

Docket No. A-2427-95T3

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

JAMES DALE,

Appellant,

v.

THE BOY SCOUTS OF AMERICA and THE MONMOUTH COUNCIL, BOY SCOUTS
OF AMERICA,

Respondent,

APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, MONMOUTH COUNTY
THE HONORABLE J.S.C. MCGANN, JR., JUDGE

**BRIEF AMICI CURIAE OF
NATIONAL ASSOCIATION OF SOCIAL WORKERS and
THE NEW JERSEY CHAPTER OF THE NATIONAL
ASSOCIATION OF SOCIAL WORKERS**

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Brown v. Board of Education, 347 U.S. 483 (1954) 3

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Heart of Atlanta Motel v. United States, 379 U.S. 241, 250 (1964) 2

Roberts v. United States Jaycees, 468 U.S. 609, 625 (1984) 2

Watkins v. U.S. Army, 875 F.2d at 725 n. 29 (9th Cir. 1989), cert. denied, 498 U.S. 957 (1990) 14

MISCELLANEOUS

A. Damien Martin, Learning to Hide: The Socialization of the Gay Adolescent, 10 Adolescent Psychiatry 52, 57 (Sherman Feinstein et al. eds., 1982) 10

Abinati, Abby, Legal Challenges Facing Lesbian and Gay Youth, in Helping Gay and Lesbian Youth 149, 156 (Teresa DeCrecenzo ed., 1994) 5

Anderson, Dennis A., Lesbian and Gay Adolescents: Social and Developmental Considerations, The High School Journal, Oct/Nov 1993-Dec/Jan 1994, at 13, 15 10

Bailey, J. Michael & Pillard, Richard C., A Genetic Study of Male Sexual Orientation, 48 Arch. Gen. Psychiatry 1089 (1991) 12

Bailey, J. Michael, et al., Heritable Factors Influence Sexual Orientation in Women, 50 Arch. Gen. Psychiatry 217 (1993) 12

Berrill, Kevin T., Anti-Gay Violence and Victimization in the United States, 5 J. Interpersonal Violence 274, 286 (1990) 6

Clifford P., Victims of Hate Killings, The Houston Post, April 2, 1995, at A25 7

Committee on Adolescence, American Academy of Pediatrics, Homosexuality and Adolescence, 92 Pediatrics 631 (1993) 12

Gibson, Paul, Gay Male and Lesbian Youth Suicide, in Report of the 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) 9, 15-17

Gov. Weld Asks Schools to Aid Gay Students, The New York Times, July 4, 1993, at A15 6

Green, The Immutability of (Homo)sexual Orientation: Behavioral Science Implications for a Constitutional (Legal) Analysis, 16 J. Psychiatry & Law 537 (1988) 12

Hammer, Dean H., et al., A Linkage Between DNA Markers on the X Chromosome and Male Sexual Orientation, 261 Science 321 (1993) 11

Herek, Gregory M., Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research, 1 Law & Sexuality 133, 156 (1991) 11, 12

Hetrick, Emery & Martin, A. Damien, Developmental Issues and Their Resolution for Gay and Lesbian Adolescents, 14 J. Homosexuality 25, 34 (1987) 9, 13

Hunter, Joyce & Schaecher, Robert, Gay and Lesbian Adolescents, in Encyclopedia of Social Work 1055, 1059 (Richard L. Edwards et al. eds., 19th ed. 1995) 3, 5, 9, 14, 15

Hunter, Joyce & Schaecher, Robert, Stresses on Lesbian and Gay Adolescents in Schools, 9 Social Work in Education 180, 181 (1987) 12, 15

Jenny, Carole, et al., Are Children At Risk for Sexual Abuse by Homosexuals?, 94 Pediatrics 41 (1994) 11

Markowitz, Michael, Man Gets Probation For Assaulting Gays To Pay One Victim \$17,000, The Record, Northern New Jersey, August 10, 1994 7

Martin, A. Damien & Hetrick, Emery S., The Stigmatization of the Gay and Lesbian Adolescent, 15 J. Homosexuality 163, 173 (Michael W. Ross ed., 1988) 11, 13

N.J. State Police Uniform Crime Reporting Unit,
1994 Annual Bias Incident Offense Report 7 (1994)
and 1990 Annual Bias Incident Offense Report 6 (1990). 7

Safe Schools Coalition of Washington, Safe Schools
Anti-Violence Documentation Project Second Annual
Report 1 (1995) 6, 10

Stein, M.L., Teen Arrested in Hate Mail Case, Editor and
Publisher Magazine, June 5, 1993, at 32 6

Whitam, Frederick L., et al., Homosexual Orientation
in Twins: A Report of 61 Pairs and Three Triple
Sets, 22 Archives of Sexual Behavior 187 (1993) 12

Wolfson, Evan, Civil Rights, Human Rights, Gay
Rights: Minorities and the Humanity of the Different,
14 Harv. J.L. & Pub. Pol'y 23, 24-25 (1991) 4

INTRODUCTION

Amici are the National Association of Social Workers and the New Jersey Chapter of the National Association of Social Workers. In support of appellant, Amici submit this brief on the issue of the state's compelling interest in ending anti-gay discrimination. Anti-gay discrimination inflicts terrible injury upon all youth, both for those who are gay and those who are not. The harm they suffer includes significant rates in violence and an alarming increase in suicide and other self-destructive behaviors. Amici present below a summary of journals and studies documenting the injury to youth, thereby demonstrating New Jersey's compelling interest in ending the discrimination challenged in this action. If indeed respondent has expressive associational interests that are implicated here, New Jersey's compelling interest overwhelms such associational interests.

STATEMENT OF INTEREST

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 New Jersey Chapter of NASW has over 6,600 members.

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.

New Jersey has a compelling interest in ending discrimination against people who are lesbian or gay. Several reasons establish the compelling nature of the state's interest.¹ However, one reason is sufficient: the destructive effect discrimination has on the youth in our communities -- both those who are gay and those who are not.²

¹ 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 a state's interest in ending discrimination through a non-discrimination statute like New Jersey's Law Against Discrimination is "compelling." Other courts have specifically held that "[t]he eradication of sexual orientation discrimination is a compelling governmental interest." Gay Rights Coalition v. Georgetown, 536 A.2d 1, 31-38 (D.C. App. 1987). Among the many goals sought to be advanced by non-discrimination laws like New Jersey's Law Against Discrimination 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 v. United States, 379 U.S. 241, 250 (1964).

² 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

Although no discrimination or prejudice is exactly the same, 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 applicable to the effects of anti-gay discrimination on gay youth. 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. at 494. In its opinion, the Court looked to social science literature to assess the effects of discrimination. Id. at 494. Through this brief, Amici seek to assist this Court by presenting a review of the social science literature documenting the effects of anti-gay discrimination on gay youth. The scientific 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

discrimination on gay and non-gay adolescents who are male, although the literature discussed in this brief also demonstrates corresponding injury 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, whether or not they are, often suffer as do gay youth. Such injury applies as well to the friends or siblings of gay youth, or the daughters and sons of lesbian and gay parents.

Hunter & Robert Schaecher, Gay and Lesbian Adolescents, in Encyclopedia of Social Work 1055, 1059 (Richard L. Edwards et al. eds., 19th ed. 1995). Hatred often leads to violence against others, a form of dehumanization. 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.

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. 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 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.

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).

One state's attempt to address the violence against lesbian and gay schoolchildren 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.

Safe Schools Coalition of Washington, Safe Schools Anti-Violence Documentation Project Second Annual Report 1 (1995). 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 the Boy Scouts.³

The state of Massachusetts 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

³ 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 to two San Diego County weeklies and threatening one with destruction.")

A15. As a result, the state became the first state to create a program to train teachers in preventing violence and harassment against lesbian and gay youth. Id.

The injury to gay and non-gay youth spreads beyond contexts particular to young people. Non-gay teens, having learned to hate, also cause suffering for lesbian and gay adults as well. 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.

In New Jersey, the statistics concerning anti-gay bias incidents are alarming. The most recent reports from the New Jersey Department of Law document that anti-gay bias incidents skyrocketed 478% from 1990 to 1994. N.J. State Police Uniform Crime Reporting Unit, 1994 Annual Bias Incident Offense Report 7 (1994) and 1990 Annual Bias Incident Offense Report 6 (1990).⁴ As reflected elsewhere in the country, teenagers overwhelmingly account for the bias crimes in New Jersey, Id. at 8 and 7, which is likewise reflected in press reports. See, e.g., Michael Markowitz, Man Gets Probation For Assaulting Gays To Pay One

⁴ The extraordinary increase is in stark contrast to the other categories for bias incidents. For example, bias incidents based on ethnicity rose 6%. Id.

Victim \$17,000, The Record, Northern New Jersey, August 10, 1994 (a teen at the time of the crime, the defendant was otherwise an "exemplary" student who dragged two gay men from a bus and beat them seriously, leading to a criminal record).

The 478% increase in anti-gay bias incidents in the state of New Jersey only reflects incidents reported to the police, and is strongly suggestive of the fuller scope 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 the loved ones, family and friends, of those who suffer. Similarly, the loved ones of those who commit the violence, families who have already lost their teenaged sons and brothers to hate, go on to lose them to the criminal justice system and sometimes ruined lives. Combatting institutionalized discrimination, which promotes hatred that in turn leads to violence and costly suffering, is of compelling interest to New Jersey. By virtue of its Law Against Discrimination, New Jersey has already recognized the compelling interest. Should that recognition not be sufficient to resolve the matter, that same compelling interest overwhelms any of respondents' expressive associational interests, if indeed such associational interests exist.

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

Anti-gay discrimination also causes gay youth to harm themselves, which adds to New Jersey's compelling interest at

stake in this matter. Aside from bearing the brunt of violence, gay youth suffer many other harms from discrimination, with the most tragic manifestation 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 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). 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. 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.⁵

⁵ 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 Isolates Gay Youth and Renders Them 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).⁶ In addition to facing the emotional toll of being despised for who they are, 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 Safe Schools Coalition of Washington, Safe Schools Anti-Violence Documentation Project Second Annual Report 1 (1995). The combination of violence with the lack of support is overwhelming.

Naturally, anti-gay discrimination plays an additional role in the lack of support which gay youth feel because gay adults are either 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 for fear of

⁶ Feeling despised, gay adolescents may also feel unable to approach even parents who might be supportive, because the adolescents themselves often do not feel deserving of support and therefore cannot recognize that it would be forthcoming.

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 adults' fear of harm is not surprising, given that jobs and physical safety are at stake. Accordingly, most young gay people lack positive role models that might provide them much needed support to manage anti-gay discrimination.

The adults' fear for jobs and physical safety often arises from the stereotypes fostered by 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). Scientific research 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).

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.⁷ 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, 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). 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

⁷ The direct connection between DNA and sexual orientation suggests 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 suggests 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 prenatal levels of sex hormones suggests the biological influence. Green, The Immutability of (Homo)sexual Orientation: Behavioral Science Implications for a Constitutional (Legal) Analysis, 16 *J. Psychiatry & Law* 537 (1988).

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.

In addition to the lack of positive gay adult role models, there is a lack of support from those who are most conventionally the source of support for adolescents. Families and clergy and friends, often the key to emotional stability for adolescents, often do not provide needed support to gay adolescents, sometimes because of the same persistent stereotypes mentioned above and sometimes because of fear of harm to themselves or their families. 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 29.⁸ Gay adolescents most often stand alone, in isolation, without family, without friends, without clergy, and without any positive role models in their lives.⁹

The state has a compelling interest in combatting anti-gay discrimination because such discrimination deprives gay youth of positive gay adult role models and of support from family and friends, often leaving adolescents isolated and vulnerable to harm.

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

⁸ 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.

⁹ 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 those they do not realize they know and frequently like and respect. See Watkins v. U.S. Army, 875 F.2d at 725 n. 29 (9th Cir. 1989), cert. denied, 498 U.S. 957 (1990) (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.").

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. That suicidal script, written by anti-gay discrimination, leads to gay youth comprising up to thirty percent of completed teen suicides, as many as three thousand young lives each year. Id. at 3-110, 3-115.

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 New Jersey.

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. By virtue of its Law Against Discrimination, New Jersey has already recognized the compelling interest, and, should that recognition not be sufficient to resolve the matter, that same compelling interest overwhelms any purported associational interests advanced by respondents.

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.

It is hard to envision a more compelling interest for New Jersey than the interest in saving its non-gay youth from lives filled with hate and 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. One of the ways to address the 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 p. 3-153. New Jersey's Law Against Discrimination requires such a result. Moreover, if indeed respondent has legitimate associational interests implicated here, they are overwhelmed by New Jersey's compelling interest in ending anti-gay discrimination.

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