

CASE NO. 13-4429

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

TARA KING, ED.D., individually and on behalf of her patients, RONALD NEWMAN, PH.D., individually and on behalf of his patients, NATIONAL ASSOCIATION FOR RESEARCH AND THERAPY OF HOMOSEXUALITY (NARTH), and AMERICAN ASSOCIATION OF CHRISTIAN COUNSELORS (AACC),

Plaintiffs–Appellants,

v.

CHRISTOPHER J. CHRISTIE, Governor of the State of New Jersey, in his official capacity, ERIC T. KANEFSKY, Director of the New Jersey Department of Law and Public Safety: Division of Consumer Affairs, in his official capacity, MILAGROS COLLAZO, Executive Director of the New Jersey Board of Marriage and Family Therapy Examiners, in her official capacity, J. MICHAEL WALKER, Executive Director of the New Jersey Board of Psychological Examiners, in his official capacity; and PAUL JORDAN, President of the New Jersey State Board of Medical Examiners, in his official capacity,

Defendants–Appellees,

and

GARDEN STATE EQUALITY,
Intervenor–Defendant–Appellee.

BRIEF *AMICI CURIAE* OF SURVIVORS OF SEXUAL ORIENTATION CHANGE EFFORTS, IN SUPPORT OF *DEFENDANTS-APPELLEES* URGING AFFIRMANCE

Appeal From The United States District Court,
District of New Jersey
Civil Action No. 13-5038
The Honorable Freda L. Wolfson, District Judge

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INTEREST OF *AMICI CURIAE*

Amici Curiae are four survivors of “sexual orientation change efforts” (“SOCE”) and the sister of a man who was subjected to SOCE as a child and ultimately committed suicide. *Amici* submit this brief to recount the serious harms that they, their families, and others suffered because they were subjected to these dangerous practices, illustrating the serious risk that thousands of minors will be severely and irreparably harmed if A3371 is not upheld.

This brief reflects the harmful effects of SOCE on five individuals. The experiences of three *amici*, James Guay, Ryan Kendall, and Peter Drake, led them to testify before committees of the California legislature in support of California Senate Bill 1172, which similarly prohibited SOCE in California and was recently upheld by the Ninth Circuit. Similarly, this brief recounts the harms suffered by John Metzidis-Drennan who, like James and Peter, voluntarily sought out SOCE therapy but found that it had lasting, damaging effects. Finally, Maris Ehlers recounts the story of her brother, Kirk Andrew Murphy, who took his own life after being subjected to SOCE as a child.¹

SUMMARY OF ARGUMENT

A3371 is necessary to protect minors from the serious harms caused by the junk science techniques, collectively referred to as SOCE, that continue to be used

¹ No party or party’s counsel authored any portion of this brief. No one other than the *Amici Curiae* or their counsel contributed any money to fund this brief.

by some practitioners nearly 40 years after the mental health profession roundly rejected the idea that homosexuality is a disorder or condition that can or should be changed. *Amici's* personal stories as survivors of SOCE, and the stories of those that they love, show the severity of the risks of exposure to SOCE, even to those who voluntarily seek out this "treatment." The proven dangerousness of these discredited practices demonstrates that the Legislature was well within its power to regulate professional mental health providers to protect the health and safety of their patients, regardless of what level of scrutiny is applied, and notwithstanding Plaintiffs-Appellants' dubious First Amendment claims.

For these reasons, this Court should affirm the District Court's order granting Defendants-Appellees motion for summary judgment upholding A3371.

ARGUMENT

I. THE STATE HAS A COMPELLING INTEREST IN PROTECTING MINORS FROM THE SERIOUS HARMS CAUSED BY SEXUAL ORIENTATION CHANGE EFFORTS

A3371 was enacted to protect minors from the serious harms caused by SOCE. Based on extensive evidence of the harmfulness and ineffectiveness of SOCE, and the broad consensus in the mental health profession condemning its practice, the Legislature found that "[m]inors who experience family rejection based on their rejection based on their sexual orientation face especially serious health risks," and that efforts at changing sexual orientation "are against

fundamental principles of psychoanalytic treatment and often result in substantial psychological pain by reinforcing damaging internalized attitudes.” N.J.S.A. 45:1-54.

Plaintiffs-Appellants ignore the evidence of the harmfulness of SOCE and instead assert that it is a “false premise” that SOCE has proven to be harmful. Plaintiffs-Appellants’ Op. Br. at 16. This audacious claim ignores the serious harms that *Amici* and their families have suffered because they were subjected to SOCE, as well as the pain and suffering of the countless other lesbian, gay, bisexual, and transgender (“LGBT”) adolescents and young adults who have been exposed to these damaging “therapies.” As Dr. Caitlin Ryan’s research has revealed, “a little more than half (53%) of LGBT young adults, ages 21-25, report having been pressured by their families to change their sexual orientation when they were teenagers, while a little more than one-third (34%) report having been sent outside the home to a therapist or religious leader to ‘cure, treat, or change your sexual orientation’ during their teenage years.” *See* Declaration of Dr. Caitlin Ryan, *Welch v. Brown*, Case No. 2:12-CV-02484-WBS-KJN (E.D. Cal.), Docket No. 41, at 4-5. *Amici*’s stories, recounted below, are just the tip of the iceberg.

For nearly 40 years, the leading professional associations of mental health researchers and practitioners have recognized that homosexuality is not a mental illness or disorder. Homosexuality was removed from the Diagnostic and

Statistical Manual of Mental Disorders (“DSM”) in 1973. It remains absent from the DSM-5, the latest edition. *See* Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (2013). There are no documented benefits of this junk science; in fact, there is so ““great an analytical gap between the data and the opinion proffered”” by the advocates of SOCE that they would not qualify to testify as expert witnesses. *See General Electric Co. v. Joiner*, 522 U.S. 136, 146 (1997). The one prominent academic study that purported to show that SOCE could result in changes in sexual orientation has been renounced by its author, Dr. Robert Spitzer, who explained that his methodology was deeply flawed and apologized to the gay community for “making unproven claims of the efficacy of reparative therapy.” Robert L. Spitzer, Letter to the Editor, *Spitzer Reassesses his 2003 Study of Reparative Therapy of Homosexuality*, 41 ARCHIVES SEXUAL BEHAV. 757 (2012).

The overwhelming evidence in the legislative record establishing the danger of practicing SOCE on children demonstrates that A3371 must be upheld as a valid exercise of the State’s power to regulate licensed mental health providers to protect the health and safety of minors, regardless of what level of scrutiny is applied by the Court. *Amici’s* stories of the harms that they and their loved ones suffered provide further demonstrate the sound basis for the legislature’s action.

A. James Guay

As the son of a preacher raised in a fundamentalist Christian household in Southern California, James Guay was plagued with guilt and shame when he realized at the age of 12 that he was gay. Like countless other children brought up in religiously conservative households, James was taught that homosexuals were inherently flawed and sinful, and was desperate to change his sexual orientation. He spent the next eight years of his life making every effort to eliminate his same-sex attractions before finally recognizing that he could never truly change this fundamental part of himself.

After four years of attempting to change on his own—through church involvement, Bible reading, and prayer—James had succeeded only in internalizing the Biblical message that he was an “abomination,” increasing his feelings of self-hatred. At the age of 16, James disclosed his internal struggle to his parents, who helped him to find a self-described “ex-gay” licensed psychologist, Dr. James Wilder, who practiced a form of SOCE referred to as “conversion therapy.” James was initially filled with a sense of relief and a newfound hope that he could change his sexual orientation through SOCE. Like many other LGBT minors, James voluntarily agreed to undergo SOCE and was fully dedicated to the weekly sessions for a year. As an impressionable teenager determined to rid himself of his “disease,” James believed for a time that

undergoing SOCE would help him to become heterosexual. Yet the promises of change never materialized, and his exposure to SOCE instead caused lasting psychological trauma.

As part of James' "conversion therapy," Dr. Wilder counseled that homosexuality can result from inadequate parenting, which wreaked havoc on James' relationship with his parents by transforming his self-hatred into anger at them. Dr. Wilder also required James to examine his past to search for an actual set of events that caused his same-sex desires, which put extraordinary pressure on him to create false memories and obliterated his sense of self. When he realized that, despite his discipline and devotion, he could never truly change who he was, James' worst fears were realized and he saw himself as intrinsically broken. His exposure to SOCE deepened his depression, shame, and feelings of isolation, rejection, and failure. For years, he suffered from fear of intimacy, anxiety, panic attacks, and from addictive behaviors.

Eventually, James was able to recover from the damage done to him by SOCE, and he has worked as a licensed therapist for more than a decade helping LGBT clients overcome the harmful effects of SOCE. His clients who underwent SOCE are often distrustful, scared, and in a great deal of pain, exhibiting symptoms similar to those of people who suffered early childhood traumas. Through his work, James has learned that his experience was a common one:

many of his clients voluntarily underwent SOCE because they, like he, desperately needed to conform their identities to the expectations of their families and communities.

James testified before the California State Assembly's Committee on Business, Professions and Consumer Protection in support of California Senate Bill 1172 because he felt an obligation, as a licensed therapist and a survivor of SOCE, to do his part to protect minors from the harms that he suffered. *See Hearing on SB 1172 Before Cal. State Assembly Comm. on Bus., Prof. & Consumer Prot.*, 2011-2012 Reg. Sess. (June 26, 2012) (statement of James Guay), available at <http://sd28.senate.ca.gov/sites/sd28.senate.ca.gov/files/06-26-12%20SB1172%20James%20Guay%20StatementBio.pdf>.

B. Ryan Kendall

Ryan was raised in a religiously conservative household in Colorado Springs by parents who believed that homosexuals were essentially evil. When he was a young teenager, Ryan's parents discovered that he was gay by reading his journal and were outraged. Ryan remembers his mother looking at him and telling him that he was going to burn in hell.

Ryan's parents desperately sought to "fix" him by sending him to a series of SOCE practitioners. After several sessions with a self-described "Christian therapist," Ryan's parents were referred to the National Association for Research

and Therapy of Homosexuality (“NARTH”), an organization that purported to practice a more secular form of SOCE. For the better part of a year, Dr. Joseph Nicolosi, who Plaintiffs-Appellants rely on to refute the notion that SOCE harms minors, *see* Plaintiffs-Appellants’ Op. Brief at 6-7, practiced SOCE on Ryan through weekly telephone sessions and in person at NARTH’s California treatment center.

During each session, Dr. Nicolosi emphasized that Ryan’s “treatment” would help him suppress his sinful and defective same-sex desires. Ryan knew that his sexual orientation was inherent and unchangeable, so he never went through a period of believing that SOCE was beneficial. This did not protect him from severe psychological harm due to the “therapy.” Ryan’s exposure to SOCE validated his parents’ beliefs about homosexuality, encouraging them to reject him and causing him great pain. After he began SOCE, Ryan’s parents became verbally and emotionally abusive, telling him that he was abhorrent, disgusting, and evil. Ryan’s sense of identity and place in the world were virtually destroyed, driving him to the brink of suicide.

Ryan’s experience was not unique: in enacting A3371, the Legislature relied in part on peer-reviewed research finding that LGBT youth who experienced higher levels of family rejection, as Ryan did, were 8.4 times more likely to report having attempted suicide. N.J.S.A. 45:1-54(m). In fact, Gabriel Arana, another

minor undergoing SOCE who Dr. Nicolosi paired with Ryan as part of their “treatment,” came perilously close to taking his own life after years of exposure to SOCE because he saw himself as “a leper with no hope of a cure.” *See* Gabriel Arana, *My So-Called Ex-Gay Life*, THE AMERICAN PROSPECT, Apr. 11, 2012, <http://prospect.org/article/my-so-called-ex-gay-life>.

When he was 16, Ryan stopped undergoing SOCE, ran away from home, and legally separated from his parents. For the next decade, Ryan suffered severe depression, including frequent thoughts of suicide. He was filled with self-hatred that derived from SOCE, which had reinforced the message that he was defective and immoral at a time when most adolescents are first discovering their sexual identity. Like many others experiencing total family rejection, Ryan succumbed to periods of drug abuse and homelessness, and his education was derailed for more than a decade. Ryan’s exposure to SOCE tore apart his family, leading to a fifteen-year period of estrangement from his parents.

Although Ryan has been able to rebuild his life, returning to school and reconciling with his parents, he continues to struggle with the lasting psychological damage caused by SOCE. Nor will he be able to regain his lost decade—at the critical period in the transition from adolescence to adulthood—or the fifteen years taken from him and his family, including his father, whose health is precarious.

Ryan testified at hearings on A3371 before the New Jersey Senate's Health, Human Services, and Senior Citizens Committee on March 18, 2013, and before the New Jersey Assembly's Women & Children Committee on June 13, 2013. *See* Supplemental Appendix of Appellee Garden State Equality, Doc. No. 30-8, filed 2/28/14, at SA 232-233.² Ryan also testified before California Assembly's Committee on Business, Professions and Consumer Protection in support of California Senate Bill 1172. *See Hearing on SB 1172 Before Cal. State Assembly Comm. on Bus., Prof. & Consumer Prot.*, 2011-2012 (June 26, 2012) (statement of Ryan Kendall), available at <http://sd28.senate.ca.gov/sites/sd28.senate.ca.gov/files/06-26-12%20RyanKendallTestimony.pdf>. Ryan testified before these committees because, as a survivor of SOCE, he wanted to ensure that minors raised in similar circumstances to his would be protected in the future.

C. Peter Drake

Peter Drake realized that he was attracted to men when he was 13, but because of the stigma associated with homosexuality, he could not accept that he was gay for much of his life. Peter lived in a straight marriage for 28 years, fathering two children. While Peter avoided same-sex relationships for decades, he

² The New Jersey Assembly committees transcribe hearings only at the request of a committee member, but an audio recording of the Assembly Committee testimony is also available at http://www.njleg.state.nj.us/media/archive_audio2.asp?KEY=AWC&SESSION=2012. Mr. Kendall's testimony appears at the 55:10 mark of the audio recording.

was never able to change who he was, and eventually realized that he was fighting a losing battle. When he was 46, Peter sought out a licensed SOCE therapist in an attempt to change his sexual orientation.

For nearly three years, Peter subjected himself to weekly SOCE “therapy” sessions that were extremely harmful to his mental health. His therapist’s change efforts ranged from having Peter imagine himself lusting for parts of the female body, to attempting to “father” Peter to correct the supposedly inadequate parenting that the therapist believed to be a cause of his homosexuality. Like countless others who undergo SOCE, Peter perceived his inability to change his sexual orientation as a personal failure, and became increasingly discouraged, ashamed, and humiliated. Peter’s hopes that he could be “cured” were dashed, and his therapist offered no comfort, leaving him broken. Peter’s exposure to SOCE severely worsened his depression, and he came very close to attempting suicide.

Through work with a different therapist, Peter was eventually able to accept himself as a gay man, coming out to his family and friends when he was 53. With support from his wife, Peter’s marriage ended amicably. Peter’s daughter has also come out as a lesbian. Given what he suffered from his exposure to SOCE as a middle-aged man, Peter is grateful that his daughter was never subjected to SOCE, particularly as a minor. Peter testified before the California State Senate’s Judiciary Committee in support of California Senate Bill 1172 to ensure that

minors, who are particularly susceptible to the dangers of SOCE, are protected from the harms that he suffered.

D. John Metzidis-Drennan

Around the age of 14, when John Metzidis-Drennan realized he was attracted to men, he felt immense shame, as he had been struggling with the fear that he was gay since early childhood. Raised in a politically conservative household in Orange County, California, John saw that his community viewed being gay as disgusting and shameful. As a child, he was often teased by other children and called derogatory names like “gay boy” and “faggot,” and thus learned to be careful about the way he spoke, the way he carried himself, and the interests and hobbies he pursued, lest anything be perceived by the other children as too effeminate or “gay.”

Due to the stigma associated with homosexuality, John was not prepared to accept his sexual orientation, which he saw as a “problem” or “defect” that needed to be “cured.” After graduating high school, John began reading about the “ex-gay” movement, and was drawn to the to the forms of SOCE practiced by Plaintiff-Appellant NARTH and Dr. Nicolosi, which taught that it was possible to change one’s sexual orientation. At the age of 20, John sought out a SOCE practitioner and began undergoing weekly sessions of “reparative therapy” with Scott Sutherland, a therapist at Dr. Nicolosi’s clinic.

Like many others who voluntarily seek out SOCE, John was initially hopeful at the prospect of changing his sexual orientation, and for a period believed that he was making progress. However, it was not long before SOCE began to have negative consequences on his life. As part of his “reparative therapy,” John was counseled that homosexuality was caused by a dysfunctional family life and upbringing and was encouraged to tell his parents about his struggles, which necessarily involved confronting them with what he had come to believe were their failures in raising him. This completely upended John’s relationship with his parents and their relationship with each other, as he blamed them and they blamed each other for his homosexual “problem.”

After about nine months of subjecting himself to SOCE, John was frustrated with his inability to change his sexual orientation, and became fixated on the notion that he was broken or defective. He became withdrawn and exceedingly self-conscious, and his grades showed a sharp decline. John began suffering from deepening depression and anxiety, and thought about killing himself. When, after 18 months of SOCE, John finally accepted that he could not change his sexual orientation, his therapist was unable to offer any support, and instead blamed John for not working hard enough to change. John quit his “reparative therapy” the summer after graduating from college, and had to delay starting law school for a year so that he could put his life back together.

John, who graduated from the University of Pennsylvania law school in 2008, considers himself one of the luckier survivors of SOCE, but one of the most damaging aspects for him was the deep violation of trust and the abuse of the therapeutic relationship. John opened up to his therapist more than he had to any other person to that point in his life, sharing intimate details and exploring difficult emotions. Yet that relationship was based upon a fraud: that his sexual orientation was a disorder that could be changed if he tried hard enough. During an extremely difficult time in his young adulthood, John needed help, and instead suffered further harm because of his exposure to SOCE.

E. Maris Ehlers

Maris Ehlers's older brother, Kirk Andrew Murphy, was the original poster child for the dangerous practices now known as SOCE. On December 21, 2003, at the age of 38, Kirk committed suicide. At the time, Maris did not understand why. After learning more about the SOCE "therapy" that Kirk was subjected to by the State of California, Maris wonders how Kirk was able to live as long as he did.

In 1970, when Kirk was almost five years old, his parents enrolled him in a federally-funded experimental study at the University of California, Los Angeles ("UCLA"), which used aversion therapy to discourage feminine behaviors in young boys, based on the now-discredited theory that this would prevent them from growing up to be gay. Under the pseudonym "Kraig," Kirk became a case

study, and later a repeatedly-cited “success story” of then-UCLA doctoral student George A. Rekers, who has since become one of the leading proponents of subjecting children to SOCE. *See* George A. Rekers & O. Ivar Lovaas, *Behavioral Treatment of Deviant Sex-Role Behaviors in a Male Child*, 7 J. APPLIED BEHAV. ANALYSIS 173-190 (1974).

At the UCLA Gender Identity Clinic, Kirk was placed in a playroom filled with stereotypical “boys’ toys” and “girls’ toys.” *Id.* at 176. Kirk’s mother was instructed to smile and compliment him when he played with the “boys’ toys,” and to shun him when he played with “girls’ toys.” *Id.* at 179. Kirk became so distraught by his mother’s refusal to acknowledge him after he picked up a “girls’ toy” that he would break down crying, and the researchers had to reassure her “empathetically that she was doing the right thing and was doing it well” *Id.* Maris does not fault her mother for following the directions of UCLA “therapists,” whom she trusted not to ask her to do anything that would harm her son. However, Maris does not doubt that requiring her mother to repeatedly reject Kirk was cruel and damaging.

The UCLA researchers exported Kirk’s SOCE “treatment” to the Murphy home, training Kirk’s mother to award blue poker chips for masculine behavior and red poker chips for feminine behavior. *Id.* at 180-81. Blue chips were to be exchanged for rewards, like candy, and red chips for punishments, including

“physical punishment by spanking.” *Id.* at 180. At the end of each week, when the chips were tallied, Kirk’s father would administer the spankings by whipping Kirk’s bare bottom with a belt. While Maris was too young to remember the poker chip system imposed on the family as part of Kirk’s SOCE “treatment,” she does remember sneaking into Kirk’s room to comfort him after the whippings.

After ten months, the UCLA researchers ended their experimental SOCE treatment on Kirk and declared victory, concluding that they had succeeded in their attempt “to extinguish feminine behavior and to develop masculine behavior.” *Id.* at 179, 186. Contrary to the researchers’ self-congratulation, their “therapy” had caused extraordinary damage to Kirk. After undergoing SOCE, Kirk became withdrawn, isolated, and incredibly self-conscious. He obsessed over what others thought of him, revealing through questions to Maris that he was constantly over-analyzing the words and actions of others. Maris could never understand the visible pain that Kirk carried with him, and his belief that no one could ever love him as he was. She believes that SOCE left Kirk stricken with the feeling that he was broken.

At the age of 17, Kirk attempted suicide for the first time. The following year, Kirk explained to Dr. Richard Green, one of the leading advocates for removing homosexuality from the DSM in 1973, that he had a sexual encounter with a man weeks before his suicide attempt. Jim Burroway, *What Are Little Boys*

Made Of?: An Investigation of an Experimental Program to Train Boys to be Boys, BOX TURTLE BULLETIN, June 7, 2011, <http://www.boxturtlebulletin.com/what-are-little-boys-made-of5> (quoting Richard Green, THE “SISSY BOY SYNDROME” AND THE DEVELOPMENT OF HOMOSEXUALITY 313-15 (Yale University Press, 1987)).³ Kirk told Dr. Green that he felt guilty that the SOCE “treatment” he underwent at UCLA had failed to “fix” him, and admitted that he had tried to kill himself because he did not want to be gay. *Id.*

Unlike the other *Amici*, Kirk was not able to recover from the severe harm that he suffered as the result of being exposed to SOCE at a young age, and ultimately took his own life at the age of 38. Through the painful process of losing her brother and then learning what was done to him under the auspices of government-sanctioned SOCE “treatment,” Maris became committed to protecting other minors from being exposed to the dangerous junk science that cost Kirk his life.

CONCLUSION

The serious harms that *Amici* and their families suffered because they were subjected to SOCE, recounted above, demonstrate the dangerousness of these discredited practices. The overwhelming evidence in the legislative record is more than sufficient to uphold A3371 on the merits, despite Plaintiffs-Appellants’

³ Dr. Richard Green used Kirk as a prominent case study in his book, under the pseudonym “Kyle.” He confirmed that “Kyle” is Kirk to Maris in 2010.

questionable constitutional challenges, and regardless of what level of scrutiny is applied by the Court. The personal stories of *Amici*, as survivors of SOCE, demonstrate the seriousness of the risk that thousands of minors will be severely and irreparably harmed if A3371 is struck down.

For these reasons, and for the reasons stated in the Briefs of the State of New Jersey Defendants-Appellees and Intervenor-Defendant-Appellee Garden State Equality, *Amici Curiae* urge the Court to affirm the District Court's grant of summary judgment to Defendants-Appellees upholding A3371.

DATED: March 5, 2014

Respectfully submitted,

ROSEN BIEN GALVAN & GRUNFELD LLP

By: /s/ Sanford Jay Rosen
Sanford Jay Rosen

Attorneys for *Amici Curiae*

CERTIFICATION OF BAR MEMBERSHIP

Pursuant to Local Rule 28.3(d) and 46.1(e), the undersigned counsel certifies that he is a member of the bar of this Court.

DATED: March 5, 2014

/s/ Sanford Jay Rosen

Sanford Jay Rosen

DECLARATION OF SIGNING ATTORNEY

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that this brief is proportionately spaced, has a typeface of 14 points or more and contains 4,024 words as counted by the Microsoft Word 2010 word processing program used to generate the brief. Pursuant to Local Rule 31.1(c), I certify that the text of the paper copies of this brief and the text of the PDF version of this brief filed electronically with the Court today are identical. I further certify that prior to electronically filing this brief with the Court today it was scanned by ESET Endpoint Antivirus 5.0.2126.0, a virus detection program, and found to be free from computer viruses.

DATED: March 5, 2014

/s/ Sanford Jay Rosen

Sanford Jay Rosen

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2014, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit through the appellate CM/ECF system.

I certify that all counsel of record are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: March 5, 2014

/s/ Sanford Jay Rosen

Sanford Jay Rosen