No. 12-17681

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAVID H. PICKUP, ET AL.,
Plaintiffs-Appellants,

v.

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

and

EQUALITY CALIFORNIA,
Intervenor-Defendant-Appellee.

On Appeal from the United States District Court for the Eastern District of California, No. 2:12-cv-02497-KJM (Mueller, J.)

BRIEF OF *AMICUS CURIAE* DR. JACK DRESCHER, M.D. IN SUPPORT OF DEFENDANTS-APPELLEES AND URGING AFFIRMANCE

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STATEMENT PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 29(c)(5)

This *amicus curiae* brief respectfully submitted by Dr. Jack Drescher, M.D., was not authored in whole or in part by counsel for any party in the above-captioned action. No party or counsel for a party contributed money intended to fund preparation or submission of this brief. No person other than Dr. Drescher or his counsel contributed money that was intended to fund preparation or submission of this brief.

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INTEREST OF *AMICUS CURIAE* AND AUTHORITY TO FILE

This case turns in large part on whether sexual orientation change efforts ("SOCE") are reasonably likely to harm mental health. *Amicus curiae* Dr. Jack Drescher, M.D., is a psychiatrist and recognized expert on mental health issues related to gender and sexuality. *See* Curriculum Vitae of Jack Drescher, M.D., available at http://www.jackdreschermd.net/cv.html. As a medical professional and researcher, Dr. Drescher is well-versed in the state of the science on the dangers of SOCE. His expertise led to his participation in what is believed to be the only systematic review of the scientific literature on SOCE: the 2009 Report of the American Psychological Association's Task Force on Appropriate Therapeutic Responses to Sexual Orientation. Dr. Drescher is familiar with the scientific research on the dangers of SOCE and how this research fits into the larger body of scientific knowledge about sexuality and mental health.

Plaintiffs-Appellants denied Dr. Drescher's request for consent to file an *amicus curiae* brief. Pursuant to Federal Rule of Appellate Procedure 29(b), Dr. Drescher has filed an accompanying Motion For Leave To File An *Amicus Curiae* Brief.

INTRODUCTION

Senate Bill ("SB") 1172 is consistent with the highest duty of health care: "First, do no harm." The California legislature enacted SB 1172 on August 30,

2012 in accordance with the widespread recognition that SOCE are unproven and potentially dangerous for young people. Part I, *infra*.

Plaintiffs-Appellants claim that research on SOCE does not reveal evidence that SOCE are harmful. They are wrong. Part II, *infra*. Notwithstanding SOCE proponents' failure to rigorously test their own methods, the existing research on SOCE contains significant evidence that SOCE are harmful. Plaintiffs-Appellants resort to cherry-picking statements about the inadequacies of research on SOCE.

Plaintiffs-Appellants dismiss the evidence demonstrating the harms of SOCE as not credible. In their view, the lack of rigorous research on SOCE is a reason to allow the use of SOCE on minors. Again, Plaintiffs-Appellants are incorrect. Part III, *infra*. The direct evidence that SOCE are harmful is consistent with an empirically tested body of knowledge about sexuality and mental health. Viewing this evidence through the lens of the "do no harm" principle, Plaintiffs-Appellants bear the burden of demonstrating that SOCE are safe for young people. They have failed to do so, and SB 1172 is well-justified.

DISCUSSION

I. THE LEGISLATURE ENACTED SB 1172 IN ACCORDANCE WITH THE MENTAL HEALTH PROFESSION'S DUTY TO "DO NO HARM."

Like all health care providers, mental health professionals must follow Hippocrates' famous counsel: "First, do no harm." *See, e.g.*, Am. Psychological

Ass'n, *Ethical Principles of Psychologists and Code of Conduct*, Principle A, available at http://www.apa.org/ethics/code/index.aspx?item=3. ("Psychologists strive to benefit those with whom they work and take care to do no harm."). In enacting SB 1172, the California legislature recognized that subjecting minors to SOCE is incompatible with the duty to "do no harm." *See* SB 1172 § 1(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."); *see also id.* § 1(b)-(l) (listing recognized dangers of SOCE).

Plaintiffs-Appellants attempt to obscure the "do no harm" principle's importance to this case, arguing that the legislature lacked evidence that SOCE cause harm. *See* Opening Brief ("Br.") at 17-18. This position misrepresents the nature of the available evidence and—at a more fundamental level—the ethical standard for determining whether a treatment is reasonably likely to cause harm.

II. THERE IS DIRECT EVIDENCE THAT SOCE ARE HARMFUL.

Plaintiffs-Appellants' view of the evidence on SOCE turns largely on their mischaracterization of the 2009 Report of the American Psychological Association's Task Force ("APA Task Force") on Appropriate Therapeutic Responses to Sexual Orientation ("APA Report") (available at

http://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf). The APA established the APA Task Force—on which Dr. Drescher served as one of six members—to investigate, among other things, the "appropriate application of affirmative therapeutic interventions" for those who "present a desire to change either their sexual orientation or their behavioral expression of their sexual orientation, or both," or, in the case of minors, those "whose guardian expresses a desire for the minor to change." APA Report at 1. The APA Task Force undertook a systematic review of peer-reviewed literature on SOCE. *Id.* at 26. Such reviews are commonly used to answer questions about the effectiveness of health care treatments. *Id.* To Dr. Drescher's knowledge, the APA Report is the only systematic review of research on SOCE.

After reviewing publications covering 83 studies, the APA Task Force found no reliable evidence to suggest that SOCE therapies are effective in changing a person's sexual orientation. *Id.* at 35-41. The research on SOCE was plagued by significant methodological problems, including—but not limited to—high dropout rates, failure to evaluate different interventions separately, and unrepresentative samples. *See id.* at 28-34. The APA Task Force determined that "the low quality of the research on SOCE is such that ***claims regarding its effectiveness and widespread applicability must be viewed skeptically***." *Id.* at 27 (emphasis added).

Plaintiffs-Appellants distort the APA Task Force's cautionary warning about the reliability of claims regarding the effectiveness of SOCE to argue that the research does not support the conclusion that SOCE are dangerous. Opening Br. at 7. Erasing all context, Plaintiffs-Appellants seize on the following observations by the APA Task Force to make the implausible argument that the lack of reliable research ***reduces*** rather than heightens concerns about SOCE's safety: that "there is a dearth of scientifically sound research on the safety of SOCE"; that "no study to date of adequate scientific rigor has been explicitly designed" to study the occurrence of harm from SOCE; and that the lack of data made it impossible to "conclude how likely it is that harm will occur from SOCE." Opening Br. at 7 (quoting APA Report at 42). Plaintiffs-Appellants likewise rely on the Task Force's review of the scientific literature as it applies to minors, quoting observations about the lack of published research on the effect of SOCE on children or empirical research on adolescents who request SOCE. *Id.* at 28 (citing APA Report at 72-73).

Plaintiffs-Appellants have misread the APA Report. To be sure, proponents of SOCE have failed for decades to subject their techniques to rigorous scientific analysis. But that does not mean that there is no "credible" evidence of harm in the literature. Opening Br. at 50. Quite the opposite. As its Report shows, the APA Task Force found compelling evidence that SOCE are harmful.

Take, for example, the early research on SOCE, which focused on aversive conditioning techniques such as electric shock, deprivation of food and liquids, and chemically-induced nausea—techniques that Plaintiffs-Appellants and other SOCE proponents do not disavow. APA Report at 31. Although these studies did not seek to investigate harm—given that they came from a time in which homosexuality was widely viewed as a mental illness—they nonetheless suggest that SOCE are harmful. The early studies contain reports that subjects experienced depression, treatment-related anxiety, suicidal ideation, impotence, and relationship dysfunction. *Id.* at 41-42. The early studies were also characterized by high dropout rates, which may be a further indication that subjects viewed their treatments as harmful. *Id.* at 42.

More recent studies on SOCE contain similar reports of harmful outcomes. Although some subjects in these studies perceived SOCE as positive, others reported a wide range of negative social and emotional outcomes. These included anger, anxiety, confusion, depression, grief, guilt, poor self-image, suicidal ideation, self-hatred, and sexual dysfunction. *Id.*

The peer-reviewed literature on SOCE contains significant evidence that SOCE are harmful. Proponents of SOCE, on the other hand, cannot point to any scientifically rigorous research on SOCE that demonstrate any benefits of these methods.

III. PLAINTIFFS-APPELLANTS' CHALLENGE TO THE EVIDENCE THAT SOCE ARE HARMFUL IS INCONSISTENT WITH ETHICAL MENTAL HEALTH CARE BECAUSE IT DISREGARDS EMPIRICALLY TESTED KNOWLEDGE OF SEXUALITY AND MENTAL HEALTH.

Plaintiffs-Appellants flout the "do no harm" principle that is the basis of medical ethics by asserting that the compelling evidence of harm is "anecdotal at best" and not "scientifically credible." Opening Br. at 50, 56. They miss the point. The available scientific literature coupled with the absence of reliable research on SOCE's safety more than justifies SB 1172 in light of mental health professionals' duty to "do no harm." Ignored by Plaintiffs-Appellants, the APA Task Force expressed apprehension about SOCE in unequivocal terms: "[t]he lack of rigorous research on the safety of SOCE represents a serious concern." APA Report at 42.

To understand the APA Task Force's "serious concern," it is important to keep in mind some basics of what the professional mental health community has learned through scientific study of sexual orientation and mental health:

- Homosexuality is a natural, positive variant of human sexuality. It is not a mental illness. *See, e.g.*, APA Report at 14-15; J.C. Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality*, HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY 115, (J.C. Gonsiorek & J.D. Weinrich eds., 1991); Am. Psychological Ass'n, *Minutes of the Council of Representatives*,

30 AM. PSYCHOLOGIST 633 (1975), available at http://www.apa.org/about/policy/discrimination.aspx.

- The exact causes of homosexuality—just like the causes of heterosexuality—are unknown. *See, e.g.*, *Sexual Orientation and Adolescents*, 113 PEDIATRICS 1827, 1828 (June 1, 2004), available at http://www.pediatricsdigest.mobi/content/113/6/1827.full.pdf+html; Am. Psychological Ass'n, 7 ENCYCLOPEDIA OF PSYCHOLOGY 260 (A.E. Kazdin ed., 2000).
- Homosexuality is stigmatized, and this stigma can lead to negative mental health outcomes. APA Report at 15-17.
- Affirmative therapeutic interventions—which support clients' identity development without preconceived goals for how they ultimately identify or express their sexual orientation—can help clients cope with stigma and improve mental health. *Id.* at 60-63.
- Conversely, interventions that reinforce stigma—by assuming that homosexuality is a disorder—often lead to psychological pain by reinforcing internalized homophobic attitudes. *Id.* at 86-87.

Within this framework, SOCE pose an unacceptable risk of harm to mental health. SOCE purport to control homosexuality even though the mechanisms that cause it are unknown. Worse, SOCE presume that homosexuality is a mental

disorder that should be changed. *See* Equality California's Supplemental Excerpts of Record ("SER") 49. By embracing this long-discredited view, SOCE reinforce stigma that is known to harm mental health. *See id.*

The risks are especially high for minors. Minors have emotional and cognitive vulnerabilities that leave them particularly vulnerable to harm from stigma. *Id.* at 51. Family rejection is strongly associated with poor mental health outcomes for lesbian, gay, and bisexual youth. *See, e.g.*, Caitlin Ryan, David Huebner, Rafael M. Diaz, & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346 (Jan. 1, 2009), available at http://www.pediatricsdigest.mobi/content/123/1/346.full.pdf+html; SER 61-64. Moreover, minors' financial and emotional dependence on adults may leave them little choice in whether to undergo a treatment that reinforces stigma. APA Report at 77; SER 51-52. At a minimum, SOCE interfere with a developmental process in which the ultimate outcome—and the effect of efforts to control it—are unknown. APA Report at 77; SER 51. These risks should ***heighten***, not lessen, the caution required by the "do no harm" principle.

The direct evidence of harm found in SOCE research—regardless of how Plaintiffs-Appellants label that evidence—is consistent with a large body of knowledge tending to show that SOCE are dangerous to youth. If SOCE

proponents want to claim ethical and scientific legitimacy for their methods, they bear the burden of refuting this body of knowledge. They have failed to do so. Under the "do no harm" principle that guides medical ethics, the American Psychological Association, its peer organizations, and the legislature are well-justified in concluding that SOCE pose an unacceptable risk to minors. *See* SB 1172 § 1(b)-(n); Am. Psychological Ass'n, *Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts* (2009), available at http://www.apa.org/about/policy/sexual-orientation.aspx; Am. Psychiatric Ass'n, *Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies* (2000), available at http://www.psychiatry.org/advocacy--newsroom/position-statements.

CONCLUSION

Scientific knowledge and ethical standards for mental health professionals offer ample reason to conclude that SOCE are unreasonably dangerous for minors. The legislature had a rational basis for enacting SB 1172.

Dated: February 4, 2013

Respectfully submitted,

COVINGTON & BURLING LLP

By */s/ Jay Rapaport*
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ADDENDUM

BILL NUMBER: SB 1172 CHAPTERED
BILL TEXT

CHAPTER 835
FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2012
APPROVED BY GOVERNOR SEPTEMBER 30, 2012
PASSED THE SENATE AUGUST 30, 2012
PASSED THE ASSEMBLY AUGUST 28, 2012
AMENDED IN ASSEMBLY JULY 5, 2012
AMENDED IN SENATE MAY 25, 2012
AMENDED IN SENATE APRIL 30, 2012
AMENDED IN SENATE APRIL 25, 2012
AMENDED IN SENATE APRIL 16, 2012
AMENDED IN SENATE APRIL 9, 2012

INTRODUCED BY Senator Lieu
(Coauthor: Assembly Member Ma)

FEBRUARY 22, 2012

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.

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.

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.

CERTIFICATION OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Fed R. App. P. 29(d) and 32(a)(7)(B) because it contains 2,057 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. The brief further complies with the requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App P 32(a)(6) because it has been prepared in a proportionately spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

Dated: February 4, 2013

COVINGTON & BURLING LLP

By */s/ JAY RAPAPORT*
JAY RAPAPORT

Attorneys for *Amicus Curiae*
Dr. Jack Drescher, M.D.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 4, 2013.

I certify that all participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: February 4, 2013

COVINGTON & BURLING LLP

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