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Reply to: Virginia

November 1, 2013

Via CM/ECF Electronic Filing

United States Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, CA 94103

Re: *Pickup, et al. v. Brown, et al.*, Case No. 12-17681
Citation of Supplemental Authorities, F.R.App.P. 28(j), Local Rule 28-6

To: Honorable Members of the Court of Appeals for the Ninth Circuit:

Pursuant to Fed. R. App. P. 28(j), Plaintiffs wish to direct the Court's attention to a recent change in the American Psychiatric Association's position on pedophilia, which is relevant to Appellants' vagueness claims concerning the mental health profession's understanding of sexual orientation. Appellants' vagueness claims are set forth in their Opening Brief at pp. 39-46, their Reply Brief at pp. 25-30, and their Petition for a Rehearing at pp. 13-14. The APA recently approved the Diagnostic and Statistical Manual of Mental Health Disorders (DSM-V), which changed its position on pedophilia and classifies it as a sexual orientation. The APA's statement on this matter and pamphlet discussing the modification is attached. *See also* American Psychiatric Association, DSM-V Development, *available at* www.dsm5.org/Pages/Default.aspx. Nevertheless, almost immediately after news about the APA's change, the APA issued a press release stating that its classification of pedophilia as a sexual orientation was simply an "error." So after the purported "experts" were challenged on their classification of pedophilia as a sexual orientation, and after having vetted the DSM-V changes for over ten years, those tasked with understanding sexual orientation still could not get it correct. The press release on this issue is also attached.

The Panel and the District Court both criticized Appellants for suggesting that the term "sexual orientation" was not well understood, vague, and changing. *See Pickup v. Brown*, 728 F.3d 1042, 1059 (9th Cir. 2013); (ER at 00024-26). The APA's recent changes to the DSM-V reveal that such criticism was not well-founded. Indeed, the term "sexual orientation" is continuing to change even as this matter is pending before this Court.

Sincerely,
/s/Mathew D. Staver
Attorney for Plaintiffs/Appellants



Paraphilic Disorders



In the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, paraphilic disorders are often misunderstood as a catch-all definition for any unusual sexual behavior. In the upcoming fifth edition of the book, DSM-5, the Sexual and Gender Identity Disorders Work Group sought to draw a line between atypical human behavior and behavior that causes mental distress to a person or makes the person a serious threat to the psychological and physical well-being of other individuals. While legal implications of paraphilic disorders were considered seriously in revising diagnostic criteria, the goal was to update the disorders in this category based on the latest science and effective clinical practice.

Through careful consideration of the research as well as of the collective clinical knowledge of experts in the field, several important changes were made to the criteria of paraphilic disorders, or paraphilias as they have been called in previous editions of the manual.

Characteristics of Paraphilic Disorders

Most people with atypical sexual interests do not have a mental disorder. To be diagnosed with a paraphilic disorder, DSM-5 requires that people with these interests:

- feel personal distress about their interest, not merely distress resulting from society's disapproval; or
- have a sexual desire or behavior that involves another person's psychological distress, injury, or death, or a desire for sexual behaviors involving unwilling persons or persons unable to give legal consent.

To further define the line between an atypical sexual interest and disorder, the Work Group revised the names of these disorders to differentiate between the behavior itself and the disorder stemming from that behavior (i.e., Sexual Masochism in DSM-IV will be titled Sexual Masochism Disorder in DSM-5).

It is a subtle but crucial difference that makes it possible for an individual to engage in consensual atypical sexual behavior without inappropriately being labeled with a mental disorder. With this revision, DSM-5 clearly distinguishes between atypical sexual interests and mental disorders involving these desires or behaviors.

The chapter on paraphilic disorders includes eight conditions: exhibitionistic disorder, fetishistic disorder, frotteuristic disorder, pedophilic disorder, sexual masochism disorder, sexual sadism disorder, transvestic disorder, and voyeuristic disorder.

Additional Changes to Paraphilic Disorders

Other changes to diagnostic criteria for two DSM-5 paraphilic disorders also should be noted.

The first concerns transvestic disorder, which identifies people who are sexually aroused by dressing as the opposite sex but who experience significant distress or impairment in their lives—socially or occupationally—because of their behavior. DSM-IV limited this behavior to heterosexual males; DSM-5 has no such restriction, opening the diagnosis to women or gay men who have this sexual interest. While

the change could increase the number of people diagnosed with transvestic disorder, the requirement remains that individuals must experience significant distress or impairment because of their behavior.

In the case of pedophilic disorder, the notable detail is what wasn't revised in the new manual. Although proposals were discussed throughout the DSM-5 development process, diagnostic criteria ultimately remained the same as in DSM-IV TR. Only the disorder name will be changed from pedophilia to pedophilic disorder to maintain consistency with the chapter's other listings.

DSM is the manual used by clinicians and researchers to diagnose and classify mental disorders. The American Psychiatric Association (APA) will publish DSM-5 in 2013, culminating a 14-year revision process. For more information, go to www.DSM5.org.

APA is a national medical specialty society whose more than 36,000 physician members specialize in the diagnosis, treatment, prevention and research of mental illnesses, including substance use disorders. Visit the APA at www.psychiatry.org. For more information, please contact Eve Herold at 703-907-8640 or press@psych.org.

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NEWS RELEASE

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October 31, 2013

APA Statement on DSM-5 Text Error
Pedophilic disorder text error to be corrected

The American Psychiatric Association's (APA) Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) has recently been published after a comprehensive multi-year research and review of all of its diagnostic categories.

In the case of pedophilic disorder, the diagnostic criteria essentially remained the same as in DSM-IV-TR. Only the disorder name was changed from "pedophilia" to "pedophilic disorder" to maintain consistency with the chapter's other disorder listings.

"Sexual orientation" is not a term used in the diagnostic criteria for pedophilic disorder and its use in the DSM-5 text discussion is an error and should read "sexual interest." In fact, APA considers pedophilic disorder a "paraphilia," not a "sexual orientation." This error will be corrected in the electronic version of DSM-5 and the next printing of the manual.

APA stands firmly behind efforts to criminally prosecute those who sexually abuse and exploit children and adolescents. We also support continued efforts to develop treatments for those with pedophilic disorder with the goal of preventing future acts of abuse.