No. 12-17681

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
Intervenor-Defendant-Appellee

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

BRIEF OF *AMICI CURIAE* MEDICAL PROFESSIONALS TONYA CHAFFEE, MD, MPH; LAURA DAVIES, MD; RODNEY ERWIN, MD; PRAVEEN R. KAMBAM, MD; LAURIE ANNE RICHER, DO; H. ERIC BENDER, MD; AND GRAEME HANSON, MD
in support of Defendants-Appellees
Urging Affirmance

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February 6, 2013

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Am. Psychol. Ass'n, *Minutes of the Annual Meeting of the Council of Representatives*,
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U.S. Dept. of Veterans Affairs, *Men and Sexual Trauma*, http://www.ptsd.va.gov/public/pages/men-sexual-trauma.asp 10

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I. INTRODUCTION

No one—including Plaintiffs-Appellants—would recommend that a minor undergo psychological treatment to reverse her ***heterosexual*** orientation simply because she was previously the victim of sexual abuse by the opposite sex. Yet in their efforts to attack California Senate Bill 1172, Plaintiffs-Appellants advocate for exactly this type of "reparative therapy" for victims of sexual abuse who happen to have same-sex attractions. Indeed, by raising the specter of a victim of a "Jerry Sandusky child sex abuser" who "begins to have urges to act out [homo]sexually," *see* Opening Br. at 45, Plaintiffs-Appellants' underlying premise is painfully clear: heterosexuality is normal, while homosexuality is a mental disorder that results from sexual abuse and requires corrective treatment.

Amici Curiae are seven leading California professors, doctors, and experts in the fields of child and adolescent psychiatry and medical care, and they categorically reject the Plaintiffs-Appellants' premise as medically unfounded and dangerous for the victims of sexual abuse. In response to Plaintiffs-Appellants' argument that sexual orientation change efforts ("SOCE") are appropriate for minor victims of sexual

abuse, *Amici Curiae* submit this brief to bring the Court's attention to three key issues on this topic[1]:

First, there is no credible evidence that sexual abuse changes a person's sexual orientation. This hypothesis is based in part on the misguided belief that homosexuality is a trauma-induced mental disorder, a view that has been rejected by the American Psychiatric Association for four decades. None of the mainstream medical, psychiatric, or psychological organizations in the United States currently hold that position that sexual abuse changes a person's sexual orientation.

Second, there are established protocols for the treatment of victims of sexual abuse, and SOCE would never be an appropriate therapeutic response. The medical community has coalesced around certain treatments and psychotherapies based on empirical support for their efficacy in addressing the trauma caused by sexual abuse. While there are a range of important goals and aims behind these treatments, attempting to change a minor's sexual orientation is never one of them.

[1] While this brief is focused on SOCE in the context of victims of sexual abuse, *Amici Curiae* fully support the position of Defendants-Appellees, the California legislature, and the medical community that SOCE is ineffective and potentially harmful to patients generally.

Third, the risk of harm from SOCE treatments is particularly acute for minor victims of sexual abuse. According to the American Psychological Association and other leading mental health organizations, attempts to change sexual orientation may increase distress, depression, and suicidal tendencies—dangers that victims of sexual abuse are particularly ill-equipped to handle. Moreover, if this Court were to legitimize SOCE treatments by invalidating SB 1172, it would perpetuate Plaintiffs-Appellants' baseless implication that sexual abuse changes sexual orientation from heterosexual to homosexual. Given that homosexuality continues to be stigmatized, such a ruling would create a real risk of chilling minors' and parents' willingness to report sexual abuse in the first place.

For these reasons and all of the reasons discussed below, *Amici Curiae* respectfully request that this Court affirm the district court's ruling in this matter.

II. INTERESTS OF *AMICI CURIAE*

Amici Curiae are medical practitioners and scholars in the field of child and adolescent psychiatry and sexual abuse, and they have an interest in ensuring that California minors receive safe and competent

medical care. To this end, they believe that it is critically important to correct the misleading suggestions set forth in Plaintiff-Appellees' attack on SB 1172.[2]

Dr. Graeme Hanson is a Clinical Professor of Psychiatry and Pediatrics at the University of California, San Francisco ("UCSF"). He has previously taught at Harvard Medical School, and he served as the Director of Pediatric Mental Health Services for San Francisco General Hospital ("SFGH") from 1980 through 1988. In that latter role, he was the Psychiatric Director for the Child and Adolescent Sexual Abuse Resource Center. He is also a Distinguished Life Fellow of the American Psychiatric Association and a Life Fellow of the American Academy of Child and Adolescent Psychiatry, and he is board-certified in Psychiatry and Child and Adolescent Psychiatry. For the last seven years, he has been a psychiatric consultant for San Francisco Child Abuse Prevention Center. The San Francisco Department of Health has bestowed a Lifetime Achievement Award on him for Child, Youth, and Family Mental Health Services.

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[2] No party's counsel authored this brief in whole or in part, and no party or a party's counsel nor any other person other than the *Amici* contributed money that was intended to fund preparing or submitting the brief.

Dr. Tonya Chaffee is an Associate Clinical Professor of Pediatrics at UCSF and the Medical Director of the Child and Adolescent Support Advocacy and Resource Center ("CASARC"), the organization that offers counseling and medical services to all minors who are victims of sexual assault in the County of San Francisco as well as training to teachers and health care providers. She is also the Director of the Teen and Young Adult Health Center at SFGH. In addition to her doctorate, she received a Masters of Public Health at the University of California, Berkeley, and she regularly treats victims of sexual abuse. She is board-certified in Pediatrics and Adolescent Medicine.

Dr. H. Eric Bender is a forensic, child and adolescent, and adult psychiatrist on staff at the University of California, San Francisco, and he is in private practice. He is certified by the American Board of Psychiatry and Neurology in the specialty of psychiatry and the subspecialty of child and adolescent psychiatry and is board eligible in the subspecialty of forensic psychiatry. He also serves as an attending physician for Psychiatric Emergency Services at SFGH and the San Francisco Behavioral Health Center.

Dr. Praveen R. Kambam is a Clinical Assistant Professor in the Department of Psychiatry and Biobehavioral Sciences in the David Geffen School of Medicine at UCLA, an Adjunct Professor in the Graduate School of Education and Psychology at Pepperdine University, and is in private practice. He is certified by the American Board of Psychiatry and Neurology in the specialty of psychiatry and the subspecialties of child and adolescent psychiatry and forensic psychiatry

Dr. Laurie Richer is a Clinical Professor of Psychiatry in the Department of Psychiatry at UCSF School of Medicine as well as the Medical Director of the Trauma Recovery/Rape Treatment Center. Her areas of research include emergent treatment protocols for prevention of PTSD and the treatment of drug-facilitated sexual assault. She is a Diplomate of the National Board of Medical Examiners and the American board of Psychiatry and Neurology.

Dr. Rodney Erwin is a child, adolescent, and adult psychiatrist at Kaiser Permanente. He serves as the Site Leader for the Department of Psychiatry in Petaluma, and he is certified in Psychiatry and Child and Adolescent Psychiatry by the American Board of Psychiatry and

Neurology. He has also served as a psychiatric consultant to a juvenile hall and a residential treatment center for children with severe emotional disorders. He is a working group member of the National Center for Youth in Custody.

Dr. Laura Davies is a child, adolescent, and adult psychiatrist in private practice. She is a consultant psychiatrist for St. Luke's Hospital and the California Pacific Medical Center ("CPMC"), and she was formerly an Assistant Clinical Professor of Child and Adolescent Psychiatry at UCSF and a Child Psychiatrist in the Departments of Pediatrics and Psychiatry. She is board-certified by the American Board of Psychiatry and Neurology and is a Diplomate in the Subspecialty of Child and Adolescent Psychiatry. She has received the Irving Phillips, MD Memorial Award for Excellence in Child & Adolescent Psychiatry.

III. ARGUMENT

A part of Plaintiffs-Appellants' argument against SB 1172 is that homosexuality is a disorder that can be brought on by sexual abuse, requiring "corrective" treatment. *See* Opening Br. at 45 (suggesting the existence of minors who are "molested by the likes of a Jerry Sandusky

child sex abuser"; who as a result "begin[] to have urges to act out sexually in the way [they were] abused" (*i.e.*, homosexually); and who thus need treatment to reverse their sexual orientation).[3] While this belief exists among some political and religious groups, and even well-intentioned parents and family members, it lacks a medical or scientific basis. And when it is used to justify performing SOCE on minors, it is dangerous for the following reasons.

A. There Is No Credible Evidence that Sexual Abuse Changes a Person's Sexual Orientation

Across the mainstream scientific and medical communities, there is no longer any dispute about the following: Homosexuality is a normal variation of human sexuality; it is ***not*** a disorder. In fact, the American Psychiatric Association declassified homosexuality as a

[3] Critically, while Plaintiffs-Appellants attempt to characterize SB 1172 as preventing any treatment to reduce unwanted sexual urges, the law does no such thing. If a minor seeks treatment to reduce harmful sexual urges or behaviors—be they heterosexual or homosexual—such treatment is not prohibited so long as the professional does not seek to ***change*** the minor's sexual orientation. Indeed, Plaintiffs-Appellants admit that SB 1172 expressly <u>***permits***</u> psychotherapies that "***do not seek to change sexual orientation***." *See* Opening Br. at 6. Thus, Plaintiffs-Appellants' claimed inability to treat Jerry Sandusky-related "urges" can only be interpreted as an argument that sexual abuse changes sexual orientation, requiring a corrective "reversal" of orientation.

mental disorder as a result of significant research back in 1973,[4] and the American Psychological Association followed suit in 1975.[5] Numerous studies have since confirmed that gay men and women can and do lead healthy, happy, and productive lives.[6] In short, Plaintiffs-Appellants' implicit thesis has been rejected by the medical community for at least four decades.

Moreover, while the precise determinants of sexual orientation are a matter of ongoing study, *Amici Curiae* are aware of no credible evidence that sexual abuse changes sexual orientation. The American Psychiatric Association has opined that "no specific psychosocial or family dynamic cause for homosexuality has been identified, including

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[4] *See generally* Am. Psychiatric Ass'n, *Position Statement: Homosexuality and Civil Rights* (1973), 131 AM. J. PSYCHIATRY 497 (1974).

[5] Am. Psychol. Ass'n, *Minutes of the Annual Meeting of the Council of Representatives*, 30 AM. PSYCHOLOGIST 620, 633 (1975).

[6] *E.g.* Glenn I. Roisman et al, *Adult romantic relationships as contexts of human development: A multimethod comparison of same-sex couples with opposite-sex dating, engaged, and married dyads*, 44(1) DEVELOPMENTAL PSYCHOLOGY 91-101 (2008) (finding that "gay males and lesbians in our studies were generally not distinguishable from their committed heterosexual counterparts on measures of self- and partner reported relationship quality[.]").

histories of childhood sexual abuse."[7] The American Academy of Pediatrics has concluded that "there is no scientific evidence that abnormal parenting, sexual abuse, or other adverse life events influence sexual orientation."[8] The United States Department of Veterans Affairs has stated that "[s]exual assault does not cause someone to have a particular sexual orientation."[9]

Plaintiffs-Appellants and their supporters often point to studies indicating that gay and lesbian adults are more likely to report childhood sexual abuse than heterosexual adults. However, this argument conflates correlation and causation. The scientific literature indicates that (a) minors with homosexual orientations have a greater chance of being victims, including because they are more likely to be targeted for abuse and less likely to receive familial protection,[10] and (b)

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[7] Am. Psychiatric Ass'n, *LGBT- Sexual Orientation*, http://www.psychiatry.org/lgbt-sexual-orientation (last visited Jan. 28, 2013).

[8] Barbara L. Frankowski & the Comm. on Adolescence, *Clinical Report: Sexual Orientation and Adolescents*, 113 PEDIATRICS 1827, 1828 (2004).

[9] U.S. Dept. of Veterans Affairs, *Men and Sexual Trauma*, http://www.ptsd.va.gov/public/pages/men-sexual-trauma.asp (last visited Jan. 28, 2013).

[10] *See, e.g.*, Elizabeth M. Saewyc et al., *Hazards of Stigma: The Sexual and Physical Abuse of Gay, Lesbian, and Bisexual Adolescents in the*

persons who are willing to acknowledge stigmatizing events such as childhood sexual abuse may also be more willing to admit to stigmatizing characteristics such as same-sex orientation (and vice versa).[11]

Moreover, any argument that sexual abuse actually determines or changes sexual orientation is inconsistent with *Amici Curiae*'s clinical experience and understanding of the medical literature. The general scientific consensus is that sexual orientation is determined before birth or very early in life and is largely immutable, a fact recognized by this Court. *See Hernandez-Montiel v. I.N.S.*, 225 F.3d 1084, 1093 (9th Cir. 2000) (explaining that "[s]exual orientation and sexual identity are immutable" and "[m]any social and behavioral scientists 'generally believe that sexual orientation is set in place at an early age.'"), overruled in part on other grounds by *Thomas v. Gonzales*, 409 F.3d

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United States and Canada, 85 CHILD WELFARE 195, 197–200, 209 (2006); Heather L. Corliss et al., *Reports of parental maltreatment during childhood in a United States population-based survey of homosexual, bisexual, and heterosexual adults*, 26 CHILD ABUSE AND NEGLECT 1165, 1174-75 (2002); Lynda S. Doll et al., *Self-Reported Childhood and Adolescent Sexual Abuse Among Adult Homosexual and Bisexual Men*, 16 CHILD ABUSE & NEGLECT 855, 861-62 (1992).

[11] *See* Saewyc et al., *supra* note 10, at 208-09; Doll et al, *supra* note 10, at 861.

1177 (9th Cir. 2005). Thus, SOCE would not be an appropriate therapeutic response to minor sexual abuse.

B. Sexual Orientation Change Efforts Are Not Part of the Established Treatment Protocols for Child Victims of Sexual Abuse

While homosexuality is neither a disorder nor a result of sexual abuse, there are actual psychological disorders that are clinically associated with sexual abuse, including the DSM disorders of Major Depressive Disorder, Borderline Personality Disorder, Somatization Disorder, Substance Abuse Disorders, Posttraumatic Stress Disorder (PTSD), Dissociative Identity Disorder, and Bulimia Nervosa.[12] Childhood sexual abuse has also been linked to problematic behaviors that do not constitute individualized DSM disorders, including more sexualized behaviors than comparison groups.[13]

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[12] Frank W. Putnam, *Ten-Year Research Update Review: Child Sexual Abuse*, 42 JOURNAL OF AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY 269, 271 (2003).

[13] *Id*. at 271-272; Kathleen A. Kendall-Tackett et al., *Impact of Sexual Abuse on Children: A Review and Synthesis of Recent Empirical Studies,* 113(1) PSYCHOLOGICAL BULLETIN 164, 165-167 (1993); William N. Friedrich et al., *Child Sexual Behavior Inventory: Normative and Clinical Comparisons*, 4(3) PSYCHOLOGICAL ASSESSMENT 303, 310-311 (1992). As noted above, nothing about SB 1172 prevents practitioners from treating harmful sexualized behavior, so long as the practitioner

When treating children for problems associated with sexual abuse, practitioners have a duty to ensure that their clients receive the most effective and appropriate treatment available. It is therefore incumbent on responsible practitioners to select and employ mental health treatment protocols and procedures that have a sound theoretical basis, positive clinical-anecdotal literature, and empirical support for their utility with victims of abuse.

There is no shortage of treatment protocols meeting these criteria. The National Crime Victims Research and Treatment Center and the Center for Sexual Assault and Traumatic Stress have issued guidelines (the "Treatment Guidelines") based on an effort to identify all protocols for the treatment of childhood abuse with a sound theoretical basis, substantial clinical-anecdotal literature indicating the treatment's value, no clinical or empirical evidence indicating that the treatment constitutes a substantial risk of harm to those receiving it, and empirical support for their efficacy.[14] They concluded that 16 of the 24

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does not attempt to change the patient's sexual orientation from homosexual to heterosexual. *See supra* at note 3.

[14] *See* Benjamin E. Saunders et al., *Child Physical and Sexual Abuse: Guidelines for Treatment (Revised Report: April 26, 2004)*, http://academicdepartments.musc.edu/ncvc/resources_prof/OVC_guideli

protocols evaluated met those criteria.[15] Not one of the treatment protocols, however, included efforts to alter the victim's sexual orientation.

The absence of SOCE comes as no surprise to *Amici Curiae* and makes scientific sense. Even assuming that SOCE could achieve its stated goal (and the evidence strongly suggests otherwise[16]), attempting

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nes04-26-04.pdf, 18-23 (Apr. 26, 2004) (describing protocol selection criteria and classification system).

[15] *Id.* at 99-103. For example, a protocol known as Trauma-Focused Cognitive-Behavioral Therapy (TF-CBT) met the highest standards of the Treatment Guidelines. *Id.* at 102. TF-CBT "focuses on the patient's conditioned emotional associations to memories and reminders of the trauma, distorted cognitions about the event(s), and negative attributions about self and others." *Id.* at 49. TF-CBT often involves development of a "Trauma Narrative," which has been shown particularly effective in moderating fear and anxiety. *See* Esther Deblinger et al., *Trauma-Focused Cognitive Behavioral Therapy for Children: Impact of the Trauma Narrative and Treatment Length*, 28 DEPRESSION AND ANXIETY 67, 71 (2011).

[16] *See* Am. Psychol. Ass'n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation*, 79 (Aug. 2009), http://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf (finding "no empirical evidence that providing any type of therapy in childhood can alter adult sexual orientation"); Stewart L. Adelson & the Am. Acad. of Child and Adolesc. Psychiatry Comm. on Quality Issues, *Practice Parameter on Gay, Lesbian, or Bisexual Sexual Orientation, Gender Nonconformity, and Gender Discordance in Children and Adolescents*, 51(9) J. AM. ACAD. CHILD ADOLESC. PSYCHIATRY 957, 968 (2012) ("There is no empirical evidence adult homosexuality can be prevented if gender nonconforming children are influenced to be more

to change a person's sexual orientation is never an appropriate therapeutic response to sexual abuse. As discussed in the Treatment Guidelines, it is imperative to repair the harm to self-esteem and self-worth that sexual abuse can cause.[17] Any efforts that suggest the patient has the "wrong" sexual orientation are inimical to this goal, and, as discussed in the following section, can further harm minors.

For all of these reasons, *Amicus Curiae* are unaware of any mainstream treatment protocol for childhood sexual abuse that incorporates efforts to alter the sexual orientation of the patient.

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gender conforming."); *see also Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 966 (N.D. Cal. 2010) ("No credible evidence supports a finding that an individual may, through conscious decision, therapeutic intervention or any other method, change his or her sexual orientation."). Significantly, the author behind a controversial 2001 study that appeared to support the efficacy of SOCE has recently recanted and admitted that he misinterpreted the data. *See* Benedict Carey, *Psychiatry Giant Sorry for Backing Gay 'Cure,'* N.Y. TIMES, May 18, 2012.

[17] *See* Saunders, *supra* note 14, at 25-26 ("Abuse-specific (e.g., self-blame, guilt) and abuse-related (e.g., stigmatization, shame) attributions are associated with increased distress and may lead to conditions such as depression, low self esteem, and impaired socialization that are common in abused children.").

C. Sexual Orientation Change Efforts Pose a Particular Danger to Victims of Childhood Sexual Abuse

Although undergoing SOCE is potentially harmful to any patient, the risk appears particularly acute for victims of childhood sexual abuse. The American Psychological Association (APA) Task Force on SOCE has concluded that attempts to change sexual orientation may cause or exacerbate distress and poor mental health in some individuals, including depression and suicidal thoughts.[18] Similarly, the American Academy of Child and Adolescent Psychiatry (AACAP) has warned that SOCE "may encourage family rejection and undermine self-esteem, connectedness and caring, important protective factors against suicidal ideation and attempts."[19] Due to this "significant risk of harm" and the absence of "evidence that efforts to alter sexual orientation are effective, beneficial, or necessary," the AACAP has advised practitioners that SOCE is "contraindicated."[20]

In light of SOCE's potential to increase the mental health risks described above, the California legislature has concluded that SOCE is particularly harmful to children who are already at high risk of suicide

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[18] Am. Psychol. Ass'n Report, *supra* note 16, at 42.

[19] Adelson, *supra* note 16, at 968.

[20] *Id.*

and other serious mental health problems.[21] Sexually abused children are among the most vulnerable. They face significantly higher risks of major depression and suicidality than non-abused children,[22] as well as altered self-perceptions including helplessness, shame, guilt, and self-blame.[23] Subjecting sexually abused minors to SOCE threatens to compound the mental health risks that this population already faces as a result of their abuse.

Separate and apart from the harm to individual patients, the legitimization of SOCE threatens to create a barrier to the reporting of sexual abuse. Underreporting of childhood sexual abuse is already a significant problem among boys.[24] Adolescent boys, for example, are the

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[21] 2012 Cal. Stats., Ch. 835, §1(m).

[22] Putnam, *supra* note 12, at 271 (reporting that "[m]ajor depression and dysthymia have been strongly associated with [childhood sexual abuse] in numerous studies," and that in one study children "reporting [childhood sexual abuse involving] intercourse had an increased odds ratio of 8.1 for major depression and 11.8 for a suicide attempt."); Kendall-Tackett, *supra* note 13, at 167 ("Depression appeared to be a particularly robust symptom across age groups and was also one that appeared frequently in adults molested as children, as two recent reviews have indicated.") (citation omitted).

[23] *See* Putnam, *supra* note 12, at 274.

[24] Mary L. Paine & David J. Hansen, *Factors influencing children to self-disclose sexual abuse*, 22 CLINICAL PSYCHOLOGY REVIEW 271, 274 (2002) ("[A] variety of research suggests that underreporting [of sexual

least likely to report sexual victimization.[25] One factor leading to nondisclosure of sexual abuse is the fear of being perceived as gay because the abuser was of the same sex.[26] Unfortunately, the stigma attached to homosexuality remains strong: boys continue to be socialized with an ethos that denigrates homosexuality,[27] and sexual minority youths are subject to higher rates of harassment and violence at school and in their communities.[28]

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abuse] is a significant problem among boys.") (citation omitted); Josie Spataro et al., *Child Sexual Abuse: A Reality for Both Sexes*, 36(3) AUSTRALIAN PSYCHOLOGIST 177, 177 (2001) ("Various considerations indicate that male [childhood sexual abuse] may be under-reported").

[25] Paine, *supra* note 24, at 274 ("The [underreporting] trend may increase with age, as adolescent boys have been observed to be least likely to report their sexual victimization.") (citations omitted).

[26] *See id.*, at 274-275 (noting that "boys have the additional taboo of homosexuality to overcome if they tell") (citation omitted); Spataro, *supra* note 24, at 177 (citing "the fear of homosexuality" as a factor that may perpetuate nondisclosure of male childhood sexual abuse); Marjorie R. Sable et al., *Barriers to Reporting Sexual Assault for Women and Men: Perspectives of College Students*, 55(3) JOURNAL OF AMERICAN COLLEGE HEALTH 157 (2006) (finding the fear of being judged as gay is perceived as an important barrier to the reporting of sexual assault or rape by male victims).

[27] Spataro, *supra* note 24, at 177 ("Boys are usually socialised with an ethos where self-reliance, independence, and sexual prowess are valued, and both a victim role and homosexuality are denigrated.") (citations omitted).

[28] *See* Saewyc, *supra* note 10, at 200.

Permitting licensed mental health practitioners to perform SOCE to "correct" purportedly abuse-induced homosexuality threatens to worsen underreporting of sexual abuse by male victims. A judicial endorsement would legitimize SOCE's underlying thesis that abuse "by the likes of a Jerry Sandusky child sex abuser" causes problematic homosexuality requiring "corrective" treatment. *See* Opening Br. at 45. The misguided stigma that would surely attach to victims perceived as abuse-induced homosexuals can only further deter male victims and their families from reporting incidents of sexual abuse.

IV. CONCLUSION

For all of these reasons, *Amici Curiae* respectfully request that this Court affirm the district court's ruling and validate the California legislature's reasoned judgment that permitting licensed mental health providers to engage in SOCE creates unacceptable risks of harm to minors.

DATED: February 6, 2013

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE PURSUANT TO FED. R. APP. P. 32(a)(7)(C) AND CIRCUIT RULE 32-1 FOR CASE NUMBER 12-17681

I certify that pursuant to Fed. R. App. P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached answering brief is proportionately spaced, has a typeface of 14 points or more, and contains 3,835 words, exclusive of the table of contents and table of authorities.

DATED: February 6, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Adam L. Gray, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 6, 2013.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/ Adam L. Gray
Adam L. Gray