No. 13-15023

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DONALD WELCH, ET AL.,
Plaintiffs-Appellees,

vs.

EDMUND G. BROWN, JR., GOVERNOR OF THE STATE OF CALIFORNIA,
IN HIS OFFICIAL CAPACITY, ET AL.,
Defendants-Appellants.

Appeal from the Eastern District of California
No. 2:12-cv-02484-WBS
The Honorable William B. Shubb

BRIEF FOR *AMICI CURIAE* CALIFORNIA FAITH FOR EQUALITY; CALIFORNIA COUNCIL OF CHURCHES; JUSTICE AND WITNESS MINISTRIES, UNITED CHURCH OF CHRIST; THE RT. REV. MARC HANDLEY ANDRUS, EPISCOPAL BISHOP OF CALIFORNIA; UNITARIAN UNIVERSALIST LEGISLATIVE MINISTRY CALIFORNIA; CALIFORNIA NETWORK OF METROPOLITAN COMMUNITY CHURCHES; AND ST. PAUL'S FOUNDATION FOR INTERNATIONAL RECONCILIATION, IN SUPPORT OF DEFENDANTS-APPELLANTS GOVERNOR BROWN, *ET. AL.*, AND URGING REVERSAL

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Pickup, et al. v. Brown, et al.
Ninth Circuit No. 12-17681

CORPORATE DISCLOSURE STATEMENT

California Faith for Equality is a 501(c)(3) nonprofit corporation organized under the laws of the State of California. It has no parent corporation and issues no stock.

The California Council of Churches is a 501(c)(3) nonprofit corporation organized under the laws of the State of California. It has no parent corporation and issues no stock.

The California Network of Metropolitan Community Churches is a statewide organization of churches affiliated with the Universal Fellowship of Metropolitan Community Churches, which has no parent corporation and issues no stock.

The Justice and Witness Ministries, United Church of Christ, is a 501(c)(3) nonprofit that has no parent corporation and issues no stock.

St. Paul's Foundation for International Reconciliation was created in 2010 as a 501(c)(3) nonprofit corporation and is a registered California charity. It has no parent corporation and issues no stock.

The Unitarian Universalist Legislative Ministry California is a 501(c)(3) nonprofit corporation organized under the laws of the State of California and headquartered in Sacramento, California. It has no parent corporation and issues no stock.

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I. INTRODUCTION[1]

Plaintiffs in these two matters contend that SB 1172 is unconstitutional. Among other things, they assert that parents are entitled – as a matter of religious liberty – to subject their children to Sexual Orientation Change Efforts ("SOCE"), a discredited psychological "therapy" that the Legislature has determined is both ineffective and likely harmful to minors.[2]

Amici, representing voices from communities of faith, stand as staunch defenders of religious liberty. Together they urge this Court to hold that SB 1172, which protects minors from potential harm from a discredited "therapy," is a constitutional enactment that does not threaten Californians' cherished religious liberties.

Focusing exclusively on the conduct of licensed professionals, SB 1172 by its terms does nothing to interfere with freedom of worship, with freedom of conscience

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[1] No party or its counsel authored any part of this *amicus curiae* brief, which was authored exclusively by the *amici curiae's* counsel. No person other than *amici curiae* and their counsel contributed money to fund preparation or submission of the brief. All parties to *Welch v. Brown*, No. 13-15023, consented to the *amicus curiae* brief's filing. All parties to *Pickup v. Brown*, No. 12-17681, consented except the Plaintiffs-Appellants David Pickup, *et al.*, who through their counsel have expressly withheld consent. The *amicus curiae* brief thus is filed with all parties' consent in *Welch*. In *Pickup* it is accompanied by a motion for leave to file. *See* FRAP 29(a).

[2] *See* Cal. Stats. 2012, ch. 835, §2 (to be codified at Cal. Bus. & Prof. Code §§865, 865.1, 865.2), reproduced in an Addendum to this brief.

and belief, or with the communication of religious principles and doctrines. It regulates only the conduct of professional therapists and licensed counselors, whatever their religious convictions may be.

Moreover, few principles are better established in our law than this: That no one, not even a parent, is entitled on account of religious convictions, to injure a child. The State of California may protect minors from harm, whatever the motivations behind a threatened injury may be. Doing so is not an unconstitutional abridgement of religious liberty.

SB 1172 should be sustained. The judgment below in *Pickup* should be affirmed, and the judgment below in *Welch* should be reversed.

II. IDENTITY AND INTEREST OF AMICI

Amicus curiae **California Faith for Equality**[3] is a multi-faith coalition whose mission is to educate, support, and mobilize California's faith communities to promote equality for LGBT people, many of whom have been deeply wounded by their own faith communities, and also to safeguard religious freedom. Formed in 2005, California Faith for Equality formally incorporated in October 2009, and is a 501(c)(3) non-profit corporation. As a multi-faith organization, it respects and values

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[3] http://cafaithforequality.org/ (accessed Feb. 4, 2013).

the wisdom and perspectives of every faith tradition, and vigorously advocates on behalf of religious liberty for all.

Amicus curiae **California Council of Churches**[4] is an organization of California's Christian churches representing the State's mainstream and progressive communities of faith. Its membership comprises more than 6,000 California congregations, with more than 1.5 million individual members, drawn from 21 denominations spanning the mainstream of Protestant and Orthodox Christian communities.

Amicus curiae **Justice and Witness Ministries, United Church of Christ**[5] is one of four Covenanted Ministries in the United Church of Christ ("UCC"), which comprises more than 5,000 churches in the United States, and more than 200 in California. The Justice and Witness Ministries helps all settings of the Church respond to God's commandments to do justice, seek peace, and effect change for a better world. Its vision is a just, compassionate and peaceful world that honors all of God's creation. Its mission: To speak and act prophetically through community mobilization, leadership training, issues education, public witness, and public-policy advocacy – guided by the pronouncements and resolutions approved by the UCC at

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[4] http://calchurches.org/ (accessed Feb. 4, 2013).

[5] http://www.ucc.org/jwm/ (accessed Feb. 4, 2013).

General Synod. UCC churches have a rich heritage of standing with the marginalized and oppressed, and for more than three decades have set a clear course of welcome, inclusion, equality, and justice for LGBT people.

Amicus curiae **The Rt. Rev. Marc Handley Andrus** is the eighth Bishop of The Episcopal Church in the Diocese of California. Tracing its history to 1849 and originally encompassing the entire state, today the Episcopal Diocese of California serves a diverse community of 27,000 worshipers in 80 congregations encompassing the greater San Francisco Bay Area, with some 335 priests and 85 vocational deacons. Five other Episcopal dioceses serve other communities throughout California.

The Episcopal Church opposes so-called "reparative therapy" purporting to change a person's sexual orientation as coercive and manipulative. In 2003, acting on a resolution brought by the Diocese of California opposing "reparative therapies," the highest legislative body of The Episcopal Church adopted a policy statement resolving that "this Church oppose any religious, spiritual, psychological, or psychiatric consulting or treatment which compromises our baptismal covenant to respect the dignity of every human being, affirming that medical treatment, psychological

therapy, and pastoral counseling should conform to the professional standards of the respective professions."[6]

Amicus curiae **Unitarian Universalist Legislative Ministry, California**[7] is a statewide justice ministry guided by Unitarian Universalist principles, which seeks to educate, organize, and advocate for public policies that:

- uphold the worth and dignity of every person
- further justice, equity, and compassion in human relations
- ensure use of the democratic process
- protect religious freedom
- promote respect for the interdependent web of all existence

As a matter of human dignity, Unitarian Universalist congregations and clergy in California have long opposed the persecution and marginalization of any human being on account of his or her sexual orientation.

Amicus curiae **California Network of Metropolitan Community Churches** is a statewide organization of Metropolitan Community Churches ("MCC").[8] The first

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[6] General Convention, *Journal of the General Convention of The Episcopal Church, Minneapolis, 2003* (New York: General Convention, 2004), p. 261f, *available at* http://www.episcopalarchives.org/cgi-bin/acts/acts_resolution-complete.pl?resolution=2003-C004 (accessed Feb. 4, 2013).

[7] http://www.uulmca.org/ (accessed Feb. 4, 2013).

[8] http://mccchurch.org (accessed Feb. 4, 2013).

MCC worship service, in a Los Angeles suburb in 1968, launched an international religious movement that has grown to 43,000 adherents and 250 local congregations in 23 countries around the globe – making it the largest denomination ministering primarily to LGBT people. MCC's prophetic witness through the years has over that time advanced the international struggle for LGBT rights and equality, and continues to do so.

Amicus curiae **St. Paul's Foundation for International Reconciliation**[9] was created in 2010 as a 501(c)(3) non-profit corporation and is a registered California charity. Inspired by the universal principles of St. Paul, the Foundation assists and encourages local communities to commit to contemporary reconciliation projects. It has focused on the intersection of faith with human rights, health, and education, by providing resources for emerging grass-roots organizations and leaders, particularly in the Global South – where the mythical efficacy of Sexual Orientation Conversion Efforts undergirds efforts to criminalize and marginalize LGBT people. The St. Paul Foundation's educational programs in Europe and North America seek partner congregations, foundations, and donors, to provide funds, technical assistance, and advocacy, so that marginalized groups can be included more deliberately in their own larger communities. The St. Paul's Foundation is also engaged in dialogue and

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[9] http://stpaulsfdr.org/ (accessed Feb. 4, 2013).

coalition building with secular and religious organizations seeking better outcomes for marginalized people, particularly women and LGBT people.

III. ARGUMENT

The plaintiffs in these two cases have asserted that SB 1172 improperly impinges upon their religious liberty – because their desire to subject children to a discredited and damaging "therapy" is said to be motivated by the religious beliefs of parents and therapists.[10] The *Pickup* plaintiffs tell this Court that the discredited "therapy" reflects their "religious and moral beliefs."[11] The *Welch* plaintiffs' moving

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[10] The *Pickup* complaint, for example, identifies the practice with "Free Exercise of Religion," and "religious freedom." CR1:¶¶1-3. The *Pickup* plaintiffs allege that "SB 1172 has infringed Mr. and Mrs. Doe's constitutionally protected rights to free exercise of religion," CR1:¶93, that it "has infringed on Mr. and Mrs. Doe 2's constitutionally protected rights to free exercise of religion," CR1:¶112, and that it impinges upon the religious liberty of Mr. Pickup and Mr. Vaezo as licensed professionals. CR1:¶145, CR1:¶220.

[11] *Pickup* Opening Brief at 39. Parents "Jack and Jane Doe 1 testified that discontinuing the SOCE counseling for [their son] John Doe 1 will harm his health and well-being" on account of asserted "conflict" between his same-sex attractions and "religious beliefs." *Pickup* Opening Brief at 55. The National Legal Foundation's *amicus* brief filed in *Pickup* says that "many of the individual Plaintiffs and the members of the organizational Plaintiffs engage in or receive the type of counseling that they do due to religious beliefs." Brief *Amicus Curiae* of the National Legal Foundation, at 1 (*Pickup v. Brown*, No. 12-17681).

papers below say that thanks to SB 1172, "irreparable injury will result to the Plaintiffs . . . and the practice of their religion."[12]

Yet SB 1172 is not a regulation of religion. Focusing exclusively on the professional conduct of licensed professionals, the legislation does not target religious exercise, and has no effect at all upon worship. Neither does it affect the teaching and sharing of religious belief and doctrine. SB 1172 applies only to the professional conduct of one who is "designated as a mental health professional under California law or regulation."[13] The licensing scheme of which it is a part expressly exempts pastoral counseling.[14] California's Supreme Court has observed that the Legislature concluded "that access to the clergy for counseling should be free from state imposed counseling standards, and that 'the secular state is not equipped to ascertain the

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[12] *Welch* CR9:3 (notice of motion and motion).

[13] Cal. Stats. 2012, ch. 835, §2 (to be codified at Cal. Bus. & Prof. Code §865(a)).

[14] *See* Cal. Bus. & Prof. Code §2063 ("Nothing in this chapter shall be construed so as to . . . . regulate, prohibit, or apply to any kind of treatment by prayer, nor interfere in any way with the practice of religion"); *id*. §4980.01(b) ("This chapter shall not apply to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of his or her pastoral or professional duties"); *Nally v. Grace Community Church*, 47 Cal. 3d 278, 298, 763 P.2d 948, 959 (1988) ("the Legislature has exempted the clergy from the licensing requirements applicable to marriage, family, child and domestic counselors and from the operation of statutes regulating psychologists"); *Jacqueline R. v. Household of Faith Family Church, Inc.*, 97 Cal. App. 4th 198, 206, 118 Cal. Rptr. 2d 264, 269 (2002) ("the Legislature has chosen not to regulate pastoral counseling").

competence of counseling when performed by those affiliated with religious organizations.'"[15]

Though *amici* stand as staunch defenders of religious liberty and freedom of conscience, moreover, a parent's or therapist's liberty of conduct properly ends where harm to the health and welfare of a child is threatened.

SB 1172's opponents can certainly cite Scriptural accounts of parents who sought to demonstrate their own deep faith in God by risking their offspring's well-being – and of children who acquiesced. Scripture speaks of Abraham who, "when put to the test, offered up Isaac," and of Jephthah, who "through faith conquered kingdoms."[16] Abraham was prepared to give his son Isaac up as an offering.[17] And Jephthah "made a vow to the Lord" that if he were granted victory in battle "'then whoever comes out of the doors of my house to meet me . . . shall be the Lord's to be

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[15] *Nally*, 47 Cal. 3d at 298, 763 P.2d at 959-60 (citation omitted).

[16] Hebrews 11:2, 17, 32 (NSRV); *see* Mikael Sjöberg, *Wrestling with Textual Violence: The Jephthah Narrative in Antiquity and Modernity* 2-3 (Sheffield: Department of Biblical Studies, University of Sheffield/Sheffield Phoenix Press, 2006) ("The Letter to the Hebrews (11:32) . . . presents Jephthah as a model believer through inclusion among a long series of 'heroes of faith,' such as Abraham and David"); Barbara Miller, *Tell It on the Mountain: The Daughter of Jephthah in Judges 11*, at 42 (Collegeville, Minn.: Liturgical Press, 2005) ("Jephthah is honored as one who through faith conquered kingdoms, administered justice, and was mighty in war (Heb. 11:32-33)").

[17] Gen. 22:9-13 (NRSV).

offered up by me as a burnt offering.'"[18] To Jephthah's dismay, "there was his daughter coming out to meet him," who on learning of her father's vow, "said to him, 'My father, if you have opened your mouth to the Lord, do to me according to what has gone out of your mouth.'"[19] So Jephthah "did with her according to the vow he had made."[20]

Our law nonetheless is clear: parents have no constitutional right to do harm to their children. And parents' sincere religious belief and interpretation of Scripture cannot override laws of general application protecting minors from harm.

In *Prince v. Massachusetts*, 321 U.S. 158 (1944), our Supreme Court rejected contentions that applying general child-labor laws violated the free-exercise rights of religious parents and guardians who believed that God wanted children to be in the streets confronting strangers and selling religious tracts. Betty, a nine-year old girl, "believed it was her religious duty to perform this work and failure would bring condemnation 'to everlasting destruction at Armageddon.'" *Id*. at 162-63. Two liberty interests were asserted, one the parents' freedom "to bring up the child in the . . . tenets and the practices of their faith," and the other the child's freedom "to

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[18] Judges 11:29-31 (NRSV).

[19] Judges 11:36 (NRSV).

[20] Judges 11:39 (NRSV).

observe these." *Id*. at 164. Neither could override the State's interest in protecting a child from harm.

"Acting to guard the general interest in youth's well being," the Supreme Court held, "the state as *parens patriae* may restrict the parents' control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways." *Id*. at 166. "Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience." *Id*.

"The right to practice religion freely does not include liberty to expose the community or the child to disease or the latter ill health or death," the Court declared in *Prince*. *Id*. at 166-67. Neither does it include the right to expose minors to "therapy" that the State of California has determined will likely harm them. "Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves." *Id*. at 170.

The point has been restated many times, and by now is embedded in our law.[21] Countless decisions affirm the State's power to protect children from harm, even when doing so overrides their parents' religious convictions. Courts may, for example, compel blood transfusions and other potentially life-saving medical treatment for minors over religious parents' objections.[22] Neither may a parent place a minor's emotional health at risk by denying reconstructive surgery to remedy a serious

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[21] *Wisconsin v. Yoder*, 406 U.S. 205, 233-34 (1972) ("the power of the parent, even when linked to a free exercise claim, may be subject to a limitation under *Prince* if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens"); *Wynn v. Carey*, 582 F.2d 1375, 1386 (7th Cir. 1978); *State v. Baxter*, 141 P.3d 92, 99-100 (Wash. Ct. App. 2006); Laurence Tribe, *American Constitutional Law* 1267-68 (Mineola, New York: Foundation Press, 2d ed. 1988).

[22] *E.g.*, *Jehovah's Witnesses in the State of Washington v. King County Hospital*, 390 U.S. 598 (1968) (per curiam: "The judgment is affirmed. *Prince v. Massachusetts*, 321 U.S. 158"), *aff'g* 278 F. Supp. 488, 498-505 (W.D. Wash. 1967) (three-judge court); *Cude v. State*, 377 S.W. 2d 816, 819 (Ark. 1964); *In re Eric B.*, 189 Cal. App. 3d 996, 235 Cal. Rptr. 22, 23-26 (Cal. App. 1987); *People in Interest of D.L.E.*, 645 P.2d 271, 275-76 (Colo. 1982); *In Interest of Ivey*, 319 So. 2d 53, 58-59 (Fla. Dist. Ct. App. 1975); *In re Baby Girl Newton*, 1990 Del. Ch. LEXIS 48, 9-10 (Del. Ch. Apr. 24, 1990); *People ex rel. Wallace v. Labrenz*, 104 N.E. 2d 769, 773-74 (Ill. 1952); *Morrison v. State*, 252 S.W. 2d 97, 100-03 (Mo. Ct. App. 1952); *State v. Perricone*, 181 A.2d 751, 755-57 (N.J. 1962); *Muhlenberg Hospital v. Patterson*, 320 A.2d 518, 520-21 (N.J. Sup. Ct. Law Div. 1974); *In re Willmann*, 493 N.E. 2d 1380, 1390 (Ohio Ct. App. 1986); *In re Clark*, 21 Ohio Op. 2d 86, 185 N.E. 2d 128, 130-32 (1962); *In re Hamilton*, 657 S.W. 2d 425, 427-29 (Tenn. Ct. App. 1983).

disfigurement.[23] Parents may even be criminally liable for withholding needed treatment on religious grounds.[24]

The Supreme Court held more generally in *Employment Division v. Smith*, 494 U.S. 872 (1990), that religious motivations do not exempt one from compliance with valid state laws of general application. "We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Id*. at 878-79. The Court's decisions "have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'"[25]

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[23] *See In re Sampson*, 317 N.Y.S. 2d 641, 650-59 (N.Y. Fam. Ct. 1970) (reconstructive surgery ordered over mother's religious objections to correct a 15-year-old child's facial disfigurement).

[24] *See, e.g.*, *Walker v. Superior Court*, 47 Cal. 3d 112, 138-41, 763 P.2d 852, 869-71 (Cal. 1988); *People v. Rippberger*, 231 Cal. App. 3d 1667, 1688-89, 283 Cal. Rptr. 111, 123 (Cal. App. 1991).

[25] *Id*. at 879 (quoting *United States v. Lee*, 455 U.S. 252, 263 n.3 (1982) (Stevens, J., concurring in the judgment); *see San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1030-31 (9th Cir. 2004); *see also, e.g.*, *United States v. Indianapolis Baptist Temple*, 224 F.3d 627, 629 (7th Cir. 2000) ("neutral laws of general application that burden religious practices do not run afoul of the Free Exercise Clause"); *Kissinger v. Board of Trustees*, 5 F.3d 177, 179 (6th Cir. 1993).

Some have criticized the *Smith* decision for failing adequately to recognize and accommodate our Constitution's commitment to religious liberty.[26] Yet it is the Supreme Court's prerogative, not this Court's, to overrule *Smith*.[27] And even if religious-liberty interests were to be far more generously accommodated than under *Smith*, there is no basis for thinking that California would be precluded from protecting minors from harm.

To hold that California may not, with SB 1172, protect minors from harm would, moreover, place in doubt the constitutionality of a great many other statutes – including, for example, those protecting minor females from genital mutilation arguably motivated by parental religious beliefs.[28] It might also place in question the

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[26] *See, e.g.*, Martha Nussbaum, *The New Religious Intolerance: Overcoming the Politics of Fear in an Anxious Age* 80-83 (Cambridge, Mass.: Belknap Press, 2012); Martha Nussbaum, *Liberty of Conscience: In Defense of American Tradition of Religious Equality* 147-58 (New York: Basic Books, 2010).

[27] *See Rodriguez de Quilas v. Shearson/American Express*, 490 U.S. 477, 484 (1989); *Nunez-Reyes v. Holder*, 646 F.3d 684, 692 (9th Cir. 2011) (en banc).

[28] *See, e.g.*, 18 U.S.C. §116; Cal. Penal Code §273.4; Cal. Health & Safety Code §124170; Colo. Rev. Stat. §18-6-401(1)(b)(i); Del. Code Ann. Tit. 11, §780; 720 Ill. Comp. Stat. 5/12-34; Md. Code Ann., Health Gen'l §20-601; Minn. Stat. §§144.3872, 609.2245; Nev. Rev. Stat. §200.5083; N.Y. Penal Law §130.85; N.D. Cent. Code §12.1-36-01; Ore. Rev. Stat. §§163.207, 431.827; R.I. Gen. Laws §11-5-2(c)(3); Tenn. Code §39-13-110; Texas Health & Safety Code §167.001; W. Va. Code §61-8D-3a; Wis. Stat. Ann. §146.35; *see also* Rosemarie Skaine, *Female Genital Mutilation: Legal, Cultural and Medical Issues*, 251-52 (Jefferson, North Carolina & London: McFarland & Co., 2005) ("16 states have passed legislation outlawing this

constitutionality of laws protecting minors from practices such as psychosurgery, *e.g.*, Cal. Wel. & Inst. Code §5326.6, which in the past have been employed in misguided attempts to change sexual orientation.[29]

As the "therapy" SB 1172 regulates has been discredited, and is likely to harm those who are subjected to it, the State of California's decision to protect minors should be sustained.

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practice"); Anika Rahman & Nahid Toubia, *Female Genital Mutilation: A Guide to Laws and Policies Worldwide* 237 & 240-41 n.8 (London & New York: Zed Books, 2001) (citing state laws); *cf. Adem v. State*, 300 Ga. App. 708, 708, 686 S.E. 2d 339, 339 (Ga. App. 2009) ("Khalid Misri Adem was convicted of first degree cruelty to children and aggravated battery for removing his daughter's clitoris."); *Abdelkarim v. Abdelrahmen*, 2012 Ariz. App. Unpub. LEXIS 1481, at *16 (Ariz. Ct. App. 2012) (child custody order properly modified in light of "court's concerns about father potentially subjecting his daughter to genital mutilation") (non precedential under Ariz. R. Civ. App. P. Rule 28(c)).

[29] *See* Jonathan Ned Katz, *Gay American History* 129 (New Yokr: Meridian/Penguin Group rev. ed. 1992) ("Lobotomy was performed as late as 1951.").

IV. CONCLUSION

This Court should sustain SB 1172 as constitutional exercise of California's plenary power to protect minors from harm. The judgment below in *Pickup* should be affirmed. The judgment below in *Welch* should be reversed.

DATED: February 4, 2013

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certified that the **Brief for *Amici Curiae* California Faith for Equality; California Council of Churches; Justice and Witness Ministries, United Church of Christ; The Rt. Rev. Marc Handley Andrus, Episcopal Bishop of California; Unitarian Universalist Legislative Ministry California; California Network of Metropolitan Community Churches; and St. Paul's Foundation for International Reconciliation, in Support of Governor Brown, *et. al.*, and SB 1172; Urging Affirmance in *Pickup* and Reversal in *Welch*** uses a proportionally spaced Times New Roman typeface, 14-point, and that the text of the brief comprises 3,565 words according to the word count provided by Microsoft Word 2002 (or 2003) word processing software.

s/ ERIC ALAN ISAACSON
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SENATE BILL NO. 1172
CHAPTER 835

AN ACT TO ADD ARTICLE 15 (COMMENCING WITH SECTION 865) TO CHAPTER 1 OF DIVISION 2 OF THE BUSINESS AND PROFESSIONS CODE, RELATING TO HEALING ARTS.

[APPROVED BY GOVERNOR SEPTEMBER 30, 2012. FILED SECRETARY OF STATE SEPTEMBER 30, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, Lieu. Sexual orientation change efforts.

Existing law provides for licensing and regulation of various professions in the healing arts, including physicians and surgeons, psychologists, marriage and family therapists, educational psychologists, clinical social workers, and licensed professional clinical counselors.

This bill would prohibit a mental health provider, as defined, from engaging in sexual orientation change efforts, as defined, with a patient under 18 years of age. The bill would provide that any sexual orientation change efforts attempted on a patient under 18 years of age by a mental health provider shall be considered unprofessional conduct and shall subject the provider to discipline by the provider's licensing entity.

The bill would also declare the intent of the Legislature in this regard.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Being lesbian, gay, or bisexual is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years.

(b) The American Psychological Association convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts, and issued a report in 2009. The task force concluded that sexual orientation change

efforts can pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources.

(c) The American Psychological Association issued a resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts in 2009, which states: "[T]he [American Psychological Association] advises parents, guardians, young people, and their families to avoid sexual orientation change efforts that portray homosexuality as a mental illness or developmental disorder and to seek psychotherapy, social support, and educational services that provide accurate information on sexual orientation and sexuality, increase family and school support, and reduce rejection of sexual minority youth."

(d) The American Psychiatric Association published a position statement in March of 2000 in which it stated:

> "Psychotherapeutic modalities to convert or 'repair' homosexuality are based on developmental theories whose scientific validity is questionable. Furthermore, anecdotal reports of 'cures' are counterbalanced by anecdotal claims of psychological harm. In the last four decades, 'reparative' therapists have not produced any rigorous scientific research to substantiate their claims of cure. Until there is such research available, [the American Psychiatric Association] recommends that ethical practitioners refrain from attempts to change individuals' sexual orientation, keeping in mind the medical dictum to first, do no harm.
>
> The potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient. Many patients who have undergone reparative therapy relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction. The possibility that the person might achieve happiness and satisfying interpersonal relationships as a gay man or

> lesbian is not presented, nor are alternative approaches to dealing with the effects of societal stigmatization discussed.
>
> Therefore, the American Psychiatric Association opposes any psychiatric treatment such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his/her sexual homosexual orientation."

(e) The American School Counselor Association's position statement on professional school counselors and lesbian, gay, bisexual, transgendered, and questioning (LGBTQ) youth states: "It is not the role of the professional school counselor to attempt to change a student's sexual orientation/gender identity but instead to provide support to LGBTQ students to promote student achievement and personal well-being. Recognizing that sexual orientation is not an illness and does not require treatment, professional school counselors may provide individual student planning or responsive services to LGBTQ students to promote self-acceptance, deal with social acceptance, understand issues related to coming out, including issues that families may face when a student goes through this process and identify appropriate community resources."

(f) The American Academy of Pediatrics in 1993 published an article in its journal, Pediatrics, stating: "Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation."

(g) The American Medical Association Council on Scientific Affairs prepared a report in 1994 in which it stated: "Aversion therapy (a behavioral or medical intervention which pairs unwanted behavior, in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through psychotherapy, gay men and lesbians can become comfortable with their sexual orientation and understand the societal response to it."

(h) The National Association of Social Workers prepared a 1997 policy statement in which it stated: "Social stigmatization of lesbian, gay and bisexual people is widespread and is a primary motivating factor in leading some people to seek sexual orientation changes. Sexual orientation conversion therapies assume that homosexual orientation is both pathological and freely chosen. No data demonstrates that reparative or conversion therapies are effective, and, in fact, they may be harmful."

(i) The American Counseling Association Governing Council issued a position statement in April of 1999, and in it the council states: "We oppose 'the promotion of "reparative therapy" as a "cure" for individuals who are homosexual.'"

(j) The American Psychoanalytic Association issued a position statement in June 2012 on attempts to change sexual orientation, gender, identity, or gender expression, and in it the association states: "As with any societal prejudice, bias against individuals based on actual or perceived sexual orientation, gender identity or gender expression negatively affects mental health, contributing to an enduring sense of stigma and pervasive self-criticism through the internalization of such prejudice.

Psychoanalytic technique does not encompass purposeful attempts to 'convert,' 'repair,' change or shift an individual's sexual orientation, gender identity or gender expression. Such directed efforts are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes."

(k) The American Academy of Child and Adolescent Psychiatry in 2012 published an article in its journal, Journal of the American Academy of Child and Adolescent Psychiatry, stating: "Clinicians should be aware that there is no evidence that sexual orientation can be altered through therapy, and that attempts to do so may be harmful. There is no empirical evidence adult homosexuality can be prevented if gender nonconforming children are influenced to be more gender conforming. Indeed, there is no medically valid basis for attempting to prevent homosexuality, which is not an illness. On the contrary, such efforts may encourage family rejection and undermine self-esteem, connectedness and caring, important protective factors against suicidal ideation and attempts. Given that there is no evidence that efforts to alter sexual orientation are effective, beneficial or necessary, and the possibility that they carry the risk of significant harm, such interventions are contraindicated."

(l) The Pan American Health Organization, a regional office of the World Health Organization, issued a statement in May of 2012 and in it the organization states: "These supposed conversion therapies constitute a violation of the ethical principles of health care and violate human rights that are protected by international and regional agreements." The organization also noted that reparative therapies "lack medical justification and represent a serious threat to the health and well-being of affected people."

(m) Minors who experience family rejection based on their sexual orientation face especially serious health risks. In one study, lesbian, gay, and bisexual young adults

who reported higher levels of family rejection during adolescence were 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 family rejection. This is documented by Caitlin Ryan et al. in their article entitled Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics 346.

(n) California has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth, and in protecting its minors against exposure to serious harms caused by sexual orientation change efforts.

(o) Nothing in this act is intended to prevent a minor who is 12 years of age or older from consenting to any mental health treatment or counseling services, consistent with Section 124260 of the Health and Safety Code, other than sexual orientation change efforts as defined in this act.

SEC. 2. Article 15 (commencing with Section 865) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 15. Sexual Orientation Change Efforts

865. For the purposes of this article, the following terms shall have the following meanings:

(a) "Mental health provider" means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, intern, or trainee, a licensed marriage and family therapist, a registered marriage and family therapist, intern, or trainee, a licensed educational psychologist, a credentialed school psychologist, a licensed clinical social worker, an associate clinical social worker, a licensed professional clinical counselor, a registered clinical counselor, intern, or trainee, or any other person designated as a mental health professional under California law or regulation.

(b) (1) "Sexual orientation change efforts" means any practices by mental health providers that seek to change an individual's sexual orientation. This includes efforts to change behaviors or gender expressions, or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same sex.

(2) "Sexual orientation change efforts" does not include psychotherapies that: (A) provide acceptance, support, and understanding of clients or the facilitation of clients' coping, social support, and identity exploration and development, including sexual orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices; and (B) do not seek to change sexual orientation.

865.1. Under no circumstances shall a mental health provider engage in sexual orientation change efforts with a patient under 18 years of age.

865.2. Any sexual orientation change efforts attempted on a patient under 18 years of age by a mental health provider shall be considered unprofessional conduct and shall subject a mental health provider to discipline by the licensing entity for that mental health provider.