

Case No. S039738

2 Civil B061869

(Superior Court Case No. C365529)

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

TIMOTHY CURRAN,

Appellant,

vs.

MOUNT DIABLO COUNCIL OF THE BOY SCOUTS OF AMERICA,

Respondent.

Appeal from the Los Angeles Superior Court
The Honorable Sally Grant Disco, Judge

**BRIEF AMICUS CURIAE OF
THE NATIONAL ASSOCIATION OF SOCIAL WORKERS;
CALIFORNIA CHAPTER OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS;
PARENTS, FAMILIES, AND FRIENDS OF LESBIANS AND GAYS;
GAY AND LESBIAN PARENTS COALITION INTERNATIONAL; AND
THE GAY, LESBIAN, AND STRAIGHT TEACHERS NETWORK,
IN SUPPORT OF APPELLANT**

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INTRODUCTION

Amici the National Association of Social Workers; the California Chapter of the National Association of Social Workers; Parents, Families and Friends of Lesbians and Gays; the Gay and Lesbian Parents Coalition International; and the Gay, Lesbian, and Straight Teachers Network submit this brief in support of appellant on the issue of the state's compelling interest in ending anti-gay discrimination.¹ Such discrimination inflicts terrible injury upon all youth, both gay and heterosexual. The damage includes a significant increase in violence and an alarming increase in suicide and other self-destructive behaviors. Amici present below a summary of journals, studies, and press reports documenting the damage to youth, thereby providing the Court with support for the state's compelling interest in ending the discrimination challenged in this action.

ARGUMENT

THE STATE HAS A COMPELLING INTEREST IN ENDING DISCRIMINATION AGAINST PEOPLE WHO ARE GAY BECAUSE OF THE IMPACT OF SUCH DISCRIMINATION ON ALL YOUTH, BOTH GAY AND NON-GAY.

The state has a compelling interest in ending discrimination against people who are lesbian or gay. While several reasons establish the compelling nature of the state's interest,² one

¹ A statement of the interests of amici is appended to this brief.

² The United States Supreme Court held in Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 549 (1987), that California's interest in ending

reason is sufficient: the destructive effect such discrimination has on the youth in our communities -- both those who are gay and those who are heterosexual.³

The United States Supreme Court's historic discussion of the effect of racial discrimination on African-American children in Brown v. Board of Education, 347 U.S. 483 (1954), holds insightful truths about the effects of anti-gay discrimination on gay youth as well. The Court observed in Brown that discrimination reaching children "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Id.

discrimination through the Unruh Civil Rights Act is "compelling." California's courts have agreed that the "'government has a compelling state interest in eradicating discrimination in all forms.'" Pines v. Tomson, 160 Cal. App. 3d 370, 391 (1984) (citation omitted). Moreover, it specifically has been held that "[t]he eradication of sexual orientation discrimination is a compelling governmental interest." Gay Rights Coalition v. Georgetown University, 536 A.2d 1, 31-38 (D.C. App. 1987). Among the many goals sought to be advanced by laws like the Unruh Act are the removal of "barriers to ... political and social integration that have historically plagued certain groups," Roberts v. United States Jaycees, 468 U.S. 609, 625 (1984), and the "deprivation of personal dignity that ... accompanies denial of equal access to public establishments." Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 250 (1964).

³ Given that the respondent in the present case is affiliated with the largest organization for young men in the United States, this brief will focus primarily on the effects of discrimination on gay and non-gay adolescents who are male, although the literature discussed in this brief also demonstrates corresponding damage to female adolescents, both those who are lesbian and those who are not. In addition, it is important to note that youth who are perceived to be gay, although they are not gay, often suffer the same injury as do gay youth. Such injury applies as well to the friends of gay youth and to the daughters and sons of lesbian and gay parents.

at 494. In its opinion, the Court looked to social science literature to assess the effects of discrimination. Id. Through this brief, amici seek to assist this Court by presenting a similar review of the social science literature documenting the effects of anti-gay discrimination on young people. That literature demonstrates that such discrimination generates brutal violence against gay youth and leads to the profound loss of gay youth to suicide and other self-destructive behaviors that exact a high cost for the state.

Anti-gay discrimination also has serious effects upon non-gay youth. Such discrimination "hurts [youth] who are not gay or lesbian because they are taught to hate and discriminate." Joyce Hunter & Robert Schaecher, Gay and Lesbian Adolescents, in Encyclopedia of Social Work 1055, 1059 (Richard L. Edwards et al. eds., 19th ed. 1995). Hate, which too often leads to violence, is a form of dehumanization, which harms all members of a free society. Such dehumanization of those who are different from the majority unfortunately has occurred across history, with the most notorious manifestation in this country being the treatment of racial difference.

This dehumanization has corrupted our society to this day. Whatever our race, we have all been harmed, we have all paid in blood, in social pathology, and in false senses of inferiority or superiority, as Abraham Lincoln foretold in his Second Inaugural Address. For example, in describing the consequences to white children of seeing blacks segregated out of the schools, deprived not only of civil rights, but of equal humanity, Senator Charles Sumner declared, 'Their hearts, while yet tender with childhood, are necessarily hardened by this conduct, and their subsequent lives, perhaps, bear enduring testimony to

legalized uncharitableness.' Even more succinctly, Frederick Douglass observed, 'No man can put a chain about the ankle of his fellow man, without at last finding the other end fastened about his own neck.'

Evan Wolfson, Civil Rights, Human Rights, Gay Rights: Minorities and the Humanity of the Different, 14 Harv. J.L. & Pub. Pol'y 23, 24-25 (1991) (citations omitted). The words of Lincoln, Sumner, and Douglass also describe the effect of anti-gay discrimination on non-gay youth, because discrimination teaches them at a tender age to hate and to commit acts of violence against gay people at an alarming rate. Amici discuss below both the harms that anti-gay discrimination inflicts upon the hearts and minds of non-gay youth, and the suffering that results for gay youth.

I. ANTI-GAY DISCRIMINATION PROMOTES VIOLENCE.

Anti-gay violence by teenagers is widespread, as documented in multiple studies of lesbians and gay men who suffered violence when they were young.

Between 33% and 49% of the respondents in studies conducted in Maine, Wisconsin, Pennsylvania, and in eight U.S. cities had experienced harassment, threats and/or violence while in high school or junior high school. According to the [New York] Governor's Task Force on Bias-related Violence (1988), teenagers surveyed about their biases against a variety of minorities reacted more negatively to gay people than to any other group. The report described this aversion as "alarming" and concluded that gay men and lesbians "are perceived as legitimate targets that can be openly attacked." The report noted that teenagers' written comments about gays were "often openly vicious," and that "a number of students threatened violence against gays."

Kevin T. Berrill, Anti-Gay Violence and Victimization in the United States, 5 J. Interpersonal Violence 274, 286 (1990)

(citations omitted).³

Threats against gay youth often escalate to actual violence, but the fear of retribution for reporting the violence leaves it unaddressed. For example, one state's attempt to address the violence against lesbian and gay youth in schools has documented shocking results:

Incidents reported [in one twelve-month period from 1994-1995] ranged from name-calling to rape. Overall, assailants outnumbered targeted persons by about three to one. Two severe beating incidents resulted in emergency room care for three people and in-patient mental health treatment for one. Fourteen incidents reported this year involved some form of sexual assault Of these fourteen sexual assaults, six were gang rapes, with a total of eight people raped. This year's incidents have caused four youths to begin or increase their use of alcohol or other drugs. One of those youths and two others attempted suicide and another killed himself.

Safe Schools Coalition of Washington, Safe Schools Anti-Violence Documentation Project Second Annual Report 1 (1995) (attached as Appendix A). The majority of perpetrators of violence are teenage men, id. at 17, which highlights the significance of ending discrimination in organizations that direct their activities toward adolescent and pre-adolescent males, such as

³ See also W. Blumenfeld & D. Raymond, Looking at Gay and Lesbian Life 245-46 (1988) (describing an incident where a man, attacked by three youths, was "kicked and beaten and thrown over the rail of a bridge . . . , twenty feet down into ten-foot deep waters, despite his screams that he could not swim. His body was found the next day downstream." The teenagers bragged afterward to a friend that they "jumped a fag and beat the s--- out of him" and then threw him into the stream. All three were released into the custody of their parents because the assistant attorney general said they were "not a threat to the community." The chief detective on the case agreed, because, in his words, the teenagers "came from respectable families").

the Boy Scouts.⁴

Another state found the violence against lesbian and gay youth in schools, and in particular the link to the high suicide rate for lesbian and gay youth, to necessitate a "Governor's Commission on Gay and Lesbian Youth." Gov. Weld Asks Schools to Aid Gay Students, The New York Times, July 4, 1993, at A15. As a result, the state of Massachusetts became the first state to create a program to train teachers in preventing violence and harassment against lesbian and gay youth. Id.

The connection between discrimination and violence occurs at many levels, and frequently starts with a tolerance of discrimination by the government and by important social institutions and others who set community standards. Learning that discrimination is acceptable sets the stage for hatred of those discriminated against, a lesson that has been commonplace in many of our nation's schools. See, e.g., Appendix A, passim. With the tolerance of anti-gay discrimination, ". . . school environments become the breeding ground for bigotry." Abby Abinati, Legal Challenges Facing Lesbian and Gay Youth, in Helping Gay and Lesbian Youth 149, 156 (Teresa DeCrecenzo ed., 1994). Numerous studies have shown that the next step, from hatred to violence, is predictable. "When adults tolerate

⁴ See M.L. Stein, Teen Arrested in Hate Mail Case, Editor and Publisher Magazine, June 5, 1993, at 32 (describing arrest of "17-year-old high school honors student and former Boy Scout" on "suspicion of sending hate-laden Ku Klux Klan letters [which included anti-gay material] to two San Diego County weeklies and threatening one with destruction.")

abusive language, the next step is often physical violence. Lesbian and gay students are pushed, punched, and even severely beaten." Hunter & Schaecher, Gay and Lesbian Adolescents, supra, at 1058.

The reporting of violence against gay youth is often a hidden component of the much larger reporting of violence against lesbian and gay individuals in general. Violence against the lesbian and gay population as a whole is therefore an indication of violence against gay youth. In addition, such violence reflects how the damage to non-gay youth, in learning to hate and commit acts of violence, carries over into adulthood to create long-term costs to the state through harms to human dignity and economic costs in the areas of health care and criminal justice.

A federal study commissioned by the National Institute of Justice concluded that gay men and lesbians are probably victimized more often than any other minority group. P. Finn & T. McNeil, The Response of the Criminal Justice System to Bias Crime: An Exploratory Study 1 (1987); see also Watkins v. U.S. Army, 875 F.2d 699, 724 (9th Cir. 1989) (Norris, J., concurring in the judgment) ("reports of violence against homosexuals have become commonplace in our society"), cert. denied, 498 U.S. 957 (1990). The violence against lesbian and gay people in general "nearly tripled between the years 1988 and 1992 in five major cities across the country from 697 incidents in 1988 to 1,898 incidents in 1992." Suzanne B. Goldberg & Bea Hanson, Violence Against Lesbians and Gay Men, 28 Clearinghouse Review 417 (1994).

After 1992, studies began to track anti-gay murders, discovering 151 bias-related murders of lesbians and gay men by the latter half of 1994, with seven murders in Chicago, seventeen murders in Washington, D.C., and twenty-eight murders in New York. Lori Rotenberg, Study Links Homophobia, 151 Murders, Chic. Sun-Times, December 21, 1994, at 27.⁵ In the state of Texas, at least eight gay men were murdered in 1994 solely because they were gay, with the violence including strangulation, throat slashing, bludgeoning to the head, multiple stab wounds, gunshots, and the cutting of genitals. Clifford P., Victims of Hate Killings, The Houston Post, April 2, 1995, at A25. Half of the Texas murders involved teen-aged suspects, and in one of those cases the teenagers admitted that they were "queer-hunting". Id. Elsewhere, in just one night alone in two different states, on February 9, 1993, two assailants raped a gay man in Hartford, Connecticut when they found out he was gay, and another assailant kicked and choked a gay man in Madison, Wisconsin, screaming "I hate faggots!" Arlene Levinson, Threat of Violence Other

⁵ Over half of the murders "were characterized as 'overkill' by law enforcement, which means that the perpetrators used extraordinary violence such as multiple stab wounds, mutilation and dismemberment." Id. The nature of the murders demonstrates the depth of the hate learned by the perpetrators. "Anti-gay murders are often marked by extreme brutality. According to a study by Miller and Humphreys (1980) 'An intense rage is present in nearly all homicide cases involving gay male victims. A striking feature . . . is their gruesome, often vicious nature. Seldom is the homosexual victim simply shot. He is more apt to be stabbed a dozen or more times, mutilated and strangled.'" Berrill, supra, at 279-280 (quoting B. Miller. & L. Humphreys, Lifestyles and Violence: Homosexual Victims of Assault and Murder, 3 Qualitative Sociology 169 (1980)).

Longtime Companion for Gay Men, Women, L.A. Times, July 18, 1993, at A8.

In the state of California, anti-gay violence is rampant,⁶ as shown by a review merely of the newspaper reports of physical assaults since 1993. In Los Angeles County, anti-gay violence rose sharply from 1993 to 1994, despite an overall decrease in hate crimes in general. Errol Cockfield Jr., Hate Crimes Against Gays, Latinos Up in L.A. County, L.A. Times, March 30, 1995, at B1. Physical assaults motivated by sexual orientation increased from 241 to 319 incidents (verbal threats increased sixty percent). Id. In October 1994 in San Francisco, a gay man was shot to death for being gay, leading Mayor Jordan to post a \$10,000 award for the information leading to a conviction. S.F. Mayor Posts Award in Attack on Gay Man, San Francisco Chronicle, November 1, 1994, at A20. In the same month, a white supremacist pleaded guilty to stabbing a gay man twenty times, to his death, because he was gay. Supremacist Says He Killed Gay Man, Sacramento Bee, October 16, 1994, at B3. In May 1994, in San Diego, two men beat a gay man so badly that his kidneys were damaged, and, after the two men threatened to sodomize him, the gay man asked that he be allowed to die rather than be tormented further. Dwight C. Daniels, 2 Men Arrested in Taunting, Beating

⁶ See In re Joshua H., 13 Cal. App. 4th 1734, 1748 (1993) (noting that, in 1991, there were more reports of hate crimes in Los Angeles against gay men than against any other group and that hate crimes against gays and lesbians increased 50% between 1990 and 1991, a higher rate of increase than hate crimes against any other group).

of Gay in Hate Crime, San Diego Union-Tribune, May 17, 1994, at B3. In early 1994, in Santa Ana, a judge ordered two young men to serve sentences for the savage beating of a man because he was gay, leaving the man with his left eye protruding from its socket and a rock lodged three-quarters of an inch into the back of his head (he was to never walk again without assistance). Rene Lynch & Doreen Carvajal, Teen Gets 10 Years in O.C. 'Gay Bashing' Case, L.A. Times, January 8, 1994, at A1.⁷

The above recitation of anti-gay violence in California merely scratches the surface, because it is limited to incidents of physical assaults that were reported by the newspapers because of their severity and where the victim or a witness reported the violence as anti-gay. Similar incidents also have surfaced in California's reported case law. See In re M.S., 10 Cal. 4th 698 (1995) (describing incident where minors who yelled at group of adults, "We are going to kill you, you are all going to die of AIDS" and "We are going to get you faggots," thereafter repeatedly kicked two of the adults in the head and elsewhere, causing one of the adults to lose consciousness, requiring

⁷ In the same Santa Ana case, a civil action followed the criminal action, and the results of the civil action show how the hatred and violence spill over onto teenage bystanders. A third individual, who was a former Explorer Scout and who was not charged in the criminal action, was found liable for negligence. As a teenage friend, he had driven the two convicted individuals to the scene of the crime. The victim's lawyer explained, "People who stand by and don't actively engage in an attack can still be held responsible. . . . You can't encourage or facilitate violence." Susan Marquez Owen and Anna Cerola, Jury Awards \$1.1 Million to Man Beaten in Hate Crime, Los Angeles Times, March 15, 1995, at B1.

hospitalization); In re Joshua H., 13 Cal. App. 4th 1734 (1993) (describing minor calling neighbor a "faggot queer" and then hitting and kicking him, on videotape). Nonetheless, the horror that rests on the surface in these few reported crimes in California is strongly suggestive of the enormous mass of hate and suffering below the surface for lesbians and gay men in this state in general, as well as for gay youth in particular. That suffering, including ruined lives, also extends to all of the loved ones of those who suffer, family and friends. Combatting institutionalized discrimination, which promotes hatred that in turn leads into violence and costly suffering, is of compelling interest to the state.⁸

II. ANTI-GAY DISCRIMINATION CAUSES SUICIDE AND OTHER SELF-DESTRUCTIVE BEHAVIORS.

Aside from bearing the brunt of violence, gay youth suffer many other harms from anti-gay discrimination, with the most tragic manifestation of harm being their alarming suicide rate. According to a study by the federal government, "gay youth are 2 to 3 times more likely to attempt suicide than other young people," comprising up to thirty percent of completed suicides. Paul Gibson, Gay Male and Lesbian Youth Suicide, in Report of the

⁸ That suffering also extends to the loved ones of those who committed the violence, who, having already lost their young sons and husbands and brothers to hate, go on to lose them to the criminal justice system and ruined lives. Such losses to families, and the loss of potentially productive members of the state, and the cost imposed upon the state's criminal justice system, adds to the compelling interest of the state in ending anti-gay discrimination.

Secretary's Task Force on Youth Suicide 3-110, 3-115 (U.S. Dep't of Health & Human Services Pub. No. (ADM)89-1623, 1989) (Trial exhibit 113). As many as three thousand gay and lesbian young people take their lives each year. Id. at 3-110. "The root of the problem of gay youth suicide is a society that discriminates against and stigmatizes homosexuals. . . ." Id.; see also Cal. State Dept. of Education, Suicide Prevention Program for California Public Schools 9 (1987) (noting that gay and lesbian youth "appear to have a higher incidence of suicidal behavior than their heterosexual peers, perhaps because they are subjected to rejection, discrimination, or isolation from support networks.") (trial exhibit 125). The discrimination that so often leads to suicide also produces severe psychiatric problems, truancy, substance abuse, prostitution and attendant increases in AIDS and crime, which will be discussed below.⁹

⁹ If gay adolescents manage to make it to adulthood free of these obstacles, they are then able to lead healthy and productive lives in their communities. Emery Hetrick & A. Damien Martin, Developmental Issues and Their Resolution for Gay and Lesbian Adolescents, 14 J. Homosexuality 25, 34 (1987). "There is some indication that the incidence of contemplated and attempted suicide dramatically tapers off in young adults. Young adulthood is typically associated with greater independence from the family and more access to the lesbian and gay community, resources, and support." Hunter & Schaecher, Gay and Lesbian Adolescents, supra, at 1060. Regrettably, anti-gay discrimination prevents a great number of gay adolescents from reaching an adulthood in which they can be healthy and productive members of their communities.

A. Discrimination Causes Gay Youth to be Isolated and Vulnerable to Harm.

A significant factor in the permanent loss of gay adolescents to suicide or other self-destructive behavior is the profound lack of emotional support that results from anti-gay discrimination. Due to practices such as respondent's, most gay adolescents learn early in their lives that they are despised, with no meaningful information to the contrary from adults who play key roles in their lives. A. Damien Martin, Learning to Hide: The Socialization of the Gay Adolescent, 10 Adolescent Psychiatry 52, 57 (Sherman Feinstein et al. eds., 1982).¹⁰ In addition to facing the emotional toll of being a despised person, gay youth often suffer the verbal and physical violence, described above, from those who have learned to despise them. The violent conduct ranges from daily taunts to brutal beatings and sexual assaults, including gang rapes. See Appendix A. The combination of the violence with the lack of support is overwhelming.

Naturally, anti-gay discrimination plays a role in the lack of support that gay young people feel. Such discrimination "perpetuates ignorance about human sexuality and reinforces sex role stereotypes." Hunter & Schaecher, Gay and Lesbian Adolescents, supra, at 1059. In part, the ignorance and stereotyping occurs because openly gay adults are either

¹⁰ Feeling despised, gay adolescents may also feel unable to approach parents who might be supportive, because the adolescents may not feel deserving of support or may be worried about bringing shame to their parents.

officially excluded from participating in activities involving young people, as has been the case in respondent's organization, or often stay hidden in the closet out of fear of discrimination and other harm. Dennis A. Anderson, Lesbian and Gay Adolescents: Social and Developmental Considerations, *The High School Journal*, Oct/Nov 1993-Dec/Jan 1994, at 13, 15; A. Damien Martin & Emery S. Hetrick, The Stigmatization of the Gay and Lesbian Adolescent, 15 *J. Homosexuality* 163, 173 (Michael W. Ross ed., 1988). The fear of harm is not surprising, given that jobs and physical safety so often are at stake. Accordingly, most young gay people lack positive role models that might provide them the needed support to manage anti-gay discrimination.

One persistent stereotype is that gay men molest children, even though there is no evidence of any positive correlation between a gay sexual orientation and child molestation. Carole Jenny et al., Are Children At Risk for Sexual Abuse by Homosexuals?, 94 *Pediatrics* 41 (1994). Science has shown, to the contrary, that "[G]ay men are no more likely than heterosexual men to molest children." Gregory M. Herek, Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research, 1 *Law & Sexuality* 133, 156 (1991). Indeed, respondent's organization itself advises those in its programs that it is a "myth [that] children are at greater risk of sexual victimization from 'gay' (homosexual) adults than from 'straight' (heterosexual) adults," pointing out that studies indicate that "'Offenders attracted to boy victims typically report that they are uninterested in or

revulsed by adult homosexual relationships.'"). Trial exhibit 95, pp. DC-4, CS-5, BS-5, and E-5; trial exhibit 101, page 12.¹¹

Another persistent stereotype is that gay men could recruit children to be gay, as if being gay were a matter of belief, subject to persuasion. It is now understood that sexual orientation is influenced genetically, anatomically, biologically, and environmentally.¹² Regarding the environmental influence, the evidence is complicated, with a myriad of possible factors. Herek, Myths About Sexual Orientation, supra, at 150. Whatever the influence of environmental factors, however, it is now widely accepted that the combination of all factors -- genetic, anatomical,

¹¹ See also Reporter's Transcript, page 726, lines 3-25 (testimony of respondent's Chief Scouting Executive, agreeing that "one of the things that [respondent] tries to convey in combatting child and sexual abuse is that it is a myth that child[ren] are at greater risk from sexual victimization from homosexual adults than heterosexual adults").

¹² The direct connection between DNA and sexual orientation demonstrates the genetic influence. Dean H. Hammer et al., A Linkage Between DNA Markers on the X Chromosome and Male Sexual Orientation, 261 Science 321 (1993). Studies of identical twins further demonstrate the genetic influence, with genetic factors determining sexual orientation somewhere between thirty and seventy-five percent of the time. J. Michael Bailey et al., Heritable Factors Influence Sexual Orientation in Women, 50 Arch. Gen. Psychiatry 217 (1993); J. Michael Bailey & Richard C. Pillard, A Genetic Study of Male Sexual Orientation, 48 Arch. Gen. Psychiatry 1089 (1991); Frederick L. Whitam et al., Homosexual Orientation in Twins: A Report of 61 Pairs and Three Triple Sets, 22 Archives of Sexual Behavior 187 (1993). A study of the hypothalamus in the brain demonstrates the anatomical influence. Simon LeVay, A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men, 253 Science 1034 (1991). A study of prenatal levels of sex hormones demonstrates the biological influence. Green, The Immutability of (Homo)sexual Orientation: Behavioral Science Implications for a Constitutional (Legal) Analysis, 16 J. Psychiatry & Law 537 (1988).

biological, and environmental -- will determine sexual orientation by the age of five in a child, only manifesting itself in sexual terms later in adolescence. Joyce Hunter & Robert Schaecher, Stresses on Lesbian and Gay Adolescents in Schools, 9 Social Work in Education 180, 181 (1987); see also Reporter's Transcript, page 1264, line 3 through page 1265, line 18; page 1268, lines 9-15; and page 1270, line 20 through page 1272, line 11. If sexual orientation is determined by the age of five, a gay man cannot "recruit" an adolescent, even if one were to accept the bizarre premise that gay men would want to "recruit" adolescents. "The etiology of homosexuality remains unclear, but the current literature and the vast majority of scholars in this field state that one's sexual orientation is not a choice, that is, individuals no more choose to be homosexual than heterosexual." Committee on Adolescence, American Academy of Pediatrics, Homosexuality and Adolescence, 92 Pediatrics 631 (1993). Accordingly, the belief that gay youth could be "recruited" to be gay is part of a stereotype that is perpetuated by discrimination and that prevents positive role models from providing support to gay youth.

Commonly, families and clergy and friends, often the key to emotional stability for adolescents, also do not provide needed support to gay adolescents, sometimes because of persistent stereotypes and sometimes because of fear of harm. In fact, gay adolescents are the only minority adolescents who do not generally share their minority status with their parents.

A Black, Jewish, or Hispanic youngster does not run the risk of being thrown out of the family for being Black, Hispanic, or Jewish; a homosexual adolescent does run that risk. A Black, Jewish, or Hispanic adolescent does not run the risk of losing a religious social identity for being Black, Jewish, or Hispanic; the homosexual adolescent does run that risk. Other minority adolescents do not run the risk of being expelled from their peer groups if they are discovered; the homosexual adolescent does run that risk.

Martin & Hetrick, The Stigmatization of the Gay and Lesbian Adolescent, supra, at 170. "Even more importantly, other minority adolescents, no matter how terrible the social or economic deprivation under which they may exist, have a chance to develop a sense of the 'we' versus 'they,' the very essence of group identity; homosexual young people do not." Hetrick & Martin, Developmental Issues and Their Resolution for Gay and Lesbian Adolescents, supra, at 29.¹³ Gay adolescents most often stand alone, in desolation, without family, without friends, without clergy, and without any positive role models in their lives.¹⁴

¹³ It should be noted that, for those minority adolescents who also happen to be lesbian or gay, the pressure is all the greater, because they must face anti-gay discrimination on top of the discrimination directed at their other minority status. Hunter & Schaefer, Gay and Lesbian Adolescents, supra, at 1057.

¹⁴ Because so many lesbians and gay men are forced into the closet in order to avoid discrimination, such as that practiced by respondent, it is particularly hard to change the negative stereotypes and prejudiced views still held by many people about gay individuals whom they do not realize they know, but whom they in most cases do like and respect. See Watkins v. U.S. Army, 875 F.2d at 725 n. 29 (because "homosexuals are a minority and are frequently excluded from jobs, schools, churches, and heterosexual social circles . . . heterosexuals generally have relatively few opportunities to meet homosexuals and overcome their stereotypical thinking about homosexuality.").

B. Isolation and Vulnerability Lead to Suicide and Other Self-destructive Behavior.

The profound damage gay youth suffer from the lack of support have been all too predictable, with problems like truancy at the beginning of the path and suicide at the end. "The fear of violence and harassment has caused some lesbian and gay students to become chronic truants." Hunter & Schaecher, Stresses on Lesbian and Gay Adolescents in Schools, supra, at 184. Often gay adolescents adopt strategies to cope with discrimination that "may involve engaging in unprotected sex with people of the same sex or opposite sex, even getting pregnant or fathering a child, so that no one will suspect the young person's homosexuality. The sex often includes the use of alcohol and other drugs. These behaviors put the adolescent at significant risk for HIV infection." Hunter & Schaecher, Gay and Lesbian Adolescents, supra, at 1057 (citations omitted).

Gay adolescents often are forced to leave home and turn to the streets. "Rejected by family and friends, with no place to go, many of these 'throwaway' youths end up on the streets, putting them at high risk for prostitution and drug abuse." Hunter & Schaecher, Stresses on Lesbian and Gay Adolescents in Schools, supra, at 186. Studies of gay male adolescents have shown significant substance abuse.

The incidence of alcohol and drug use among the gay youths was considerably higher than statistics cited in national drug studies. Specifically, weekly use of alcohol, marijuana, cocaine, and crack cocaine was two to five times higher in the gay sample (National Institute on Drug Abuse, 1990).

Hunter & Schaecher, Gay and Lesbian Adolescents, supra, at 1059. With regard to prostitution, many gay adolescents "are forced to become involved in prostitution in order to survive . . . their struggle for survival becomes the fulfillment of a 'suicidal script' which sees them engaging in increasingly self-destructive behaviors. . . ." Gibson, Gay Male and Lesbian Youth Suicide, supra, at 3-114.

The tragic loss of so many young people in our communities to a variety of self-destructive behavior, and the cost to the state of such behavior, is of compelling interest to the state.

The problem is clearly one of providing information, acceptance, and support to gay youth for coping with the pressures and conflicts they face growing up as homosexuals in our society. However, in addressing their concerns we confront two issues of greater magnitude: 1) the discrimination against and maltreatment of homosexuals by our society and 2) the inability of our society to recognize or accept the existence of homosexuality in the young.

Gibson, Gay Male and Lesbian Youth Suicide, supra, at 3-133. One clear answer to the problem is for the state to attempt to put an end to anti-gay discrimination.

CONCLUSION

The state has a compelling interest in ending anti-gay discrimination. Tolerating anti-gay discrimination teaches non-gay youth to hate and to commit acts of violence, imposing costs upon the state in harm to its residents' human dignity and burdens on its health and criminal justice systems. Anti-gay discrimination leaves gay youth isolated and vulnerable to

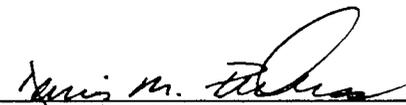
violence and psychological harm, and pushes gay youth to an alarming rate of suicide and self-destructive behavior that also exacts a great cost to the state.

One of the specific answers to these profound costs of anti-gay discrimination is obvious. "Existing youth programs such as the Boy and Girl Scouts should incorporate gay youth into their activities" and "should enlist gay and lesbian adults to work with gay youth." Gibson, Gay Male and Lesbian Youth Suicide, supra, at 3-153. California's Unruh Civil Rights Act requires such a result. It is hard to envision a more compelling interest for the state than the interest in saving its non-gay youth from lifetimes of hate and from committing brutal acts of violence, and saving its gay youth from suffering at the hands of hate and violence, leading them to suicide and other tragic harms.

Dated: October 19, 1995

Respectfully submitted,

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STATEMENTS OF INTEREST OF AMICI

The following associations respectfully submit this brief amicus curiae in the above-captioned action: the National Association of Social Workers; the California Chapter of the National Association of Social Workers; Parents, Families and Friends of Lesbians and Gays; the Gay and Lesbian Parents Coalition International; and the Gay, Lesbian, and Straight Teachers Network.

The National Association of Social Workers ("NASW") was established in 1955 as a nonprofit professional association. It is the largest social-work association in the world, with more than 160,000 members. NASW has formally opposed discrimination against gay men and lesbians. In 1977, the NASW adopted its first policy statement on gay issues, which was subsequently revised and expanded in 1987 and again in 1993. As noted in the 1993 statement, the NASW Code of Ethics prohibits social workers from discriminating on the basis of sexual orientation in their professional roles. The current NASW policy also affirms the association's commitment "to work toward full social and legal acceptance and recognition of lesbian and gay people." The California Chapter of the NASW is the second largest NASW affiliate in the country.

Parents, Families and Friends of Lesbians and Gays ("PFLAG") is an international organization of 389 affiliates and over 50,000 members. Formed in 1981, PFLAG's mission is to promote

the health and well-being of gay, lesbian and bisexual persons and their families and friends through: support in coping with an adverse society; education to enlighten an ill-informed public; and advocacy to end discrimination and to secure civil rights. PFLAG affiliates have spearheaded events and activities that educate their communities about the obstacles faced by gay, lesbian, and bisexual youth, and member parents have testified before state legislatures about the impact of discrimination, harassment and violence on their lesbian, gay and bisexual teenage sons and daughters. The state of California currently has 33 PFLAG affiliates, the greatest number of any state in the country.

The Gay and Lesbian Parents Coalition International ("GLPCI") is an international federation of over 100 chapters in nine countries. Founded in 1979, GLPCI provides support and advocacy for lesbian mothers, gay fathers, their families, and prospective lesbian and gay parents. GLPCI includes 3,700 dues-paying families. Part of GLPCI's mission is to promote family values that include love and nurturing, integrity and responsibility, and acceptance and respect. GLPCI has a support program for children, called COLAGE--Children of Lesbians and Gays Everywhere--which is run by and for the children themselves with its own office and staff located in San Francisco, California. Nearly one third of GLPCI's member families (over 1,100 families) are in the State of California.

The Gay, Lesbian, and Straight Teachers Network ("GLSTN") is

a membership-based national federation of 25 chapters (including chapters in San Francisco and Los Angeles) and 2,800 members working to assure that each member of every school community is valued and respected, regardless of sexual orientation. Formed in 1990, GLSTN is the only national organization that brings together gay and straight educators and community members to work to end homophobia in the schools. In 1993, GLSTN was a leader in the successful effort that made Massachusetts the first state to enact a statute banning discrimination against public school students on the basis of sexual orientation. In 1994, GLSTN was chosen to develop the faculty training component of Massachusetts' "Safe Schools for Gay and Lesbian Youth" program, the first statewide effort to provide comprehensive training to school staffs on the needs of gay and lesbian youth. Well over one-third of GLSTN's 2,800 members (1,100) are in the state of California.

Amici are familiar with the questions involved in this case and the scope of their presentation, and believe there is a necessity for additional argument on the issue of the state's compelling interest in ending discrimination. As social workers, parents, teachers, and families of lesbians and gay men, amici are deeply familiar with and concerned about the damaging effects of anti-gay discrimination upon young people. Such discrimination inflicts terrible damage upon all youth, both gay and non-gay. The damage includes a significant increase in violence and an alarming increase in suicide and other self-

destructive behaviors. The damage not only affects youth, whose lives may be lost to jail or death, but also affects their families and the communities who lose the young people and the futures that they otherwise might have had. Amici's brief presents the Court with a discussion of the relevant literature and studies documenting the injury caused by anti-gay discrimination. The brief aims to assist the Court by providing a summary of journals, studies, and press reports, which provide support for the state's compelling interest in ending the discrimination challenged in this action. The specific authorities and references presented by amici are not currently discussed in briefs before the Court.

Lastly, given that a substantial number of amici's members are citizens of the State of California, amici's concern with the challenged discrimination in California is particularly strong.