No. 12-17681

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAVID PICKUP, et al.,
Plaintiffs-Appellants,
v.
EDMUND G. BROWN, Jr., et al.,
Defendants-Appellees,
and
EQUALITY CALIFORNIA,
Defendant-Intervenor-Appellee

On Appeal from The United States District Court
for The Eastern District of California
No. 2:12-CV-02497-KJM-EFB (Honorable Kimberly J. Mueller)

MOTION FOR LEAVE TO FILE AMICUS BRIEF OF THE CITY OF SAN FRANCISCO IN SUPPORT OF DEFENDANTS EDMUND G. BROWN ET AL AND EQUALITY CALIFORNIA, AND IN SUPPORT OF AFFIRMANCE OF THE DISTRICT COURT'S DECISION

DENNIS J. HERRERA, State Bar #139669
City Attorney
THERESE STEWART, State Bar #104930
TARA M. STEELEY, State Bar #231775
MOLLIE LEE, State Bar #251404
SARA EISENBERG, State Bar #269303
Deputy City Attorneys
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Telephone: (415) 554-4655
Facsimile: (415) 554-4699
E-Mail: tara.steeley@sfgov.org

Attorneys for *Amicus Curiae*
THE CITY AND COUNTY OF SAN FRANCISCO

INTRODUCTION

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, the City and County of San Francisco ("San Francisco") requests leave to file the accompanying *amicus curiae* brief in support of Appellees Edmund G. Brown *et al*. and Equality California. Appellees content to the filing of this brief, but Appellants have refused consent.

IDENTITY AND INTEREST OF AMICUS

San Francisco has a long history of supporting rights and dignity of gay and lesbian individuals. San Francisco has a large lesbian and gay community that dates back to World War II, when the federal government persecuted, purged, and dishonorably discharged thousands of soldiers and sailors from the military because of their homosexuality. Many were "processed out" in San Francisco and chose to remain here, creating a vibrant community that continues to attract new generations of lesbians and gay men. San Francisco has embraced its lesbians and gay community, and many of the City's most talented civic and business leaders have risen from its ranks.

Today, San Francisco provides services and support to lesbian and gay youth, and thus witnesses the harms caused by sexual orientation change efforts ("SOCE") and other forms of discrimination against gays and lesbians. Gay and lesbian youth who experience SOCE and other forms of parental rejection often come to San Francisco, drawn by the City's reputation as a refuge. They are often homeless, emotionally scarred, and physically vulnerable. Some attempt suicide, and others engage in risky behavior driven by a low sense of self-worth. They lack the resources and support that children

usually receive from their families, and the City steps in to fill the void. The City provides these young people with welfare benefits; shelters and supportive housing; primary, emergency, psychiatric and other kinds of public health care; juvenile delinquency and dependency services including foster care; and mental health counseling and suicide prevention. Thus, San Francisco witnesses the harm to youth and experiences financial harm as a result of SOCE.

San Francisco has a further interest in this case: SOCE communicates that there is something wrong with being gay or lesbian, and this message harms San Francisco's citizens and undermines the City's efforts to combat discrimination. The City's experience and scientific literature demonstrates the pernicious effects of discrimination. As a local government and health care provider, San Francisco must expend its limited resources to respond to these harms. Further, the disapproval expressed by SOCE against lesbian and gay citizens is incompatible with San Francisco's fundamental values that lesbian and gay citizens are entitled to be treated as fully equal to all other citizens.

Finally, as a City that frequently enacts legislation to protect the health, safety and welfare of its residents, San Francisco has an interest in ensuring that the correct legal standard is applied to legislation such as S.B. 1172 which regulates professional conduct. San Francisco offers this brief to clarify the government's burden under rational basis review, which is the appropriate standard of review for this legislation. If Appellants were correct that conclusive evidence were required to support public health and safety legislation, San Francisco could be unable to effectively address countless areas

of public concern and would be hampered in its ability to respond to developing public health problems.

SAN FRANCISCO'S BRIEF WILL ASSIST THE COURT AND IS RELEVANT TO THE DISPOSITION OF THE CASE.

San Francisco offers this amicus brief to explain the harms caused by SOCE and the legal standard that this Court should apply when evaluating whether the California Legislature's decision to enact S.B. 1172 is adequately supported by the record. Both of these issues are relevant – and indeed even central – to the disposition of this case. Appellants rely heavily on their claim that SOCE is not harmful to minors and even go so far as to claim that SOCE has been practiced for "many decades without incident," despite the numerous individuals who have been harmed by SOCE. (Appellants' Opening Brief at 28; *see also id.* at 32-34, 47-51.) San Francisco – as local government and a provider of services to gay and lesbian youth – witnesses and experiences harm from SOCE, and has a perspective on the harms caused by SOCE that are not already represented by the parties. The City offers this brief to share its experience, and to ensure that the Court is able to consider the ways in which SOCE causes harm to San Francisco and other cities.

San Francisco also offers this brief to describe the legal standard that this Court should apply when evaluating whether the California Legislature's decision to enact S.B. 1172 is adequately supported by the record. Appellants' brief misstates the relevant legal standard, and asks this Court to impose requirements on legislatures that would cripple the ability of San Francisco and other governments to address matters of public concern. This brief will assist the Court's

understanding of the requirements of rational basis review, and will explain the risks to state and local governments if the rational basis standard is not correctly understood and applied.

In short, San Francisco's brief will help the Court by "assisting in a case of general public interest, supplementing the efforts of counsel and drawing the court's attention to law that might otherwise escape consideration." *Funbus Systems, Inc. v. State of California Public Utilities Commission*, 801 F.2d 1120, 1125 (9th Cir. 1986). Acceptance of San Francisco's brief is also appropriate because the City has a special interest in this litigation that is not already represented by the parties. *See id*. at 1125.

CONCLUSION

For the reasons stated herein, San Francisco's Motion for Leave to File the Attached Amicus Brief should be granted.

Dated: February 6, 2013

Respectfully submitted,

DENNIS J. HERRERA
City Attorney
THERESE STEWART
TARA M. STEELEY
MOLLIE LEE
SARA EISENBERG
Deputy City Attorneys

By: /s/ TARA M. STEELEY
TARA M. STEELEY
Deputy City Attorney

Attorneys for *Amicus Curiae*
THE CITY AND COUNTY
OF SAN FRANCISCO

CERTIFICATE OF SERVICE

I, GINA GUTIERREZ, hereby certify that I electronically filed the following document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECFsystem on February 6, 2013.

MOTION FOR LEAVE TO FILE AMICUS BRIEF OF THE CITY OF SAN FRANCISCO IN SUPPORT OF DEFENDANTS EDMUND G. BROWN ET AL AND EQUALITY CALIFORNIA, AND IN SUPPORT OF AFFIRMANCE OF THE DISTRICT COURT'S DECISION

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.

Executed February 6, 2013, at San Francisco, California.

/s/ GINA GUTIERREZ
GINA GUTIERREZ

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DENNIS J. HERRERA, State Bar #139669
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SARA EISENBERG, State Bar #269303
Deputy City Attorneys
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Telephone: (415) 554-4655
Facsimile: (415) 554-4699
E-Mail: tara.steeley@sfgov.org

Attorneys for *Amicus Curiae*
THE CITY AND COUNTY OF SAN FRANCISCO

CORPORATE DISCLOSURE STATEMENT

The Amicus does not have a parent corporation. No publicly held company owns more than 10% of stock in the Amicus.

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

The City and County of San Francisco provides support and services to gay and lesbian youth, and it witnesses firsthand the harm caused by sexual orientation change efforts ("SOCE"). Many of these youth come to San Francisco drawn by the City's reputation as a refuge for gay men and lesbians, after being rejected by their families and communities elsewhere. They are often homeless, emotionally scarred, and physically vulnerable. Some attempt suicide, and others engage in risky behavior driven by a low sense of self-worth. They lack the resources and support that children usually receive from their families, and the City steps in to fill the void. The City provides these young people with welfare benefits; shelters and supportive housing; primary, emergency, psychiatric and other kinds of public health care; juvenile delinquency and dependency services including foster care; and mental health counseling and suicide prevention.

San Francisco has a further interest in this case: SOCE communicates that there is something wrong with being gay or lesbian, and this message harms San Francisco's citizens and undermines the City's efforts to combat discrimination. Research shows a strong correlation between sexual orientation discrimination and negative health outcomes such as anxiety disorders, other mood disorders, risky behavior, and suicide attempts. At its most extreme, discrimination can take the form of bullying and hate crimes. As a local government and health care provider, San Francisco must expend its limited resources to respond to these harms.

Over the years, San Francisco has adopted a series of laws to reduce sexual orientation discrimination and ameliorate its effects. Many of these laws are enforced by San Francisco's Human Rights Commission ("HRC"), which was established to respond to sexual orientation discrimination and other forms of discrimination. In establishing the HRC, the City found:

> [D]iscriminatory practices are inimical to the public welfare and good order in that they: (a) impede social and economic progress for the entire citizenry by preventing members of minority groups from achieving full development of their individual potentialities and from contributing fully to the cultural and business life of the community; (b) constantly frustrate, degrade and embitter members of minority groups, thereby diminishing their initiative and interests in the community; and (c) tend to create intergroup hostilities and antisocial behavior.
>
> The products of discrimination accumulate continuously, with the result that the social, economic and educational gaps between those suffering discrimination and the majority of the community constantly widen. As a result, mere prohibition of future and present discrimination, while essential, will not reduce the inequalities and disadvantages which a history of discrimination has produced. Accordingly, affirmative remedial action must be initiated, encouraged and coordinated.

S.F. Admin. Code § 12A.1. These findings and other laws reflect the City's understanding of the pernicious effects of discrimination and its commitment to working towards a society in which each individual can develop his or her full potential, unimpeded by the prejudice and denigration reflected in SOCE. They also reflect the fundamental values of San Francisco and its people that lesbian and gay citizens are entitled to be treated as fully equal to all other citizens. The disapproval expressed by SOCE against lesbian and gay citizens is incompatible with these fundamental values.

Finally, as a City that frequently enacts legislation to protect the health, safety and welfare of its residents, San Francisco has an interest in ensuring that the correct legal standard is applied to legislation such as S.B. 1172 which regulates professional conduct. San Francisco agrees with Equality California that the state interest in prohibiting SOCE is sufficient to survive even heightened scrutiny, but writes separately to clarify the government's burden under rational basis review, which is the appropriate standard of review for this legislation. If Appellants were correct that conclusive evidence were required to support public

health and safety legislation, San Francisco could be unable to effectively address countless areas of public concern and would be hampered in its ability to respond to developing public health problems.

For these reasons, San Francisco offers this amicus brief to explain the harms caused by SOCE and the legal standard that this Court should apply when evaluating whether the California Legislature's decision to enact S.B. 1172 is supported by sufficient evidence.[1]

DISCUSSION

It is well established that homosexuality is a normal variant of human sexuality that is a positive and healthy outcome of human development.[2] Moreover, there is widespread consensus in the medical and mental health communities that sexual orientation change efforts are not only ineffective—but harmful, particularly when imposed upon on children. Indeed, as the American Psychological Association's executive director for professional practice has explained, "efforts to 'repair' homosexuals are nothing more than social prejudice garbed in psychological accoutrements."[3]

Appellants assert that the Legislature was required to turn a blind eye to the accumulated wisdom and experience of the leading mental health associations because scientists cannot yet prove with absolute scientific certainty that SOCE causes harm to minors. Appellants' argument fails because they misrepresent the

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[1] Counsel for San Francisco authored this brief in its entirety. No one contributed money to fund the preparation or filing of this brief. San Francisco has sought leave to file this brief pursuant to Rule 29 of the Federal Rules of Appellate Procedure.

[2] Caitlin Ryan & Donna Futterman, LESBIAN & GAY YOUTH: CARE & COUNSELING 7 (1998); ER 233.

[3] Douglas C. Halderman, *Sexual Orientation Conversion Therapy for Gay Men and Lesbians: A Scientific Examination*, in HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY 149, 149 (1991).

evidentiary standard that the State was required to meet, and they misrepresent the available evidence demonstrating that SOCE poses substantial risk of harm, and has indeed harmed numerous individuals.

I. STATE AND LOCAL GOVERNMENTS MAY REGULATE DANGEROUS HEALTH CARE PRACTICES WITHOUT WAITING FOR CONCLUSIVE AND IRREFUTABLE SCIENTIFIC PROOF OF HARM

Appellants contend that S.B. 1172 fails because there is insufficient evidence to definitively establish that being subjected to SOCE harms children. Appellants' Opening Brief ("AOB") at 49-50. But Appellants badly misstate the relevant legal standard. For all of the reasons explained in Respondents' briefs and in the District Court's thoughtful opinion, attempting to change a minor's sexual orientation through SOCE is not expressive speech, but rather professional conduct subject to reasonable regulation. Accordingly, S.B. 1172 does not implicate the core values protected by the First Amendment. Answering Brief of Defendants-Appellees at 22-28, 32-33; ER 16-21. In such situations, courts evaluate the state action under the rational basis test, which simply requires the court to determine "whether the government could have had a legitimate reason for acting as it did." *National Association for the Advancement of Psychoanalysis*, 228 F.3d 1043, 1050 (9th Cir. 2000) (internal quotation marks and citations omitted).

In conducting this analysis, courts presume the constitutionality of the state action and require those challenging the legislative judgment to "convince the court that the legislative facts on which the [action] is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." *Id.*; *see also Heller v. Doe*, 509 U.S. 312, 319-20 (1993). And importantly for present purposes, a challenger cannot meet this burden by arguing that no scientific data conclusively establishes the existence of the harm sought to be mitigated by the

legislature. *See, e.g.*, *Paris Adult Theater v. Slaton*, 413 U.S. 49 (1973); *see also, e.g.*, *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993).

Paris Adult Theater involved a suit by authorities in the state of Georgia to enjoin the exhibition of two allegedly obscene sexually explicit films in two adult theaters. The petitioners in *Paris Adult Theater*—like Appellants here—asserted that "there [was] no scientific data which conclusively demonstrate[d] that exposure to obscene material adversely affects men and women or their society," and argued that "absent such a demonstration, any kind of state regulation is 'impermissible.'" *Id.* at 60. The Court rejected this argument, explaining: "It is not for us to resolve empirical uncertainties underlying state legislation, save in the exceptional case where that legislation plainly impinges upon rights protected by the Constitution itself." *Id.* at 60-61.

Indeed, even under intermediate scrutiny, the legislature need not establish a definitive link between the regulated activity and the harm that the regulation seeks to address. Rather, the legislature can make a predictive judgment that such a link exists based on available evidence—and can act accordingly. *See Turner v. FCC*, 512 U.S. 622, 665 (1994) (explaining, in an intermediate scrutiny case, that "[s]ound policymaking often requires legislators to forecast future events and to anticipate the likely impact of these events based on deductions and inferences for which complete empirical support may be unavailable"); *Brown v. Entertainment Merchants Assoc.*, — U.S. —, 131 S.Ct. 2729, 1738-39 (2010) (rejecting California's reliance on the "predictive judgment" standard articulated in *Turner* on the ground that the *Turner* decision applied intermediate, not strict, scrutiny). Notably, even in *United States v. O'Brien*—where the Supreme Court established the intermediate First Amendment scrutiny standard in the context of evaluating a criminal prohibition against burning a draft card—the Court did not require

conclusive evidence that the integrity of the Selective Service System would be jeopardized by the destruction of draft cards. *O'Brien*, 391 U.S. 367 (1968); *see also City of Erie v. Pap's A.M.*, 529 U.S. 277, 299 (2000) (plurality op.) (noting that in *O'Brien*, "[t]here was no study documenting instances of draft card mutilation or the actual effect of such mutilation on the Government's asserted efficiency interests").

Put simply, as long as there is a rational basis to support the legislature's conclusion, courts simply "do not demand of legislatures 'scientifically certain criteria of legislation.'" *Ginsberg v. State of New York*, 390 U.S. 629, 642-43 (1968). In *Hart Book Stores, Inc. v. Edmisten*, 612 F. 2d 821 (4th Cir. 1979), for example, the Fourth Circuit Court of Appeals evaluated the constitutionality of a North Carolina statute providing that a single building that contains an adult bookstore, adult theater, adult mini-theater, massage parlor, or sexual device wares could not contain a second "adult establishment." The District Court had struck down the statute based, in large part, on "the dearth of hard evidence before the legislature." *Id.* at 832. The Court of Appeals reversed. The court explained that the legislature could reasonably have determined that the statute would mitigate negative secondary effects on neighborhoods that housed adult establishments. It then held that by requiring conclusive evidence, the District Court had "insisted on a showing that need not be made in order to uphold legislative efforts to deal with a problem within reach of the police power." *Id.*

And states' ability to regulate in the absence of absolute certainty and conclusive proof extends to other areas of public concern. In *Beatie v. City of New York*, 123 F.3d 707 (2nd Cir. 1997), for example, a "cigar aficionado" challenged New York's Smoke-Free Air Act as applied to cigars on the ground that although numerous studies showed that exposure to secondary *cigarette* smoke could be

harmful to nonsmokers, no reliable scientific study had conclusively shown secondary *cigar* smoke to have comparably adverse effects. Absent such evidence, the plaintiff argued, the City's prohibitions against cigar smoking bore no rational relationship to a legitimate government interest and therefore violated his substantive due process rights. The Second Circuit rejected the plaintiff's argument that such conclusive scientific evidence was necessary, and upheld the law. *Id.* at 713.

Similarly, governments have regulated carcinogens despite the fact that the causal connection between a particular substance and cancer has not been definitively established. *See* Cass Sunstein, *Pornography and the First Amendment*, 4 DUKE L.J. 589, 601 & n.77 (1986) (citing S. Breyer & R. Stewart, ADMINISTRATIVE LAW AND REGULATORY POLICY 91 (2d ed. 1985) and S. Breyer, REGULATION AND ITS REFORM, 135-140 (1982)); *see also, e.g.*, Cal. Health & Safety Code § 25249.5 et seq. (Proposition 65). California's mandatory motorcycle helmet law was upheld despite the lack of conclusive evidence demonstrating that it increased rider safety. *Buhl v. Hannigan*, 16 Cal.App.4th 1612, 1619-21 (1993). And numerous courts, including the Supreme Court, have upheld reasonable disclosure requirements based on logic and common sense, without even referencing material from a legislative record. *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 652-53 (1985) (reasonableness of disclosure "self-evident"); *Pharm. Care Mgm't Ass'n v. Rowe*, 429 F.3d 294, 310 (1st Cir. 2005) (same); *Nat. Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 115 (2d Cir. 2001) (same).

If conclusive evidence were required to support legislative acts, all such regulation would be suspect and legislatures would be unable to effectively address countless areas of public concern. And, as applied here, such an evidentiary

standard would presumably require experimentation on minors in order to justify legislation seeking to protect them from harm. Researchers would theoretically be required to conduct peer-reviewed, double-blind clinical studies, subjecting some children to SOCE while isolating them from all other forms of anti-gay expression to determine whether SOCE directly causes the psychological harm observed by the existing literature. Such a study would be as unethical as it is impracticable. *See FCC v. Fox Television Stations, Inc.*, — U.S. —, 129 S. Ct. 1800, 1813 (2009) (refusing to require Congress to present studies where minors are intentionally exposed to indecent television broadcasts, isolated from all other indecency, to establish the harmful effects of such broadcasts).

Thankfully, however, this is *not* the evidentiary standard for legislative action. To the contrary, as long as there is a legitimate purpose that is plausibly served by the state action, the State may act even in the absence of "conclusive evidence or empirical data." *Paris Adult Theater*, 413 U.S. at 63. As such, S.B. 1172 must be upheld so long as "the legislative facts on which [it] is apparently based could . . . reasonably be conceived to be true by the [legislature]," and the legislature "could have had a legitimate reason for acting as it did." *National Association for the Advancement of Psychoanalysis*, 228 F.3d 1043, 1050 (2000) (internal quotation marks and citations omitted). As explained below, that standard is easily met.

II. COMPELLING EVIDENCE SUPPORTS THE LEGISLATURE'S CONCLUSION THAT SOCE IS INEFFECTIVE AND HARMFUL TO CHILDREN

A. SOCE Is Ineffective And Based On The Discredited View That Homosexuality Is A Pathological Condition Resulting From Dysfunctional Childhood Experiences

There is no evidence demonstrating that SOCE is effective, and much to suggest it is not. *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.") Homosexuality is not a mental disorder.[4] Homosexuality is not a pathological condition that needs to be cured.[5] And there is no evidence that negative childhood experiences, such as sexual abuse or dysfunctional parenting, influence sexual orientation.[6] The American Psychological Association (APA) concluded, after an extensive review of the scientific literature, that "it is unlikely that individuals will be able to reduce same-sex attractions or increase other-sex sexual attractions through SOCE."[7] With respect to minors, "[t]here is no research demonstrating that providing SOCE to children or adolescents has an impact on adult sexual orientation."[8] Further, there is no "evidence that teaching or reinforcing stereotyped gender-normative behavior in childhood or adolescence can alter sexual orientation."[9] The APA's conclusion that SOCE is ineffective is shared by the Pan American Health Organization (a regional office of the World Health Organization),[10] the American Psychiatric Association,[11] the National Association of Social Workers,[12] and the American Psychoanalytic Association.[13]

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[4] ER 233-234.

[5] *Id.*; J.C. Gonsiorek, *The Empirical Basis For The Demise Of The Illness Model Of Homosexuality*, HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY, at 115-136 (1991).

[6] Caitlin Ryan & Donna Futterman, LESBIAN & GAY YOUTH: CARE & COUNSELING 7 (1998); S.D. Martin & E.S. Hetrick, *The Stigmatization of the Gay and Lesbian Adolescent*. J. HOMOSEX 15:163 (1988).

[7] ER 225.

[8] ER 226.

[9] *Id.*

[10] Pan American Health Organization, *Cures for an Illness That Does Not Exist*, http://new.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=17703&Itemid

Even former practitioners of SOCE agree that it does not work. Exodus International – known as "the spirit of the ex-gay movement"[14] – had been a leading advocate and provider of SOCE throughout its 250 ministries worldwide. But, after years of promoting SOCE, Exodus recently reversed course, and announced that it does not "subscribe to therapies that make changing sexual orientation a main focus or goal."[15] Its President, Alan Chambers, has explained that "99.9 percent" of the people he has encountered in his two decades with Exodus have not been able to eliminate same-sex attractions.[16] Similarly, John Smid – the former executive director of a residential treatment center designed to change sexual orientation – acknowledged recently that changing sexual orientation is "impossible." In the 18 years he spent practicing SOCE with adults and teens, he "never met a man who experienced a change from homosexual to heterosexual."[17]

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[11] APA Official Actions: Position Statement On Psychiatric Treatment And Sexual Orientation (2000), http://www.psychiatry.org/advocacy--newsroom/position-statements

[12] Welch ER 63.

[13] Welch ER 64-65.

[14] Gabriel Arana, *My So-Called Ex-Gay Life*, THE AMERICAN PROSPECT, April 11, 2012, http://prospect.org/article/my-so-called-ex-gay-life

[15] Exodus International, http://exodusinternational.org/?s=reparative

[16] Patrick Condon, *Christian Group Backs Away from Gay 'Cure*, NBC News, 6/27/2012; Erik Eckholm, *Rift Forms in Movement as Belief in Gay 'Cure' Is Renounced*, NEW YORK TIMES, July 6, 2012, http://www.nytimes.com/2012/07/07/us/a-leaders-renunciation-of-ex-gay-tenets-causes-a-schism.html?pagewanted=all&_r=0

[17] *John Smid, Former 'Ex-Gay' Leader, Says He Is Gay And Changing Sexual Orientation Is Impossible*, http://www.huffingtonpost.com/2011/10/20/john-smid-former-ex-gay-minister-sexual-orientation-_n_1022417.html#slide=423157; http://www.gracerivers.com/gays-repent/

Nonetheless, and contrary to the consensus of mental health associations, each of the Appellants provides sexual orientation change efforts that are grounded in a view that homosexuality is a mental disorder, is harmful, and/or results from an abnormality in a child's development. For instance, Appellant Nicolosi provides SOCE that is based on the view that individuals develop homosexual attractions because of a disruption in their relationship with their same-sex parent, which causes a gender dysphoria and incomplete sense of maleness/femaleness.[18] Appellant Nicolosi contends that "humanity was designed for heterosexuality," that homosexuality is "pathological," and that individuals with same sex attractions can become heterosexual if they are committed to "self-improvement."[19]

Similarly, Appellant David Pickup contends that homosexuality results from childhood trauma that prevents the "journey from authentic boyhood into authentic manhood from being fully realized."[20] He contends that homosexuality results from "severe gender inferiority" and "unmet needs from the time one is a child, usually from the same sex parent."[21]

Appellant Christopher Rosik acknowledges that SOCE focuses on "presumed developmental influences in the origin of a homosexual orientation" based on the theory that that same-sex attraction often results from "childhood abuse and conflicted parental relationships."[22]

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[18] JOSEPH NICOLOSI, SHAME AND ATTACHMENT LOSS: THE PRACTICAL WORK OF REPARATIVE THERAPY, 23, 26, 33, 37, 39-56 (InterVarsity Press 2009).

[19] *Id.* at 19, 26, 30.

[20] Resolving Causes Of Homosexuality, http://www.davidpickuplmft.com/#!what-is-reparative-therapy?

[21] Therapist To Challenge "Gay Cure" Ban, http://www.huffingtonpost.com/2012/10/02/brooke-baldwin-gay-therapy_n_1932251.html

[22] Christopher H. Rosik, *Conversion Therapy Revisited: Parameters And Rationale For Ethical Care*, http://narth.com/docs/conversiontherapy.html

Appellant Robert Vazzo informs patients that "[t]he fact that homosexuality itself is not a mental illness does not preclude the possibility that its origins were in fact pathological."[23] He notes that his homosexual male patients "almost without exception" express "feeling deficient in their masculinity," and "primary same-sex attachment issues, especially with the father."[24]

Like the individual Appellants, Appellant NARTH – which was founded by doctors who opposed the American Psychiatric Association's removal of homosexuality from its list of mental disorders – specifically rejects the notion that "homosexuality is normal and a part of human design, or that it is inevitable in [some] people, or that it is unchangeable."[25] NARTH's website also provides links to "research" that characterize homosexuality as an "abnormality"[26] and purports to have identified "proven health risks of male homosexual behavior."[27]

SOCE practitioners' view that homosexuality is "pathological," "abnormal" and/or results from dysfunctional childhood experiences informs the type of "treatment" provided. Some SOCE practitioners have used a variety of aversion methods, including inducing nausea, vomiting, or paralysis, providing electric shocks, having the individual induce pain whenever the individual becomes aroused as a result of same-sex erotic images or thoughts, and aversion techniques,

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[23] Frequently Asked Questions (Faqs) About Homosexuality And Reorientation Therapy, http://www.networktherapy.com/vazzo/default.asp?pid=2053

[24] *Id.*

[25] NARTH Position Statements, http://narth.com/2010/11/narth-position-statements/

[26] "Born That Way" Theory, http://narth.com/main-issues/born-that-way-theory/

[27] NARTH, http://narth.com/2012/11/the-real-comparison-of-harm-from-smoking-vs-possible-harm-of-sexual-orientation-change-efforts-soce/

to "cure" homosexuality.[28] Other SOCE practitioners use techniques to uncover past "wounds" from childhood in the hope that homosexual feelings will "spontaneous[ly] dissipate."[29] Residential centers specializing in SOCE have reportedly held adolescents against their will, and even advocated suicide for adolescents who did not change their sexual orientation.[30] While the methods used by different SOCE practitioners may differ, at bottom, each attempts to "cure" homosexuality, which they view as a pathological, harmful and abnormal condition.

Because SOCE practitioners contend that homosexuality is caused by dysfunctional relationships in early childhood, some use SOCE to address "prehomosexuality," including gender non-conforming characteristics, in young children. Appellant Nicolosi provided SOCE to a 5-year-old child whose behavior did not conform to gender norms.[31] Focus on the Family has advised parents to seek SOCE as soon as a child begins to exhibit signs of "gender confusion," noting that "[i]f your child has already reached puberty, change is difficult."[32]

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[28] ER 244; Beth Molnar, *Juveniles and Psychiatric Institutionalization: Toward Better Due Process and Treatment Review in the United States*, HEALTH AND HUMAN RIGHTS 99 (1997).

[29] http://www.davidpickuplmft.com/#!what-is-reparative-therapy?

[30] Molnar, *Juveniles and Psychiatric Institutionalization*, at 102-107; http://www.truthwinsout.org/blog/2008/05/627/. John Smid, the former director of a SOCE residential treatment center called Love In Action, has since apologized for the harms caused by SOCE, and has acknowledged that SOCE is ineffective. http://www.gracerivers.com/apology/

[31] NICOLOSI, J. & NICOLOSI, L.A., A PARENTS GUIDE TO PREVENTING HOMOSEXUALITY, at 20-21 (Downers Grove, IL Inter Varsity Press 2002).

[32] Cianciotto and Cahill, *Youth in the Crosshairs: The Third Wave of Ex-Gay Activism*, National Gay and Lesbian Task Force Policy Institute (2006).

B. There Is Ample Evidence That SOCE Is Harmful

The evidence demonstrating that SOCE causes harm is compelling and easily satisfies the government's burden under rational basis review or more stringent standards of review. SOCE – which is grounded in the view that homosexuality is "pathological," and "abnormal" – harms children and adolescents by conveying that there is something fundamentally wrong with a core aspect of who they are. That message of stigma and shame is all the more powerful when it comes from a state-licensed, credentialed therapist who is in a position of authority and who, by virtue of his training, skill and experience, can be particularly effective at influencing a young person's development.[33] Indeed, the American Academy of Pediatrics concluded that "[e]ven discomfort expressed through body language" from a medical health professional "can send a very damaging message to nonheterosexual youth."[34] Of course, expressed messages that convey stigma and shame are likely to be even more powerful.

Children and adolescents are particularly vulnerable to the harmful effects of SOCE and other forms of stigma because their identities are still forming, and they lack the psychological protections that come from a stable self-identity.[35] Indeed, "[a]gainst a fragile sense of identity, the rhetoric they hear about what makes a "real man" or a "real woman" may only produce confusion, guilt and shame about

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[33] Alan C. Tjeltveit, *The Ethics Of Value Conversion In Psychotherapy: Appropriate And Inappropriate Therapist Influence On Client Values*, CLINICAL PSYCHOLOGY REVIEW at 515–537 (1986) (describing the ethical concerns raised by empirical finding that clients adopt or are converted to psychotherapist values).

[34] American Academy of Pediatrics, *Clinical Report: Sexual Orientation and Adolescents*, PEDIATRICS Vol. 113 No.6 1827, 1830 (2004).

[35] ER 298-99; Caitlin Ryan, David Huebner, Rafael M. Diaz and Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, PEDIATRICS (2009).

who they are becoming."[36] Because of their "lack of cognitive and emotional maturity,"[37] children and adolescents are particularly susceptible to the suggestion that a core part of who they are is "abnormal," "pathological," or "dysfunctional" – all suggestions that may harm their developing self-esteem. As the APA concluded, "SOCE . . . can pose harm through increasing sexual stigma and providing inaccurate information" to youth about their sexuality.[38]

The consequences of increasing sexual stigma can be dire. A large body of literature demonstrates that, as a result of sexual stigma, sexual minorities experience chronic stress and have poorer health outcomes than the general population.[39] Indeed, as a result of minority stress and stigma, lesbian, gay, and bisexual individuals have mental disorder rates that are twice as high as the general population.[40] In addition, because of stigma and the related isolation experienced by gay and lesbian adolescents, the American Academy of Pediatrics reports that gay youth account for up to 30% of all adolescent suicides, and approximately 30% of a surveyed group of gay and bisexual males have attempted suicide at least

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[36] Arriola, *The Penalties for Puppy Love: Institutionalized Violence Against Lesbian, Gay, Bisexual and Transgendered Youth*, 1 J. GENDER RACE & JUST. 429, 445 (1998).

[37] ER 298.

[38] ER 301.

[39] ER 238; *see, e.g.,*V.M. Mays & S.D. Cochran, *Mental Health Correlates Of Perceived Discrimination Among Lesbian, Gay, And Bisexual Adults In The United States*, AMERICAN JOURNAL OF PUBLIC HEALTH, 91, 1869-1876 (2001); J. DiPlacido, *Minority Stress Amoung Lesbian, Gay Men, and Bisexuals: A Consequence of Heterosexism, Homophobia, and Stigmatization*, STIGMA AND SEXUAL ORIENTATION: UNDERSTANDING PREJUDICE AGAINST LESBIANS, GAY MEN, AND BISEXUALS, 138-159 (1998).

[40] I.H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, PSYCHOLOGICAL BULLETIN (2003).

once.[41] In addition, because of internalized stigma, lesbian, gay and bisexual youth have higher rates of emotional distress, risky sexual behavior, and substance abuse.[42]

Parents also demonstrate rejection by sending children to receive SOCE to change a fundamental aspect of who they are. Parental acceptance and support is a strong predictor of positive outcomes for lesbian and gay youth. Parental behaviors that show support for a child's development "help protect LGBT youth against risk and promote well-being, including protecting against suicidal behavior, substance abuse and depression and promoting better overall health and high leaves of self-esteem and social support in young adulthood."[43] By contrast, behaviors that suggest that a parent does not accept a LGBT child – such as sending the child to receive SOCE – are correlated with negative health outcomes for youth.[44] Youth who report high levels of parental rejection – which is often manifested through efforts to change the young person's sexual orientation – are "8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression (at the cut off point for medication), 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse" than are gay and lesbian teens whose parents do not reject or try to change the child's sexual orientation.[45] In addition, studies

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[41] American Academy of Pediatrics Committee on Adolescence, *Homosexuality and Adolescence*, http://pediatrics.aappublications.org/content/92/4/631.full.pdf.

[42] Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel at 3, available at http://www.apa.org/pi/lgbt/resources/just-the-facts.pdf

[43] Supp. ER 61-62

[44] *Id.*

[45] *Id.*

estimate that 40% of homeless young people are lesbian, gay, bisexual or transgender, and the majority of those children left home because their families rejected them.[46]

Because of the risk that children and adolescents will suffer harm from SOCE, the leading medical and mental health organizations agree that SOCE should not be provided, particularly to children and adolescents. The American Academy of Pediatrics announced in 1993 that "[t]herapy directed specifically at changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation."[47] The APA similarly concluded that "there is insufficient evidence to support the use of psychological interventions to change sexual orientation" which can cause or exacerbate "distress," "depression," and "negative self-image."[48] The American Association for Marriage and Family Therapy supports S.B.1172 "to protect minors" from SOCE, and rejects SOCE because it conveys that "sexual orientation in and of itself requires treatment or intervention."[49] The American Psychiatric Association determined that that the "potential risks of 'reparative therapy' are great and include depression, anxiety, and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred

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[46] L.E. Durso & G.J. Gates, *Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth who are Homeless or At Risk of Becoming Homeless*, The Williams Institute (2012), available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf

[47] Committee on Adolescence, *Homosexuality and Adolescence*, PEDIATRICS (1993); 92; 631.

[48] APA Policy Statements on Lesbian, Gay, Bisexual & Transgender Concerns, *Appropriate Affirmation Responses to Sexual Orientation Distress and Change Efforts*, http://www.apa.org/about/policy/sexual-orientation.pdf

[49] Welch ER 62; AAMFT Statement Re Reparative/Conversion Therapy, http://www.aamft.org/iMIS15/AAMFT/MFT_Resources/MFT_Resources/Content/Resources/Position_On_Couples.aspx

already experienced by the patient."[50] The National Association of Social Workers, California Chapter likewise supports S.B. 1172 because SOCE "can be very dangerous to the mental health, safety and well-being of the minor."[51]

Although SOCE practitioners also claim to be providing "psychoanalytic treatment," the American Psychoanalytic Association has expressly condemned the use of SOCE. Indeed, the American Psychoanalytic Association supports S.B.1172 because efforts to change sexual orientation "are against fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes."[52] The American Psychoanalytic Association also concluded that "[s]exual orientation change efforts pose critical health risks to lesbian, gay, and bisexual people, including depression, shame, decreased self-esteem, social withdrawal, substance abuse, risky behavior, and suicidality."[53]

Appellants place great weight on the fact that the APA could not state to a scientific certainty that SOCE causes harm. But the APA explained that its "systematic review of the research on SOCE found that enduring change to an individual's sexual orientation as a result of SOCE was unlikely. Further, some participants were harmed by the interventions."[54] Indeed, early studies demonstrated numerous harms from aversive forms of SOCE, including loss of

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[50] American Psychiatric Association, Position Statement on Psychiatric Treatment and Sexual Orientation (1998), http://www.psychiatry.org/advocacy--newsroom/position-statements

[51] Welch ER 63.

[52] Welch ER 64-65; http://www.apsa.org/About_APsaA/Position_Statements/Attempts_to_Change_Sexual_Orientation.aspx

[53] *Id.*

[54] ER 276.

sexual feeling, depression, suicidality, and anxiety.[55] In addition, numerous studies have documented that individuals perceive that they have been harmed from nonaversive forms of SOCE (such as those advocated by Appellants here): "[T]he reported negative social and emotional consequences include self-reports of anger, anxiety, confusion, depression, grief, guilt, hopelessness, deteriorated relationships with family, loss of social support, loss of faith, poor self-image, social isolation, intimacy difficulties, intrusive imagery, suicidal ideation, self-hatred, and sexual dysfunction."[56] The report concluded that "w[e] have concerns that [SOCE] may increase self-stigma and minority stress and ultimately increase the distress of children and adolescents."[57]

In addition, Appellants are simply wrong when they contend that SOCE has been practiced for decades "without incident." (AOB at 28.) Many individuals have come forward to explain the harm they suffered from SOCE. The Legislature heard testimony from Ryan Kendall, who was forced to undergo SOCE with Appellant Nicolosi starting at age 14. Mr. Kendall explained that SOCE "inflicts harm by sending the message that there is something defective or immoral about people who are lesbian, gay, bisexual, or transgender. . . . Tragically, it harms the most vulnerable among us – children." In his case, Mr. Kendall was driven to the brink of suicide by the SOCE he received from Appellant Nicolosi and the rejection of his family. In order to stop SOCE, Mr. Kendall "was forced to run away from home, surrender myself to the local department of human services, and

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[55] ER 263-64; N. McConaghy & R.F. Barr, *Classical, Avoidance, and Backward Conditioning Treatment of Homosexuality*, BRITISH JOURNAL OF PSYCHIATRY, 122, 151-162 (1973)

[56] ER 264; A.L. Beckstead & S.L. Morrow, *Mormon Clients' Experiences of Conversion Therapy: The Need For A New Treatment Approach*, THE COUNSELING PSYCHOLOGIST, 32, 651-690 (2004)

[57] ER 226.

legally separate myself from my family." Mr. Kendall informed the Legislature that "conversion therapy destroyed my life and tore apart my family."[58]

Gabriel Arana – another former patient of Appellant Nicolosi – has also described in detail the harms he suffered from SOCE. As a 14-year-old, Arana viewed Appellant Nicolosi as a "trusted authority figure," and Nicolosi's views concerning homosexuality "were the basis for how [Arana] saw [himself]: a leper with no hope of a cure." Arana explains that he became suicidal as a result of SOCE and has spent years in counseling to disabuse himself of the ideas he had learned while undergoing SOCE.[59]

Starting at the age of 5, Kirk Murphy was subjected to SOCE by NARTH Board member George Rekers,[60] who claimed in numerous publications to have transformed Murphy from a "gender-confused homosexual-in-waiting to a healthy, heterosexual young man." In 2011, Murphy committed suicide, after struggling throughout his life with guilt over his same sex attractions. His family asserts that SOCE left Murphy "totally stricken with the belief that he was broken, that he was different from everybody else," and caused his death.[61]

Appellants contend that the Legislature cannot put a stop to SOCE – despite its substantial and even life-threatening risk of harm – because doing so may

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[58] http://sd28.senate.ca.gov/sites/sd28.senate.ca.gov/files/06-26-12%20RyanKendallTestimony.pdf

[59] Gabriel Arana, *My So-Called Ex-Gay Life*, THE AMERICAN PROSPECT, April 11, 2012, http://prospect.org/article/my-so-called-ex-gay-life

[60] Mr. Rekers was forced to resign from the NARTH Board after the press reported that he hired a male prostitute who he met through "rentboy.com" to accompany him during a European trip. John Schwartz, *Scandal Stirs Legal Questions in Anti-Gay Cases*, NEW YORK TIMES, May 18, 2010, http://www.nytimes.com/2010/05/19/us/19rekers.html?_r=0

[61] Scott Bronstein and Jessi Joseph, *Therapy To Change 'Feminine' Boy Created A Troubled Man, Family Says*, CNN, June 10, 2011, http://www.cnn.com/2011/US/06/07/sissy.boy.experiment/index.html; http://www.youtube.com/watch?v=A-irAT0viF0

disrupt existing therapeutic relationships. Specifically, they contend that John Doe I "may regress from the progress toward his goal of eliminating his same-sex attractions, and will suffer setbacks and conflicts between his unwanted same-sex attractions and his religious beliefs." (AOB at 17.) Appellants ignore that there is no evidence that eliminating same-sex attractions is even possible, and thus, John Doe I's purported goal is likely unattainable in any event. Further, S.B.1172 does not prevent John Doe I from obtaining therapy with his chosen therapists to continue to address any tensions between his same-sex attractions and his religious beliefs. Indeed, the APA recommends that religious patients receive treatment to help them "integrate religious and sexual orientation identities."[62] S.B.1172 does nothing to prevent such treatment.

Similarly, Appellants complain that S.B.1172 will require John Doe 2 to end therapy which has reduced his anxiety, increased his level of physical activity, and improved his relationship with his family. (AOB at 17.) But again, nothing prevents John Doe 2 from continuing therapy with his chosen therapist, and to continue to work toward those goals. S.B.1172 simply prevents his therapist from attempting to change John Doe 2's sexual orientation – an effort that is likely to be harmful and has no chance of success in any event.

In short, SOCE is unnecessary, ineffective, and likely harmful to gay and lesbian children who are particularly vulnerable to the messages of shame and stigma inherent in the practice of trying to change a young person's sexual orientation. The State properly protected children by banning SOCE for minors.

[62] ER 227.

III. SAN FRANCISCO AND ITS RESIDENTS ARE HARMED BY SOCE

A. SOCE hurts San Francisco's LGBT Community

As described in Section II, *supra*, children subject to SOCE are likely to experience significant harm. But they are not its only victims. When state-licensed therapists practice SOCE, it sends the message that the State believes there could be something wrong with being gay or lesbian. This state sanctioning of SOCE encourages further private discrimination. As San Diego Mayor Jerry Sanders testified at the *Perry* trial, when "government tolerates discrimination against anyone for any reason, it becomes an excuse for the public to do exactly the same thing." Transcript of Proceedings at 1276, *Perry v. Schwarzenegger*, 704 F.Supp.2d 921 (N.D. Cal. 2010).

State sanctioned and private discrimination harms the health and welfare of gay and lesbian individuals. The APA has found that "discrimination and prejudice based on sexual orientation detrimentally affect psychological, physical, social, and economic well-being."[63] Dr. Ilan Meyer, an expert on the psychological impact of discrimination, coined the term "minority stress" to describe the chronic social stress that results from experiencing prejudice, anticipating further prejudice, harboring internalized homophobia, and attempting to conceal or hide one's sexual orientation.[64] Research shows a strong correlation between minority stress and negative health outcomes such as anxiety disorders, other mood disorders, risky behavior, and suicide attempts.[65]

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[63] American Psychological Association, *Lesbian & Gay Parenting* at 75 (2005), http://www.apa.org/pi/lgbt/resources/parenting-full.pdf

[64] Ilan H. Meyer, *Prejudice, Social Stress and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 PSYCHOL. BULLETIN 674 (2003).

[65] *Id.*; Gregory M. Herek and Linda D. Garnets, *Sexual Orientation and Mental Health*, 3 ANN. REV. CLINICAL PSYCH. 353 (2007) (discussing how stressors unique to sexual minorities affects psychological well-being); Mark L. Hatzenbuehler, Susan Nolan-Hoeksema & Sarah J. Erickson, *Minority Stress*

Discrimination also facilitates hate crimes and school bullying. Sexual orientation is the second-most common motivation for hate crimes in California, after race.[66] Sexual orientation is also a common motivation for school bullying. "More than 200,000 students in California each year report being bullied based on actual or perceived sexual orientation . . . This harassment is linked to risky behavior, poor grades, and emotional distress for students."[67] Of the students who reported experiencing harassment, "27% said that they missed school at least one day during the past 30 days because they felt unsafe."[68] These school absences are estimated to cost California school districts approximately $40 million annually.[69]

B. SOCE Harms Local Governments Such As San Francisco

SOCE and other forms of discrimination against gays and lesbians also harm San Francisco by straining the City's already limited resources. As required by California Welfare and Institutions Code § 17000 et seq., the City provides public benefits, supportive housing, and health care to its most vulnerable residents, including members of the LGBT community who are suffering the acute and

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Predictors of HIV Risk Behavior, Substance Use, and Depressive Symptoms: Results From a Prospective Study of Bereaved Gay Men, 27 HEALTH PSYCH. 455 (2008) (finding a connection between minority stress and HIV risk behavior, substance abuse, and depression); Steve W. Cole, Margaret E. Kemeny, Shelley E. Taylor and Barbara Visscher, *Elevated Physical Health Risk Among Gay Men Who Conceal Their Homosexual Identity*, 15 HEALTH PSYCHOLOGY 243 (1996) (discussing heightened risk of physical illness among gay men who conceal their sexual orientation); Steven T. Russell and Kara Joyner, *Adolescent Sexual Orientation and Suicide Risk: Evidence from a National Study*, 91 AM. J. PUBLIC HEALTH 1276 (2001) (describing increased suicide risk for sexual minority youth and association of suicide and victimization).

[66] Kamala Harris, Attorney General, *Hate Crimes in California 2011*, https://oag.ca.gov/sites/all/files/pdfs/cjsc/publications/hatecrimes/hc11/preface11.pdf

[67] Russell, S. T., Talmage, C., Laub, C., & Manke, E., *The Economic Costs of Bullying at Schoo*l (2009), http://www.casafeschools.org/FactSheet5rev2.pdf.

[68] *Id*.

[69] *Id*.

chronic harms of discrimination. The City has found that its LGBT community uses behavioral and physical health services at rate greater than the general population, partially because of the psychological effects of discrimination. Transcript of Proceedings at 701, *Perry v. Schwarzenegger*, 704 F.Supp.2d 921 (N.D. Cal. 2010) (Edmund Egan). Because SOCE perpetuates this discrimination, it increases the costs that the City and County incurs to serve these populations. The City and County expends approximately $447 million in General Fund revenues annually to provide physical and behavioral health services to residents of San Francisco, which includes a number of specialized health service programs for lesbian, gay, bisexual, and/or transgendered populations. In fiscal year 2010-11, for example, the City spent approximately $55 million on HIV prevention, treatment, and supportive services for the LGBT community.

The City is home to many LGBT youth who find themselves on the streets as a result of SOCE and other forms of parental rejection. San Francisco devotes substantial resources to helping these youth and preparing them for a successful transition to adulthood. For example, the City is currently disbursing a $1.7 million grant to the Castro Street Youth Initiative, a program that provides housing and supportive services for homeless and marginally housed young people in San Francisco's Castro District. Participating youth receive housing; case management services; access to health care including mental health, substance abuse, and HIV services; educational and employment services; and practical needs such as food and clothing. They also receive life skills training and community building experiences.[70]

[70] The City also supports LGBT youth by telling them "It Gets Better." http://m.youtube.com/#/watch?v=6RMunYfzlGs&desktop_uri=%2Fwatch%3Fv%3D6RMunYfzlGs.

The City also funds public health programs targeted at LGBT youth. These include Larkin Street Youth Services programs that provide medical case management, and a residential care facility with emergency stabilization rooms; a San Francisco AIDS Foundation program that provides young gay African American men with HIV testing, health education and risk reduction; and Community Youth Center support services for Asian/Pacific Islander youth, particularly LGBT youth.

The City also funds a number of Community Health Programs for Youth (CHPY), several of which focus on LGBT youth. The Larkin Street Youth Clinic is a City funded clinic that focuses on serving homeless and runaway youth, and up to 40% of the clinic's clients are LGBTQ. The Larkin Street Clinic includes also a specialty clinic for HIV positive young people, the vast majority of whom are gay and bi-sexual young men of color. In the HIV clinic, approximately 90% come into the program homeless, often dually diagnosed with significant mental health as well as substance abuse issues, and have had little to no family support for extended periods of time. At the Dimensions Clinic in the Castro Mission Health Center, approximately 82% of the youth clients identify as transgender, 52% are youth of color, and 30% are homeless. These clinics offer integrated services that provide youth with access to medical treatment and counseling, behavioral health services, educational programs, a continuum of housing opportunities, and other support services.

These and other services that San Francisco provides are necessary to counteract the messages youth receive from SOCE and other forms of discrimination. Ending SOCE for children and adolescents will go a long way toward reducing the discrimination against gay and lesbian youth, and the resulting public health consequences of discrimination.

CONCLUSION

For the reasons stated herein, sexual orientation change efforts are unnecessary, ineffective and likely harmful to youth. The California Legislature properly banned the practice, and this Court should affirm the decision of the District Court.

Dated: February 6, 2013

Respectfully submitted,

DENNIS J. HERRERA
City Attorney
THERESE STEWART
TARA M. STEELEY
MOLLIE LEE
SARA EISENBERG
Deputy City Attorneys

By: /*s*/ TARA M. STEELEY
TARA M. STEELEY
Deputy City Attorney

Attorneys for *Amicus Curiae*
THE CITY AND COUNTY OF SAN FRANCISCO

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 14 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 6,995 words up to the signature lines that follow the brief's conclusion, not including the corporate disclosure statement, table of contents, and table of citations.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on February 6, 2013 in San Francisco, California.

DENNIS J. HERRERA
City Attorney
THERESE STEWART
TARA M. STEELEY
MOLLIE LEE
SARA EISENBERG
Deputy City Attorneys

By: /s/ TARA M. STEELEY
TARA M. STEELEY
Deputy City Attorney

Attorneys for *Amicus Curiae*
THE CITY AND COUNTY OF SAN FRANCISCO

CERTIFICATE OF SERVICE

I, GINA GUTIERREZ, hereby certify that I electronically filed the following document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECFsystem on February 6, 2013.

AMICUS BRIEF OF THE CITY OF SAN FRANCISCO IN SUPPORT OF APPELLEES EDMUND G. BROWN ET AL AND EQUALITY CALIFORNIA, AND IN SUPPORT OF AFFIRMANCE OF THE DISTRICT COURT'S DECISION

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.

Executed February 6, 2013, at San Francisco, California.

/s/ GINA GUTIERREZ
GINA GUTIERREZ