian Goldman (1/25/2013).

"I once asked him what would have happened if he had stayed in the home," Goldman said. "He responded, 'I would have died. I would have committed suicide.'" Goldman explained,

SOCE caused severe rejection and shaming, and it changed the entire trajectory of this young person's life. He was a very gifted kid, and

prior to SOCE, although his parents were very angry [that he is gay], he still had a bright future that likely included college. The last time I saw him, he had aged out of the [child welfare] system, and he looked terrible. He definitely did not have the life he would have had if his parents had not been led by a therapist to completely isolate and reject their son.

Jim Struve, LCSW, a founding member and a leadership coordinator of the LGBTQ-Affirmative Therapist Guild of Utah for nine years, says that when Guild members provide therapy to adults who endured SOCE as youth, they routinely contend with “intervening years of depression.” Telephone Interview with Jim Struve (1/27/2013).

“In addition, because SOCE encourages the repression of feelings, it is common that recipients develop secretive behaviors as a method of managing distress,” says Struve. He continues:

Emotional repression and secrecy often spur exploring one’s sexuality through pornography. In the privacy of an internet world, it becomes easy to view same-sex pornography while denying this as an expression of being gay. For many, this develops into a porn addiction.

In addition, the need to deny that one is gay in order to comply with the goals of SOCE becomes a breeding ground for secret same-sex ‘affairs.’ Managing this complicated web of repressed emotions and secret behaviors creates a powerful undercurrent of paranoia, anxiety, and isolation. There is a fear of being discovered or caught for thoughts, feelings, or behaviors that are noncompliant with SOCE.

The stakes are very high for those people who genuinely embrace the promises of SOCE but finally figure out they are unable to deny that they are gay. For these people, the failure of SOCE to change their core self creates an existential crisis that challenges their reason to continue living. I have worked with a lot of clients who participated in SOCE therapies who emerged

with intense suicidal struggles. It can be very complicated to help people find reasons to live if they were immersed in SOCE and “failed.” As a therapist it’s daunting to help a client disengage from their belief that “If I can’t calm these things, it’s easiest to end it all.” But that is too often the therapeutic residue created by SOCE “therapies.”

Openly gay “JT,” a local leader for *Amicus* PFLAG and head of a community college committee charged with addressing retention of LGBTQ students, encounters many students whose parents rejected them based on their sexual orientation. “They flail and can’t quite find their footing,” he says. Telephone Interview with JT (1/26/2013). His observations lead him to conclude these students are vulnerable to drug use and suicide. In contrast, he says of LGBTQ students with supportive parents, “Those students never flail. They seem to be confident. They seem to be sturdy. They’re not as vulnerable to the bullying. It’s amazing to see the students who have the supportive family background and the ones who lose it. The ones who lose it—it really sends them into a tailspin.”

He continues, “For young people, parents have large latitude. [Young people] have no support. Parents can refuse to pay for college, make them homeless. They feel like life is over. And to some extent, it is. If you’re a young person thrown out of the house without any money, your life goes downhill pretty fast.”

**B. Sexual orientation change efforts amplify and aggravate external and internal stigma**

In addition to channeling the external stigma and discrimination that LGBTQ youth face, sexual orientation change efforts also contribute to internalizing that stigma and discrimination. *See* Herek Dec. ¶¶22-25, 2-ER-203-04 (when minors want to become heterosexual it is because they accept and internalize society’s negative evaluation of homosexuality). That is, LGBTQ youth who undergo sexual orientation change efforts are encouraged to “embrace society’s denigration and discrediting” of their identity. *Id.* at ¶22, 2-ER-203. “When patients begin SOCE therapy, they frequently blame themselves for experiences of rejection or maltreatment rooted in society’s devaluation of same-sex sexual orientation. SOCE therapy invariably involves validating and reaffirming this societal rejection, and imbuing it with the false appearance of scientific and medical acceptance.” Haldeman Dec. ¶10, 1-SER-50.

Schneider of The Trevor Project notes, “People often are not against going to [SOCE], because they want their parents to approve [of] them and accept them. They internalize homophobia and transphobia and want to change. They say, ‘send me!’ And then they see that it doesn’t change anything, and in fact can be abusive and can be more harmful.” Schneider says crisis line staff have not received calls from youth who believe they “didn’t do [SOCE] right or try hard enough.” Instead, he says, “Their conclusion is it does not work. It isn’t possible.”

External anti-LGBTQ stigma and internalization of that stigma by LGBTQ youth contribute to symptoms of psychological distress, depression, and anxiety affecting LGBTQ youth in far greater numbers than their heterosexual counterparts. Herek Dec. ¶¶20-21, n.20-21, 2-ER-202-03 (citing Herek & Garnets, *Sexual Orientation and Mental Health*, 3 Ann. Rev. of Clinical Psychol. 343 (2007)); *see generally* Sean Young, *Does “Reparative” Therapy Really Constitute Child Abuse?: A Closer Look*, 6 Yale J. Health Pol’y L. & Ethics 163, 187-92 (Winter 2006) (reviewing evidence that SOCE causes LGBTQ youth to internalize stigma and that both internal and external stigma cause emotional harm). Indeed, LGBTQ youth whose families force them into so-called reparative therapy tend to be armed with few protections against suicidal behavior. *See* Ryan Dec. ¶13, 1-SER-61 (there is a strong correlation between family rejection and a young person’s tendency to attempt suicide).

**C. Sexual orientation change efforts cause survivors to be less likely to seek therapy later in life**

Given the innumerable harms that LGBTQ youth suffer because of SOCE, it is not surprising when SOCE survivors experience a long-term aversion to therapy or other mental health care. *See* Motion to Intervene, *Pickup v. Brown*, E.D.Cal.Dkt#24-1 at 7 (SOCE survivors and their family members “could be deterred from seeking needed mental health treatment for themselves or their LGBTQ children for fear that they or their children might be subjected to sexual orientation change efforts”).

Candi Mayes, Executive Director and CEO of the Dependency Legal Group of San Diego, represented an abused teen after his parents forced him to go through SOCE.

As a result of SOCE, the youth had an extreme resistance to participating in any kind of therapy, because his only experience with therapy was SOCE. He would not tell us specifically what happened during the SOCE .... It was all about him needing to change who he is so that he would be like everyone else. He was cutting himself on his forearms and thighs with pretty much any sharp object that he could find .... He also was having problems sleeping and was suffering from severe anxiety. According to him, the cutting, sleep problems, and anxiety began after he came out and was rejected by his parents and put into SOCE. It was over a year before the teen would participate in any type of therapy, at which point he was diagnosed as being clinically depressed. Ultimately, he was placed in a residential facility and aged out of foster care.

Telephone Interview with Candi Mayes (1/28/2013).

Dr. Brian Coughlin, Clinical Director at the Los Angeles Youth Network, calls SOCE “a gross abuse of trust” for homeless youth, who already suffer difficulty forming meaningful relationships with a therapist.

Dr. Coughlin explains:

The youth we see have been traumatized and as a consequence suffer from depression and anxiety, and they have problems forming attachments and making connections with others. This is all related to them not feeling accepted. SOCE would emphasize their feelings of rejection and the problems they already are experiencing .... Because most of them have not been able to develop relationship and trust skills, I don't think they would know how to deal with SOCE. They would have a difficult time getting themselves out of that situation because of their inability to articulate emotions or cope with difficult situations. As such,



they would likely act out in dangerous ways including suicide, drug use, unsafe sex, etc.

Telephone Interview with Dr. Brian Coughlin (1/25/2013). Dr. Coughlin concludes, “Homeless youth are an example of just how damaging and dangerous SOCE could be.”

**D. Sexual orientation change efforts damage critical family bonds including those between parents and their LGBTQ children**

LGBTQ youth who are forced into SOCE are frequently driven from their homes and communities, as SOCE harm families by exacerbating divisions among family members. The lies upon which SOCE rest—that homosexuality is an abnormal and/or disordered choice—mutually support other lies: that homosexuality is caused when a child over-identifies with a different-sex parent, whereas heterosexuality is encouraged by strong relationships with a same-sex parent. Beckstead Dec. ¶¶9-10, 2-ER-183-84. This belief is evidenced by the tragically uninformed question of countless parents of LGBTQ children: “What did I do wrong?” Sexual orientation change efforts feed on such insecurity and perpetuate parental blame.

SOCE’s casualties include vital family relationships, particularly those between parents and their LGBTQ children. *Amicus* Parents, Families and Friends of Lesbians and Gays (“PFLAG”) counts among its members many parents who have seen “firsthand how damaging this so-called ‘reparative therapy’ has been to their children. PFLAG members believe that it is important that we recognize and educate society based on scientific facts and

reputable professional opinions, not on the ideological and pseudo-scientific beliefs expressed by ex-gay ministries and advocates of reparative therapy.” PFLAG, *Our Daughters & Sons: Questions & Answers for Parents of Gay, Lesbian & Bisexual People* at 8, [http://www.pflag.org/fileadmin/user\\_upload/Publications/Daughters\\_Sons.pdf](http://www.pflag.org/fileadmin/user_upload/Publications/Daughters_Sons.pdf).

The California Legislature’s specific findings reference the 2009 report of the task force of the American Psychological Association concluding that SOCE can trigger “blame toward parents.” Motion to Intervene, *supra*, at 3 (quoting SB 1172 § 1(b) (Cal. 2012)).

To make matters worse, families who come to accept sexual orientation or gender identity after SOCE have been attempted and failed often face a second source of pain: that they pushed a family member into damaging and painful “treatment.” SB 1172 protects youth from such processes in the first instance, and also protects families from the long-term intra-family rifts that sexual orientation change efforts cause.

Los Angeles Gay & Lesbian Center’s Brian Goldman warns that “parents struggling with their child’s sexual orientation or gender identity can easily get taken advantage of by a SOCE therapist. A lot of these parents think they are doing what is best for their child. If someone is a licensed therapist who does SOCE, then the parents may get taken in by someone who reinforces the notion that they can change their child’s sexual orientation.” Goldman Interview.

PFLAG member “CH” (initials used to protect privacy) joined the organization after she and her husband followed psychotherapists’ advice to attempt to change the gender expression of their child. The couple sought professional help when their son started picking toys and clothes traditionally considered feminine, before age three. “We went to a psychologist who told us to discourage ‘girl play’ and encourage ‘boy play.’ Fix the kid. Reward the kid for being masculine and scorn the child for being feminine.” Telephone Interview with CH (1/26/2013).

By age six, CH’s child was diagnosed with anxiety and depression, and declared, “Mommy, I’m gonna get a gun and shoot myself.” CH spoke with the psychologist about the threat, saying, “For me this was a very loud cry for help that something was desperately wrong.”

CH went to the family’s current mental health provider and inquired about trying something other than pressing the child to change. Instead she was told, “‘If you want your child to be more mainstream and more easily accepted at school, this is what you do.’ Instead of saying, ‘You know what? We don’t get to choose.’” She continues, “I don’t understand why I didn’t get good advice. My husband and I are very open-minded people. If someone had sat us down [and explained that attempts to change are not medically or scientifically supported] we would have been first in line.”

Indeed, the mental health providers CH and her husband consulted persisted in counseling the parents to “discourage girl play.” The child and the parent-child relationship continued to deteriorate. Encouraged by the

therapist, the parents threatened their child must change or leave home. Their child attempted suicide several times.

CH now recognizes the “therapy” the family received as extremely destructive. “Now in retrospect it looks an awful lot like shaming—but it was positioned by the therapist as encouragement. What that succeeded in doing was sending [our child] to a very dark place. [Our child] became very depressed, very angry.” She says, “It’s a struggle. It’s real hard for [our child] to forgive us. It’s real hard for us. I feel like I stole a happy childhood from my kid. I’d give anything to be able to undo it, but I can’t.”

JT, the former vice president of the Greater Placer County PFLAG chapter in Northern California, says, “I had great parents, but lost my relationship with them because they thought there was a cure that I could pursue that I was stubbornly refusing to accept.”

When JT’s parents found out he is gay, his parents “found a psychologist who specialized in ‘reparative therapy.’” The psychologist told JT he would “cure” him by “send[ing him] home with photos of naked women to masturbate to and associate pleasure with those images.” JT said the psychologist explained he would also “show me naked men and electrocute my groin.”

JT, 18 at the time, told the psychologist he was not interested in reparative therapy, but needed help dealing with his parents, who had trouble with the fact that he is gay. The psychologist “said he couldn’t take their money and not do what they were looking to have him do. He told me to

reconsider and go through therapy, and that most of his clients were in therapy because they were facing a life of loneliness with no family or children.”

JT left and did not return. His father asked him to try another SOCE provider, but he refused. He says, “My parents fully believed a cure was available to me. They believed I could go through this therapy and walk out changed on the other side. They really thought the best thing they could do for me was to completely break with me unless I would agree to go through the therapy.”

JT’s parents told him to agree to SOCE therapy or they would give him \$500 to leave the state. He took the money and flew to California. Both his parents died before the family could reach any substantial resolution.

“I still battle depression and anxiety, and I think it really stems back to that,” says JT. “I don’t think that bogus pseudoscience should be available, because it gives people who want to believe a different reality is possible the ability to force [SOCE]. It allows parents who are wishing for a different scenario to damage their children. They could actually move forward and develop a strong bond with their kids, and that time is lost.”

PFLAG National Executive Director Jody Huckaby stresses not only the direct harm experienced by children who endure SOCE, but also the “trauma to the family, recognizing harms of those who go through reparative therapy, [including] harm to child and serious emotional damage to dynamics between family and child.” Telephone Interview with Jody Huckaby

(1/24/2013). He cited an example of a family whose daughter committed suicide after they engaged in SOCE, and described their “overwhelming sense of loss. They had sent her to reparative therapy counseling and went with her, too.”

Motivated by legions of such stories, for more than a decade, PFLAG has served as a national resource organization for people confronting SOCE.<sup>4</sup> Huckaby worked with 16-year-old Zach, a teen who drew national attention when Zach blogged from a SOCE “camp” that his parents forced him to attend (Alex Williams, *Gay Teenager Stirs Storm*, N.Y. Times (7/17/2005), [www.nytimes.com/2005/07/17/fashion/sundaystyles/17ZACH.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2005/07/17/fashion/sundaystyles/17ZACH.html?pagewanted=all&_r=0)), and Huckaby has since assisted chapter members who peacefully protest reparative therapy “road shows” and offer LGBTQ-affirming materials and support. He recalls “defiant parents with adolescent children with looks of panic, terror, humiliation—or worse, in tears.” He is

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<sup>4</sup> See, e.g., PFLAG, *Advocacy & Issues: “Reparative Therapy,”* <http://community.pflag.org/page.aspx?pid=503> (general webpage on PFLAG’s position on “reparative therapy”); PFLAG, National Policy Statement, *Treatment to Alter Sexual Orientation or So-Called “Reparative or Conversion Therapies,”* <http://community.pflag.org/page.aspx?pid=282#G> (adopted Jan. 17, 2000); PFLAG, *Get Support: “Dos & Don’ts for Families and Friends,* <http://community.pflag.org/page.aspx?pid=541> (resource for family and friends based on common themes that come up when LGBT people come out to friends and families); PFLAG, *Get Support: “Frequently Asked Questions,”* <http://community.pflag.org/page.aspx?pid=290> (resource providing answers to questions that people typically have on learning that a friend or family member is LGBT).

nonetheless inspired when a few parents take the materials PFLAG offers.

“The parents want the facts,” he said. “That is good.”

PFLAG continues to dedicate significant technical assistance to keep its chapter leaders well informed. “Reparative therapy is an industry created to codify family rejection of LGBT people,” says Huckaby. Noting that “research bears out” the significance of family rejection, he calls SOCE “devastating when considered by the family to be a factor leading to the drug abuse, alcohol abuse, HIV, STDs, suicide or suicide attempts. It is devastating to the bond of parents and child, especially if the child went unwillingly.”

Truth Wins Out Executive Director Wayne Besen asserts, “The parents are as much victims as the children, because [SOCE therapists] explicitly blame the parents. They say the parents are responsible for an inferior form of sexuality. [The parents] are blamed as the culprit by the therapists.”

Telephone Interview with Wayne Besen (1/28/2013). In Besen’s experience, SOCE practitioners often instruct families that children are LGBTQ because a same-gender parent rejected a child. “The burden it puts on parents is enormous. It also divides them. [SOCE practitioners] sow the seeds of mistrust and blame. They say things like, ‘Your parents did this to you,’ and ‘If you think you have a good relationship with your parents, you’re deluding yourself.’ There’s an incredible amount of hostility there. So we see that the relationship between and with the parents is ruptured.”

“Another tragic side effect of such programs is that they promote mixed-orientation marriages, where one partner is gay and the other straight,”

Besen says. “They show biased pictures from wedding ceremonies, but never show clients the divorce papers and broken families that often result.”

Dependency Legal Group of San Diego Executive Director Candi Mayes further notes that when a child comes into the foster care system, the goal is generally family reunification. A social worker assigned to the case sits down with the parents and the minor to assess what that specific family needs and to create a case plan. That conversation will include choosing the type of therapy that will best serve that family. Mayes continues,

Based on our experience, SOCE reinforces the misplaced notion of parents that there is something wrong with their child if the child is LGBT. These parents oftentimes refuse to participate in reunification all together. Even parents whose hearts are in the right place oftentimes have an initial reaction of “What is wrong with my child?” or “How do we fix him or her?”

Because we know that SOCE does not change a child’s sexual orientation or gender identity, unless we can educate these parents and work with them to accept their child, then the family is destined for failure. If SOCE remains unlawful, it gives us stronger ground to stand on in educating parents about sexual orientation and gender identity and in helping them understand and accept that there is nothing wrong with their child. In our experience, reunification of LGBTQ kids and their parents is most likely to be successful with traditional therapy that aims to educate parents and help them accept their child for who he or she is.

Mayes’ colleague Pamela Deavours adds that SOCE leads to more children being placed in residential facilities rather than foster homes.

The kids that we see who have been subjected to SOCE are defiant and display behavioral problems—for example, cutting and other forms of self-mutilation, depression, suicidality. This can make it much more difficult to place a child in a foster home,



and may result in the child being placed in residential facilities. We see better outcomes in kids who get placed in foster homes than kids who age out of a residential facility.

Telephone Interview with Pamela Deavours, Attorney, Dependency Legal Group (1/28/2013).

Mayes sums up DLG’s experience bluntly: “The cases that we have had where the minor underwent sexual orientation change efforts do not turn out well.”

## **II The State of California has a long history of actively promoting sexual orientation change efforts**

Within the United States, California took a leadership role in the movement to attempt to change the sexual orientation or gender identity of individuals who identify as LGBTQ. *See generally* Ashley Porter, *Ending the “Gay Cure”: Chapter 379 Deletes Discriminatory Language From the Law*, 42 *McGeorge L. Rev.* 725, 726-27 (2011) (surveying development of California law); *see also* David B. Cruz, *Controlling Desires: Sexual Orientation Conversion and the Limits of Knowledge and the Law*, 72 *S. Cal. L. Rev.* 1297, 1299-1310 (1998-1999) (detailing SOCE history throughout the U.S.). Given California’s egregious history of actively participating in, or in some cases mandating, SOCE—or, at a minimum, the state’s complicity in SOCE—the Legislature was warranted in passing SB 1172 to ensure that minors are no longer subject to these harmful efforts.

Historically, California criminalized same-sex sexual activity and promoted SOCE as part and parcel of that criminalization. These efforts

included forced sterilization, castration, indefinite hospitalization, and other forms of indefinite incarceration for those who did not respond to treatment.<sup>5</sup> Indeed, as recently as the middle of the twentieth century, California convicted people of consensual same-sex activity, and then subjected them to sexual orientation change efforts.<sup>6</sup>

SB 1172 helps remedy California’s shameful history of not only suppressing gender and sexual nonconformity, but also of promoting SOCE, and its complicity in subjecting minors to such harmful practices.

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<sup>5</sup> California’s criminalization of homosexuality through sodomy laws and similar statutes developed concurrently with efforts to “cure” homosexuals and other sexual minorities through SOCE. However, in California, promotion of SOCE intensified in response to judicial decisions striking down or declining to enforce anti-homosexuality statutes. That is, as State sterilization, castration, and similar efforts ebbed in response to judicial action, policymakers hit on what they considered to be a more effective response to “sexual perversion”—finding a “cure.” See William N. Eskridge, *The Supreme Court of California 2007-2008: Foreword: The Marriage Cases – Reversing the Burden of Inertia in a Pluralist Constitutional Democracy*, 97 Calif. L. Rev. 1785, 1791-93 (Dec. 2009) (“Foreword”) (detailing the transition in California from (1) criminalization, to (2) law enforcement officer and judicial tactics to circumvent loopholes in anti-homosexuality laws, to (3) the quest for a “cure” to homosexuality as outright criminalization became more difficult).

<sup>6</sup>See generally William N. Eskridge, Jr., *Privacy Jurisprudence and the Apartheid of the Closet, 1946-1961*, 24 Fla. St. U. L. Rev. 703, 713-16 (1997) (“Apartheid”) (detailing California and other states’ treatment of “sexual psychopaths,” including homosexuals, through criminalization).

**A. California has a long history of criminalizing homosexuality**

California criminalized homosexuality immediately upon becoming a state, in 1850. *See generally* Eskridge, *Foreword, supra*, at 1791. Although California has made commendable efforts to address its past maltreatment of LGBTQ people, the State's historical criminalization of homosexuality and its use of SOCE were brutal. For example, California sterilized hundreds of gay men in the early twentieth century, because the State believed that homosexuality could worsen existing "corruption" in prisons and that release of an "offender" could endanger the public. *Id.* at 1792.

Where law enforcement officers in the earlier twentieth century felt the State's earliest anti-homosexuality laws did not go far enough, they circumvented the limits of the anti-homosexuality statutes by targeting gay people with other laws, for crimes such as vagrancy. *Id.* at 1789. In an attempt to close a "loophole" in California's anti-homosexuality laws, the Legislature in 1915 added "fellatio" (changed to "oral copulation" in 1921) to the list of serious felonies in the California Penal Code. *Id.*; *see also* Eskridge, *David C. Baum Memorial Lectures on Civil Liberties and Civil Rights: Hardwick and Historiography*, 1999 U. Ill. L. Rev. 631, 649-50 (1999) (documenting the increase in arrests for "crimes against nature" between 1880 and 1920).

By the middle of the twentieth century, California led the nation in its criminalization of homosexuality. In 1945, the State amended its habitual offender law to add *consensual* sodomy to the list of crimes for which a second offense automatically triggered a life sentence. Eskridge, *Foreword*,

*supra*, at 1794. In 1947, California became the first state to require sex offenders, including those convicted of consensual oral or anal sex, to register with law enforcement agencies in their home jurisdictions. *Id.* Thus, many LGBTQ people who engaged in consensual sex were forced to register as sex offenders, alongside pedophiles and rapists.

**B. California’s prior attempts to “cure” homosexuality were intertwined with its criminalization efforts and included a multitude of shocking and egregious methods**

California’s criminalization of homosexual conduct was driven by “[t]he notion of homosexuals as predatory psychopaths who threatened the well-being of society, especially children.” *Id.* at 1793-94; *see generally* Porter, *supra*, at 736 (detailing California anti-homosexuality legislation as an attempt to solve sexual psychopathy). These two concepts—(1) that homosexuals were sexual psychopaths, and (2) that children were victims whose heterosexuality should be guarded—resulted in legislation seeking a homosexual “cure,” followed by sixty years of complacency in which California permitted anti-gay statutes to remain on the books.

Around 1950, State policy began to reflect a shift away from outright criminalization of same-sex sexual conduct, and instead moved toward seeking a “cure” for homosexuality. State policy reflected a belief that converting gay people into heterosexuals was necessary for crime prevention and child protection.

In 1950, the California Legislature first enacted Welfare and Institutions Code section 8050, which listed homosexuals among sexual predators. That statute also *ordered* the State’s Department of Mental Hygiene, the State’s mental hospitals, and State universities to study the causes and cures of homosexuality. *Id.* at 725; *see also* Cal. Welf. & Inst. Code § 8050 (amended 2010) (including homosexuality as one form of sexual deviance demanding a scientific cure). Then-Governor Earl Warren felt the matter sufficiently important and pressing to call a special session of the Legislature to pass Section 8050. Porter, *supra*, at 726. In other words, the State believed that its anti-gay legislation was particularly urgent.

Although the State eventually stopped enforcing its mandate for a “cure,” the Legislature failed to eliminate that reprehensible mandate from the law until 2010, when it enacted Chapter 379, Assembly Bill No. 2199. Though the Legislature had ample prior opportunity to delete this law, it failed to take any action to do so. By way of example, in 1977 the Legislature amended Section 8050 to reflect the Department of Mental Hygiene’s name change to the Department of Mental Health. *Id.* at 726-27. Four years earlier, in 1973, the American Psychiatric Association issued a resolution declaring that homosexuality is *not* a psychiatric disorder and removed homosexuality from its Diagnostic and Statistical Manual of Mental Disorders. *Id.* at 727. Thus, in 1977, the Legislature could have deleted the directive in Section 8050 to conduct research into the causes and cures of homosexuality based on a sexual psychopathology model, but it did not do so. *Id.* at 726-27.

In other words, despite drafting, debating, and ultimately enacting a change to Section 8050, California opted to keep its quest for a “gay cure” on the books.

Not until 2010, when the Legislature enacted Chapter 379 to amend Section 8050, did it eliminate the requirement that the Department of Mental Health research methods to cure homosexuality. The amended Section 8050 now mandates that the Department of Mental Health “plan, conduct and cause to be conducted scientific research into sex crimes against children and into methods of identifying those who commit sexual offenses.” Cal. Welf. & Inst. Code § 8050 (2010); *see also* Porter, *supra*, at 728; Bonnie Lowenthal, ‘Cure’ Gays? No, Fix the Law, L.A. Times (4/04/2010), <http://articles.latimes.com/2010/apr/04/opinion/la-oe-lowenthal4-2010apr04> (detailing the effort to amend Section 8050).

During the many years it was on the books as the law of California, the legislative mandate in former Section 8050 fostered an atmosphere that encouraged SOCE in California. California’s mental health practitioners long attempted to carry out the Legislature’s mandate in former Section 8050 to find ways to change sexual orientation. Most infamously, beginning in 1954, California’s Atascadero State Hospital treated homosexuals through shock therapy and with the drug succinylcholine chloride (commonly known as “Anectine”), a muscle relaxant that causes a victim to lose the ability to breathe. *See* Eskridge, *Apartheid, supra*, at 716. The idea behind such treatment was to subject “patients” to a simulated near-death experience, while informing them that they could prevent dying by avoiding certain

sexual conduct. Other practitioners of so-called reparative therapy employed techniques such as psychotherapy, aversion therapy in which electric shocks were delivered to the brain, pharmacological shock in which practitioners induced vomiting while exposing a victim to homoerotic imagery, injection of hormones, lobotomies, and even castration.

Present-day practitioners of SOCE have abandoned such primitive methods (which today might be characterized as torture). But just as their predecessor tactics did, existing SOCE practices still lead to severe psychological damage, as well as self-injury and suicide.

Given the State's historical criminalization of homosexuality and its promotion of SOCE, including particularly egregious methods that were used on minors, SB 1172 is unquestionably an appropriate step by the State that should be allowed to take effect immediately.

## **CONCLUSION**

As *Amici* detailed in firsthand accounts above, sexual orientation change efforts do great damage to LGBTQ youth, and in the worst cases, children who engage in SOCE take their own lives. Many SOCE survivors are forever scarred by subsequent self-inflicted harms, long-term psychological problems, and an aversion to legitimate therapy. They also experience rifts with their families that are often irreconcilable, and thus leave SOCE survivors on their own, and often homeless, without sources of support, or in state institutional care. Parents of LGBTQ youth are likewise victimized by SOCE practitioners who take advantage of their pocketbooks as well as their

desire to change their children. These parents incur damage to—and even permanent loss of—their relationships with their children.

Although the State of California was once complicit in subjecting minors to these horrible practices, the State enacted SB 1172 to protect LGBTQ youth and their families from SOCE. Accordingly, *Amici* respectfully request that the Court allow SB 1172 to take immediate effect and to affirm the order denying a preliminary injunction.

February 6, 2013

Respectfully submitted,

*s/Brad W. Seiling*  
MANATT, PHELPS  
& PHILLIPS, LLP  
Brad W. Seiling,  
Benjamin G. Shatz and  
Justin Jones Rodriguez

*s/Hayley Gorenberg*  
LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.  
Hayley Gorenberg  
and Shelbi D. Day

*Attorneys for Amici Curiae*



## EXHIBIT A — *AMICI'S* STATEMENTS OF INTEREST

**Children's Law Center of California** (CLC) is pleased to support the ban on sexual orientation change efforts by state-licensed mental health professionals on minors. Created in 1990, CLC is a nonprofit, public interest law corporation that serves as appointed counsel for abused and neglected youth in Los Angeles and Sacramento counties. With 270 lawyers, paralegals, investigator/social workers and administrative staff, we serve as the "voice" in the foster care system for the approximately 29,000 abused and neglected children in the Los Angeles and Sacramento dependency courts. We estimate that at least 10 percent of our clients are LGBTQ.

As part of CLC's daily representation of abused and neglected youth, it is not uncommon for us to encounter youth who have been removed from their parents care due to abuse or neglect suffered as a direct result of the youth's lesbian, gay, bisexual or transgender identity. Similarly, we have other clients who are part of the foster care system because of familial rejection or conflict at home based on the youth's sexual orientation. These young people often exhibit behavior which at first blush is labeled as "acting out" (i.e., substance abuse, anger management, running away, losing interest in school, etc.), but upon closer look is a reaction to a lack of family support or family rejection, which then results in low self-esteem, depression, and/or self loathing.

**Dependency Legal Group of San Diego** (DLG) is a nonprofit public benefit corporation representing indigent families in San Diego County's Juvenile Dependency Court. The firm employs 67 full-time attorneys whose work emphasizes collaborating to facilitate the preservation and reunification of the families we represent.

In San Diego County, the court appoints an attorney from one of the DLG trial divisions (all of which operate under professional confidentiality standards) to represent each of the parties on cases before the Juvenile Dependency Court, unless private counsel is retained to represent a parent. DLG represents all minors. Each parent receives separate counsel. All DLG attorneys, including associated counsel, are certified to practice in San Diego County Juvenile Court, pursuant to State and Local Rules of Court.

DLG represents all foster youth in San Diego County (approximately 4,000 youth). We regularly represent LGBTQ youth in juvenile dependency court. Many of our clients, of all orientations, benefit from various forms of therapy. We understand the benefits of evidence-based therapeutic intervention for our clients and enthusiastically support these services. We also witness the

damage that can be done when youth are subjected to unsupportive, non-scientifically based treatments such as “conversion” or “reparative” programs. These interventions negatively impact the youth and the family’s reunification efforts.

**East Bay Children’s Law Offices (EBCLO)**, a nonprofit organization, protects and defends the rights of children and youth in the juvenile dependency system through effective, vigorous and compassionate legal advocacy. Employing youth advocates, social workers, and attorneys, EBCLO provides holistic and comprehensive advocacy for children’s rights both in and out of juvenile court. In representing children and youth in the child welfare system, EBCLO ensures that each child’s rights and interests are protected. EBCLO provides a unique and independent voice for these young people in the decision-making that impacts their lives. EBCLO is appointed by the court to represent all children in the Alameda County Juvenile Dependency Court.

Every year, EBCLO represents more than 2,000 children and youth in the Alameda County child welfare system due to physical abuse, sexual abuse, emotional abuse, drug exposure, abandonment or neglect. Children in the dependency system, ranging in ages from birth to 20, face tremendous challenges as victims of abuse and neglect. Many LGBTQ youth in foster care are at risk of the harmful impacts of sexual orientation change efforts by mental health providers. As minors, their alternatives to such practices are often homelessness or rejection from their families, unless they are provided with legal protections. Through our work with our young clients, EBCLO is aware of the harm that sexual orientation change efforts have on youth. We feel strongly that all children, regardless of sexual orientation, must be treated with dignity and are vested with fundamental rights, including a right to physical and emotional health and safety.

**Gaylesta**, The LGBTQ Psychotherapy Association, was founded in 1987 and incorporated as a non-profit organization in 1997. Gaylesta has grown to include approximately 250 mental health professionals. To our knowledge, we are the oldest and largest collection of individuals focused on LGBTQ mental health in California. Our membership collectively offers a range of services, experience, specializations, and expertise.

Our online referral service, community outreach, advertising, public speaking, and advocacy for legislative measures in service of LGBTQ mental health promote awareness of the skills our members offer LGBTQ communities and the public. Beyond serving as a resource for those seeking therapy, we see

ourselves as having a role in fostering the wellbeing of the LGBTQ communities. Our purpose includes promoting awareness of mental health issues specific to LGBTQ communities and developing an exchange of information relating to the field of mental health within the LGBTQ communities.

We understand how internalized homophobia and transphobia often make coming out an intensely stressful and confusing process. After coming out, LGBTQ people continue to experience prejudice and internalized oppression. Having solid self-esteem is challenging, growing up in a society that shames LGBTQ people. LGBTQ people have a particular need for therapeutic treatment modalities that address the injury done by homophobia and transphobia. Those entering therapy should feel that they are in a safe environment, working with professionals free of damaging societal biases. We work to educate therapists outside our community so all clinicians can be sensitive and aware of the issues involved when someone comes to them with concerns about their sexual orientation or gender identity.

Many of our member clinicians see the dangers of “reparative therapy” in the consulting room with people who have gone through this so-called treatment and are attempting to heal from it. Often these clients were forced into SOCE as minors because of their parents’ homophobia. We hear stories of people who had become severely depressed and even suicidal trying to change their sexual orientation or gender identity. These are vital parts of our humanness, and attempting to change them causes deep harm to our psyches. We also witness our clients’ relief and reinvestment in life when they are able to come to terms with who they are. This is why we have been outspoken and active in exposing the dangers of SOCE. This practice, which strives to treat what is not a disorder, is not therapy; it is professionalized homophobia. It is dangerous and a threat to all LGBTQ people, especially minors.

**Legal Advocates for Children and Youth (LACY)** is a program of the Law Foundation of Silicon Valley, the largest nonprofit legal services provider in Santa Clara County, California. LACY provides free and confidential legal services to children and youth in a variety of matters, including juvenile dependency, family law, and education. LACY provides legal services through a multi-disciplinary model that employs 22 attorneys and eight social workers. LACY serves approximately 2,500 clients on an annual basis.

Many of the clients served by LACY have suffered, or are at risk of suffering, abuse or neglect that necessitates the provision of legal services on their

behalf. Within each practice area, LACY represents youth who identify as either lesbian, gay, bisexual or transgender. Often, these youth come to LACY due to familial conflict related to their identification as LGBT.

LACY sees firsthand the importance of proper therapeutic intervention for youth at risk of abuse or neglect. Without such therapy, these youth are more likely to struggle with school performance, interpersonal relations and in their placements. A resolution to this case that would preclude the state-licensed use of sexual orientation change efforts would help assure that the treatment afforded our LGBT clients retains its proper focus.

**Legal Services for Children (LSC)**, founded in 1975, is one of the first nonprofit law firms in the country dedicated to advancing the rights of youth. LSC's mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment, with equal access to the services they need to become healthy and productive young adults. We provide holistic advocacy through teams of attorneys and social workers in the areas of abuse and neglect, education, and immigration. For the past decade, we have also been providing training and technical assistance to child welfare and juvenile justice systems in order to ensure fair and respectful treatment of and improved outcomes for LGBT youth. We have observed the detrimental effects on LGBT youth of attempts to change their sexual orientation, and strongly support SB 1172.

**The LGBTQ-Affirmative Therapist Guild of Utah (The Guild)** is a Utah-based, grassroots organization of licensed mental-health professionals and students-in-training, founded in October 2003 and incorporated as a nonprofit in 2011. The Guild has 98 members. Our purpose is to promote the improvement of mental health services for lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) individuals and their relationships; create an active network among LGBTQ-affirmative mental-health professionals and students in Utah for purposes of our own empowerment, education and professional growth; enhance referral and information resources for those seeking mental health services related to LGBTQ concerns; maintain our professional responsibilities to multicultural competence by embracing a commitment to speak out against inaccurate and harmful information regarding LGBTQ individuals, their lives, and their relationships; and take an active role in guaranteeing an affirmative environment for LGBTQ individuals and their families.

As much as possible from our available pool of members, we seek for our leadership to reflect our commitment to cultural diversity. Members meet monthly for consultation and education regarding mental-health concerns of sexual and gender minorities. We welcome members of any sexual orientation. The Guild website offers support and resources for Utah lesbian, gay, bisexual, transgender, queer, questioning, same-sex-attracted individuals and their allies. We provide networking opportunities, continuing education, community outreach, member resources, a calendar of events, and an online directory of LGBTQ-affirmative therapists for the general public to find help addressing their unique issues.

**Los Angeles Gay & Lesbian Center** (The Center), the world's largest LGBT organization, has been building the health, advocating for the rights and enriching the lives of lesbian, gay, bisexual and transgender people since 1969. The Center provides a broad array of services for the lesbian, gay, bisexual, and transgender community, welcoming nearly a quarter-million client visits from ethnically diverse youth and adults each year. Through its Jeffrey Goodman Special Care Clinic and on-site pharmacy, the Center offers free and low-cost health, mental health, HIV/AIDS medical care and HIV/STD testing and prevention. The Center also offers legal, social, cultural, and educational services, with unique programs for seniors, families and youth, including a 24-bed transitional living program for homeless youth.

Our mission is to: empower people to lead full and rewarding lives without limits based on sexual orientation and gender identity, by providing the highest quality educational, cultural, and wellness programs to residents of Los Angeles County; heal the damage caused by discrimination based on sexual orientation and gender identity, by providing the highest quality health and social services to residents of Los Angeles County in need; advocate for full access and equality for all people regardless of sexual orientation or gender identity, by promoting our communities' needs at local, state, and national levels; and lead through example, by living our values, sharing our expertise, and celebrating the full diversity of our lives, families, and communities. Our clinical services professionals have witnessed great damage to youth in the wake of sexual orientation change efforts, and have become particularly sensitized to the vulnerability of well-meaning parents to these risky practices.

**Los Angeles Youth Network (LAYN)** is a nonprofit agency that provides emergency shelter and long-term housing as well as extensive supportive services and psychotherapy to homeless youth ages 12 to 22. Founded in 1984, LAYN serves approximately 2,000 youth each year through its outreach and shelter programs. Consistent with national studies, the agency finds that about 40 percent of all the homeless youth served identify as LGBTQ. Many of these youth have been kicked out of their homes and abused because of their guardians' rejection of their sexual orientation and/or gender identity. As most of the youth served by the agency already suffer from depression, anxiety, substance abuse, and suicidal thoughts/behaviors as a result of parental rejection and abandonment, they are particularly vulnerable to messages from others that they are "unacceptable." LAYN finds that only messages of acceptance and safety yield positive outcomes for the youth.

Because all homeless youth have suffered abuse and/or neglect in some form, the population is extremely vulnerable. Traumatized homeless youth are extremely sensitive to perceiving rejection and have great difficulty forming healthy connections with adults. LAYN believes that rejection is part of the message of SOCE and that it is re-traumatizing to conduct this type of unvalidated and unproven intervention. LAYN uses practices that are supportive and evidence-based to help youth deal with painful emotional issues. These are practices that demonstrate to youth that they are cared about and accepted for who they are, as this is the path to wellness, healing, and trust.

**Parents, Family and Friends of Lesbians and Gays (PFLAG)**, founded in 1972 with the simple act of a mother publicly supporting her gay son, is the original family and ally organization. Made up of parents, families, friends, and straight allies uniting with LGBT people, PFLAG is committed to advancing equality through its mission of support, education and advocacy, with more than 350 chapters and 200,000 supporters crossing multiple generations of American families in major urban centers, small cities and rural areas in all 50 states.

The vision of PFLAG recognizes that only with respect, dignity and equality will people of diverse sexual orientations and gender identities reach their full identity as human beings. Our mission is to promote the health and wellbeing of lesbian, gay, bisexual and transgender persons, their families and friends, through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal



civil rights. PFLAG provides opportunity for dialogue about sexual orientation and gender identity, and acts to create a society that is healthy and respectful of human diversity.

**Public Counsel** is the public interest law office of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the Lawyers' Committee for Civil Rights Under Law. Established in 1970, Public Counsel is dedicated to advancing equal justice under law by delivering free legal and social services to indigent and underrepresented children, adults and families throughout Los Angeles County, ensuring that other community-based organizations serving this population have legal support, and mobilizing the *pro bono* resources of attorneys, law students and other professionals. With the help of more than 5,000 volunteers, Public Counsel assists more than 32,000 children, youth, families, and community organizations every year.

Public Counsel's clients include lesbian, gay, bisexual and transgender (LGBT) youth and adults. As a civil rights organization, Public Counsel has steadfastly supported the right of LGBT individuals to participate equally in all areas of life without experiencing prejudice or discrimination.

**The Trevor Project**, founded in 1998, is the leading national organization providing crisis intervention and suicide prevention services to lesbian, gay, bisexual, transgender and questioning (LGBTQ) young people under 24. The Trevor Project saves young lives through its free and confidential lifeline and instant messaging services, in-school workshops, educational materials, online resources and advocacy. An appointed member of the National Action Alliance for Suicide Prevention, The Trevor Project contributed to creating the federal National Suicide Prevention Plan and has been honored by the White House as a "Champion of Change." Having received the highest level of accreditation from the American Association of Suicidology, The Trevor Project interacts with more than 100,000 LGBTQ youth each year through the free and confidential Trevor Lifeline and TrevorChat intervention services; the social network TrevorSpace; and Trevor Lifeguard Workshops and Survival Kits in schools.

The youth served by The Trevor Project are at a heightened risk of harming behaviors, including attempting suicide, because they often face rejection, prejudice, fear and hate from peers or family, and as a result tend to lack appropriate access to mental health care. To ensure the LGBTQ youth who reach out to The Trevor Project for help receive the best possible care, the organization follows accredited best practices to refer youth in crisis only to

reputable centers for appropriate treatment and mental health services. The Trevor Project's staff and paraprofessionals have observed the damaging impact of SOCE on LGBTQ youth, and the organization strongly supports SB 1172.

**Truth Wins Out (TWO)**, founded in 2006, is a nonprofit organization that monitors anti-LGBT organizations and documents their misinformation campaigns. TWO considers sexual orientation change efforts or "ex-gay" programs a politically motivated consumer fraud designed to exploit vulnerable clients for financial gain, distort public opinion, and help pass antigay legislation. Such groups consistently make reckless, irresponsible, and false claims about homosexuality that are specifically designed to stigmatize an entire class of people.

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## **CERTIFICATE OF COMPLIANCE**

I certify that this brief complies with the typeface and other requirements of Federal Rules of Appellate Procedure 32(a) because this brief has been prepared in a proportionally spaced typeface using 2003 Microsoft Word with a 14-point Times New Roman font and contains **6,892** words, exclusive of exempted sections, as counted by the 2003 Microsoft Word word-processing program used to generate this brief.

February 6, 2013

Respectfully Submitted,

*s/Brad W. Seiling*  
Manatt, Phelps & Phillips, LLP

## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 6, 2013. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*s/Bess Hubbard*

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**No. 12-17681**

Oral Argument scheduled for the week of April 15, 2013

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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DAVID H. PICKUP, et al.,  
*Plaintiffs and Appellants,*

v.

EDMUND G. BROWN JR.,  
Governor of the State of California, et al.,  
*Defendants and Appellees.*

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Preliminary Injunction Order Appeal from the United States District Court  
Eastern District of California No. 2:12-cv-02497-KJM-EFB  
The Honorable Kimberly J. Mueller

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**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE  
Children's Law Center of California;  
Dependency Legal Group of San Diego;  
East Bay Children's Law Offices; Gaylesta;  
The LGBTQ-Affirmative Therapist Guild of Utah;  
Legal Advocates for Children and Youth; Legal Services for Children;  
Los Angeles Gay & Lesbian Center; Los Angeles Youth Network;  
Parents, Family and Friends of Lesbians and Gays;  
Public Counsel; The Trevor Project; and Truth Wins Out  
IN SUPPORT OF APPELLEES  
TO AFFIRM DENYING THE PRELIMINARY INJUNCTION**

Hayley Gorenberg  
LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.  
120 Wall Street, Suite 1900  
New York, NY 10005  
(212) 809-8585

Shelbi D. Day  
LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.  
3325 Wilshire Blvd., Suite 1300  
Los Angeles, CA 90010  
(213) 382-7600

Brad W. Seiling  
Benjamin G. Shatz  
Justin Jones Rodriguez  
MANATT, PHELPS & PHILLIPS, LLP  
11355 W. Olympic Blvd.  
Los Angeles, CA 90064  
(310) 312-4000 Fax (310) 312-4224

*Counsel for Amici Curiae*

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c), *Amici Curiae* Children's Law Center of California; Dependency Legal Group of San Diego; East Bay Children's Law Offices; Gaylesta; The LGBTQ-Affirmative Therapist Guild of Utah; Legal Advocates for Children and Youth; Legal Services for Children; Los Angeles Gay & Lesbian Center; Los Angeles Youth Network; Parents, Family and Friends of Lesbians and Gays; Public Counsel; The Trevor Project; and Truth Wins Out state that they are all non-profit corporations, they have no parent corporations, and no publicly held company owns any stock in any of *Amici*.

February 6, 2013

Respectfully submitted by,

*s/Brad W. Seiling*  
MANATT, PHELPS  
& PHILLIPS, LLP  
Brad W. Seiling,  
Benjamin G. Shatz and  
Justin Jones Rodriguez

*s/Hayley Gorenberg*  
LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.  
Hayley Gorenberg  
and Shelbi D. Day

*Attorneys for Amici Curiae*

## **MOTION TO FILE *AMICI CURIAE* BRIEF**

Pursuant to Federal Rule of Appellate Procedure 29(a), *Amici*—Children’s Law Center of California; Dependency Legal Group of San Diego; East Bay Children’s Law Offices; Gaylesta; The LGBTQ-Affirmative Therapist Guild of Utah; Legal Advocates for Children and Youth; Legal Services for Children; Los Angeles Gay & Lesbian Center; Los Angeles Youth Network; Parents, Family and Friends of Lesbians and Gays; Public Counsel; The Trevor Project; and Truth Wins Out—endeavored to obtain the consent of all parties to the filing of the accompanying *Amici Curiae* Brief. Appellants refused consent. Thus, *Amici* respectfully move this Court, under Federal Rule of Appellate Procedure 29(b), for leave to file the accompanying *Amici Curiae* Brief in support of Defendants-Appellees and Intervenor-Defendant-Appellee and the district court’s order denying a preliminary injunction.

## **INTEREST OF *AMICI CURIAE***

*Amici* are thirteen public interest organizations and advocacy groups with particular expertise and familiarity as to the issues on appeal. (See Exhibit A, describing each organization in detail.) They include community centers, therapists’ organizations, crisis hotlines, and legal groups whose employees, leaders, and members have firsthand experience with lesbian, gay, bisexual, transgender, and questioning (“LGBTQ”) youth suffering the harms of sexual orientation change efforts (“SOCE”). Given the devastating effects that SOCE have on LGBTQ youth, *Amici* have an interest in supporting

measures that protect minors from these practices. This litigation is of critical import to *Amici*'s deep and abiding commitment to helping LGBTQ youth.

***AMICI CURIAE'S BRIEF WILL ASSIST THIS COURT***

This appeal raises the question whether California Senate Bill 1172 (“SB 1172”), prohibiting state-licensed mental health providers from engaging in SOCE with minors, should be permitted to take immediate effect. In seeking to answer that question, this Court will invariably confront arguments related to injuries that the parties will face in the event of enforcement or non-enforcement, and harms that LGBTQ youth will continue to experience each day that SB 1172 does not take effect. Accordingly, *Amici* respectfully submit this brief to document the SOCE-related harms that they have encountered in their work with LGBTQ youth, and to counter the notion that SOCE are safe or ethical.

*Amici* have followed this litigation and are familiar with the parties' arguments. The proposed brief does not duplicate arguments made or information provided by others. The proposed brief will assist this Court, and leave should be granted for its filing.

February 6, 2013

Respectfully submitted by,

*s/Brad W. Seiling*  
MANATT, PHELPS  
& PHILLIPS, LLP  
Brad W. Seiling,  
Benjamin G. Shatz and  
Justin Jones Rodriguez

*s/Hayley Gorenberg*  
LAMBDA LEGAL DEFENSE  
AND EDUCATION FUND, INC.  
Hayley Gorenberg  
and Shelbi D. Day

*Attorneys for Amici Curiae*

## EXHIBIT A — *AMICI'S* STATEMENTS OF INTEREST

**Children's Law Center of California** (CLC) is pleased to support the ban on sexual orientation change efforts by state-licensed mental health professionals on minors. Created in 1990, CLC is a nonprofit, public interest law corporation that serves as appointed counsel for abused and neglected youth in Los Angeles and Sacramento counties. With 270 lawyers, paralegals, investigator/social workers and administrative staff, we serve as the "voice" in the foster care system for the approximately 29,000 abused and neglected children in the Los Angeles and Sacramento dependency courts. We estimate that at least 10 percent of our clients are LGBTQ.

As part of CLC's daily representation of abused and neglected youth, it is not uncommon for us to encounter youth who have been removed from their parents' care due to abuse or neglect suffered as a direct result of the youth's lesbian, gay, bisexual or transgender identity. Similarly, we have other clients who are part of the foster care system because of familial rejection or conflict at home based on the youth's sexual orientation. These young people often exhibit behavior which at first blush is labeled as "acting out" (i.e., substance abuse, anger management, running away, losing interest in school, etc.), but upon closer look is a reaction to lack of family support or family rejection, which then results in low self-esteem, depression, and/or self loathing.

**Dependency Legal Group of San Diego** (DLG) is a nonprofit public benefit corporation representing indigent families in San Diego County's Juvenile Dependency Court. The firm employs 67 full-time attorneys whose work emphasizes collaborating to facilitate the preservation and reunification of the families we represent.

In San Diego County, the court appoints an attorney from one of the DLG trial divisions (all of which operate under professional confidentiality standards) to represent each of the parties on cases before the Juvenile Dependency Court, unless private counsel is retained to represent a parent. DLG represents all minors. Each parent receives separate counsel. All DLG attorneys, including associated counsel, are certified to practice in San Diego County Juvenile Court, pursuant to State and Local Rules of Court.

DLG represents all foster youth in San Diego County (approximately 4,000 youth). We regularly represent LGBTQ youth in juvenile dependency court. Many of our clients, of all orientations, benefit from various forms of therapy. We understand the benefits of evidence-based therapeutic intervention for our clients and enthusiastically support these services. We also witness the

damage that can be done when youth are subjected to unsupportive, non-scientific based treatments such as “conversion” or “reparative” programs. These interventions negatively impact the youth and the family’s reunification efforts.

**East Bay Children’s Law Offices (EBCLO)**, a nonprofit organization, protects and defends the rights of children and youth in the juvenile dependency system through effective, vigorous and compassionate legal advocacy. Employing youth advocates, social workers, and attorneys, EBCLO provides holistic and comprehensive advocacy for children’s rights both in and out of juvenile court. In representing children and youth in the child welfare system, EBCLO ensures that each child’s rights and interests are protected. EBCLO provides a unique and independent voice for these young people in the decision-making that impacts their lives. EBCLO is appointed by the court to represent all children in the Alameda County Juvenile Dependency Court.

Every year, EBCLO represents more than 2,000 children and youth in the Alameda County child welfare system due to physical abuse, sexual abuse, emotional abuse, drug exposure, abandonment or neglect. Children in the dependency system, ranging in ages from birth to 20, face tremendous challenges as victims of abuse and neglect. Many LGBTQ youth in foster care are at risk of the harmful impacts of sexual orientation change efforts by mental health providers. As minors, their alternatives to such practices are often homelessness or rejection from their families, unless they are provided with legal protections. Through our work with our young clients, EBCLO is aware of the harm that sexual orientation change efforts have on youth. We feel strongly that all children, regardless of sexual orientation, must be treated with dignity and are vested with fundamental rights, including a right to physical and emotional health and safety.

**Gaylesta**, The LGBTQ Psychotherapy Association, was founded in 1987 and incorporated as a non-profit organization in 1997. Gaylesta has grown to include approximately 250 mental health professionals. To our knowledge, we are the oldest and largest collection of individuals focused on LGBTQ mental health in California. Our membership collectively offers a range of services, experience, specializations, and expertise.

Our online referral service, community outreach, advertising, public speaking, and advocacy for legislative measures in service of LGBTQ mental health promote awareness of the skills our members offer LGBTQ communities and the public. Beyond serving as a resource for those seeking therapy, we see



ourselves as having a role in fostering the wellbeing of the LGBTQ communities. Our purpose includes promoting awareness of mental health issues specific to LGBTQ communities and developing an exchange of information relating to the field of mental health within the LGBTQ communities.

We understand how internalized homophobia and transphobia often make coming out an intensely stressful and confusing process. After coming out, LGBTQ people continue to experience prejudice and internalized oppression. Having solid self-esteem is challenging, growing up in a society that shames LGBTQ people. LGBTQ people have a particular need for therapeutic treatment modalities that address the injury done by homophobia and transphobia. Those entering therapy should feel that they are in a safe environment, working with professionals free of damaging societal biases. We work to educate therapists outside our community so all clinicians can be sensitive and aware of the issues involved when someone comes to them with concerns about their sexual orientation or gender identity.

Many of our member clinicians see the dangers of “reparative therapy” in the consulting room with people who have gone through this so-called treatment and are attempting to heal from it. Often these clients were forced into SOCE as minors because of their parents’ homophobia. We hear stories of people who had become severely depressed and even suicidal trying to change their sexual orientation or gender identity. These are vital parts of our humanness, and attempting to change them causes deep harm to our psyches. We also witness our clients’ relief and reinvestment in life when they are able to come to terms with who they are. This is why we have been outspoken and active in exposing the dangers of SOCE. This practice, which strives to treat what is not a disorder, is not therapy; it is professionalized homophobia. It is dangerous and a threat to all LGBTQ people, especially minors.

**Legal Advocates for Children and Youth (LACY)** is a program of the Law Foundation of Silicon Valley, the largest nonprofit legal services provider in Santa Clara County, California. LACY provides free and confidential legal services to children and youth in a variety of matters, including juvenile dependency, family law, and education. LACY provides legal services through a multi-disciplinary model that employs 22 attorneys and eight social workers. LACY serves approximately 2,500 clients on an annual basis.

Many of the clients served by LACY have suffered, or are at risk of suffering, abuse or neglect that necessitates the provision of legal services on their behalf. Within each practice area, LACY represents youth who identify as



either lesbian, gay, bisexual or transgender. Often, these youth come to LACY due to familial conflict related to their identification as LGBT.

LACY sees firsthand the importance of proper therapeutic intervention for youth at risk of abuse or neglect. Without such therapy, these youth are more likely to struggle with school performance, interpersonal relations and in their placements. A resolution to this case that would preclude the state-licensed use of sexual orientation change efforts would help assure that the treatment afforded our LGBT clients retains its proper focus.

**Legal Services for Children (LSC)**, founded in 1975, is one of the first nonprofit law firms in the country dedicated to advancing the rights of youth. LSC's mission is to ensure that all children in the San Francisco Bay Area have an opportunity to be raised in a safe and stable environment, with equal access to the services they need to become healthy and productive young adults. We provide holistic advocacy through teams of attorneys and social workers in the areas of abuse and neglect, education, and immigration. For the past decade, we have also been providing training and technical assistance to child welfare and juvenile justice systems in order to ensure fair and respectful treatment of and improved outcomes for LGBT youth. We have observed the detrimental effects on LGBT youth of attempts to change their sexual orientation, and strongly support SB 1172.

**The LGBTQ-Affirmative Therapist Guild of Utah** (The Guild) is a Utah-based, grassroots organization of licensed mental-health professionals and students-in-training, founded in October 2003 and incorporated as a nonprofit in 2011. The Guild has 98 members. Our purpose is to promote the improvement of mental health services for lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) individuals and their relationships; create an active network among LGBTQ-affirmative mental-health professionals and students in Utah for purposes of our own empowerment, education and professional growth; enhance referral and information resources for those seeking mental health services related to LGBTQ concerns; maintain our professional responsibilities to multicultural competence by embracing a commitment to speak out against inaccurate and harmful information regarding LGBTQ individuals, their lives, and their relationships; and take an active role in guaranteeing an affirmative environment for LGBTQ individuals and their families.

As much as possible from our available pool of members, we seek for our leadership to reflect our commitment to cultural diversity. Members meet

monthly for consultation and education regarding mental-health concerns of sexual and gender minorities. We welcome members of any sexual orientation. The Guild website offers support and resources for Utah lesbian, gay, bisexual, transgender, queer, questioning, same-sex-attracted individuals and their allies. We provide networking opportunities, continuing education, community outreach, member resources, a calendar of events, and an online directory of LGBTQ-affirmative therapists for the general public to find help addressing their unique issues.

**Los Angeles Gay & Lesbian Center** (The Center), the world's largest LGBT organization, has been building the health, advocating for the rights and enriching the lives of lesbian, gay, bisexual and transgender people since 1969. The Center provides a broad array of services for the lesbian, gay, bisexual, and transgender community, welcoming nearly a quarter-million client visits from ethnically diverse youth and adults each year. Through its Jeffrey Goodman Special Care Clinic and on-site pharmacy, the Center offers free and low-cost health, mental health, HIV/AIDS medical care and HIV/STD testing and prevention. The Center also offers legal, social, cultural, and educational services, with unique programs for seniors, families and youth, including a 24-bed transitional living program for homeless youth.

Our mission is to: empower people to lead full and rewarding lives without limits based on sexual orientation and gender identity, by providing the highest quality educational, cultural, and wellness programs to residents of Los Angeles County; heal the damage caused by discrimination based on sexual orientation and gender identity, by providing the highest quality health and social services to residents of Los Angeles County in need; advocate for full access and equality for all people regardless of sexual orientation or gender identity, by promoting our communities' needs at local, state, and national levels; and lead through example, by living our values, sharing our expertise, and celebrating the full diversity of our lives, families, and communities. Our clinical services professionals have witnessed great damage to youth in the wake of sexual orientation change efforts, and have become particularly sensitized to the vulnerability of well-meaning parents to these risky practices.

**Los Angeles Youth Network** (LAYN) is a nonprofit agency that provides emergency shelter and long-term housing as well as extensive supportive services and psychotherapy to homeless youth ages 12 to 22. Founded in 1984, LAYN serves approximately 2,000 youth each year through its outreach and shelter programs. Consistent with national studies, the agency

finds that about 40 percent of all the homeless youth served identify as LGBTQ. Many of these youth have been kicked out of their homes and abused because of their guardians' rejection of their sexual orientation and/or gender identity. As most of the youth served by the agency already suffer from depression, anxiety, substance abuse, and suicidal thoughts/behaviors as a result of parental rejection and abandonment, they are particularly vulnerable to messages from others that they are "unacceptable." LAYN finds that only messages of acceptance and safety yield positive outcomes for the youth.

Because all homeless youth have suffered abuse and/or neglect in some form, the population is extremely vulnerable. Traumatized homeless youth are extremely sensitive to perceiving rejection and have great difficulty forming healthy connections with adults. LAYN believes that rejection is part of the message of SOCE and that it is re-traumatizing to conduct this type of unvalidated and unproven intervention. LAYN uses practices that are supportive and evidence-based to help youth deal with painful emotional issues. These are practices that demonstrate to youth that they are cared about and accepted for who they are, as this is the path to wellness, healing, and trust.

**Parents, Family and Friends of Lesbians and Gays (PFLAG)**, founded in 1972 with the simple act of a mother publicly supporting her gay son, is the original family and ally organization. Made up of parents, families, friends, and straight allies uniting with LGBT people, PFLAG is committed to advancing equality through its mission of support, education and advocacy, with more than 350 chapters and 200,000 supporters crossing multiple generations of American families in major urban centers, small cities and rural areas in all 50 states.

The vision of PFLAG recognizes that only with respect, dignity and equality will people of diverse sexual orientations and gender identities reach their full identity as human beings. Our mission is to promote the health and wellbeing of lesbian, gay, bisexual and transgender persons, their families and friends, through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights. PFLAG provides opportunity for dialogue about sexual orientation and gender identity, and acts to create a society that is healthy and respectful of human diversity.

**Public Counsel** is the public interest law office of the Los Angeles County and Beverly Hills Bar Associations and the Southern California affiliate of the

Lawyers' Committee for Civil Rights Under Law. Established in 1970, Public Counsel is dedicated to advancing equal justice under law by delivering free legal and social services to indigent and underrepresented children, adults and families throughout Los Angeles County, ensuring that other community-based organizations serving this population have legal support, and mobilizing the *pro bono* resources of attorneys, law students and other professionals. With the help of more than 5,000 volunteers, Public Counsel assists more than 32,000 children, youth, families, and community organizations every year.

Public Counsel's clients include lesbian, gay, bisexual and transgender (LGBT) youth and adults. As a civil rights organization, Public Counsel has steadfastly supported the right of LGBT individuals to participate equally in all areas of life without experiencing prejudice or discrimination.

**The Trevor Project**, founded in 1998, is the leading national organization providing crisis intervention and suicide prevention services to lesbian, gay, bisexual, transgender and questioning (LGBTQ) young people under 24. The Trevor Project saves young lives through its free and confidential lifeline and instant messaging services, in-school workshops, educational materials, online resources and advocacy. An appointed member of the National Action Alliance for Suicide Prevention, The Trevor Project contributed to creating the federal National Suicide Prevention Plan and has been honored by the White House as a "Champion of Change." Having received the highest level of accreditation from the American Association of Suicidology, The Trevor Project interacts with more than 100,000 LGBTQ youth each year through the free and confidential Trevor Lifeline and TrevorChat intervention services; the social network TrevorSpace; and Trevor Lifeguard Workshops and Survival Kits in schools.

The youth served by The Trevor Project are at a heightened risk of harming behaviors, including attempting suicide, because they often face rejection, prejudice, fear and hate from peers or family, and as a result tend to lack appropriate access to mental health care. To ensure the LGBTQ youth who reach out to The Trevor Project for help receive the best possible care, the organization follows accredited best practices to refer youth in crisis only to reputable centers for appropriate treatment and mental health services. The Trevor Project's staff and paraprofessionals have observed the damaging impact of SOCE on LGBTQ youth, and the organization strongly supports SB 1172.

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*s/Bess Hubbard*