



## TESTIMONY OF GLBTQ LEGAL ADVOCATES & DEFENDERS IN SUPPORT OF S 132

April 5, 2016

My name is Allison Wright and I am a staff attorney at GLBTQ Legal Advocates & Defenders (GLAD), a New England-wide public interest legal organization dedicated to ending discrimination based on gender identity and expression, HIV status, and sexual orientation. I write on behalf of GLAD to support the passage of S 132, which prohibits persons licensed to provide professional counseling from engaging in dangerous and injurious practices aimed to change a minor's sexual orientation or gender identity. This practice, most commonly known as "conversion therapy," strays from Vermont's long-standing history of preserving the safety and dignity of its LGBTQ residents. As the first state in the nation to offer legal recognition to same-sex relationships in the form of civil unions, the Vermont legislature has a proud history of eradicating discrimination against LGBTQ people as well as enacting laws that ensure the health, safety, and welfare of children. The passage of S 132 is a critical step necessary to further these goals.

### **I. "Conversion Therapy" has Been Discredited, is Contrary to Modern Medical Science, and Subjects Minors to Profound Harm.**

The practice of "conversion therapy" is premised upon the belief that being LGBTQ is abnormal or a mental disorder that must be cured. As the Vermont Legislature stated in S 132,

being LGBTQ is not a “disease, disorder, illness, deficiency, or shortcoming,” and does not require therapeutic efforts to “cure” LGBTQ people.<sup>1</sup>

Despite consensus among the medical and mental health professional groups that conversion therapy practices are ineffective, unethical, and subject patients to significant harm, some practitioners have continued to practice “conversion therapy,” most often under the guise of “talk therapy” aimed at eradicating LGBTQ identities, behaviors, and expressions.

According to the American Psychiatric Association, attempting to “treat” someone’s sexual orientation or gender identity puts them at great risk of “depression, anxiety and self-destructive behavior.”<sup>2</sup> Similarly, the American Psychological Association concluded that “conversion therapy” “may pose serious risk of harm,” such as “confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, and suicidality.”<sup>3</sup> In addition to finding conversion therapy unethical and a violation of human rights law, the Pan American Health Organization found that conversion therapy lacks “medical justification” and poses “a serious threat to the health and well-being of affected people.”<sup>4</sup>

The legislature should enact S 132 in order to protect children and adolescents from those licensed health care professionals who subject minors to harm through a practice that has proven

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<sup>1</sup> For a list of similar statements by medical and mental health organizations, see Human Rights Campaign, *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, <http://www.hrc.org/resources/entry/the-lies-and-dangers-of-reparative-therapy> (last visited Mar. 31, 2016).

<sup>2</sup> Just the Facts Coal., *Just the Facts about Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel* 7 (2008), <http://www.apa.org/pi/lgbt/resources/just-the-facts.pdf>.

<sup>3</sup> APA Task Force on Appropriate Therapeutic Responses to Sexual Orientation, *Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation* 79, 50 (2009), <http://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>.

<sup>4</sup> Pan Am. Health Org. and World Health Org., “Therapies” to Change Sexual Orientation Lack Medical Justification and Threaten Health (May 17, 2012), [http://www.paho.org/hq/index.php?option=com\\_content&view=article&id=6803%3A2012-therapies-change-sexual-orientation-lack-medical-justification-threaten-health&catid=740%3Apress-releases&Itemid=1926&lang=en](http://www.paho.org/hq/index.php?option=com_content&view=article&id=6803%3A2012-therapies-change-sexual-orientation-lack-medical-justification-threaten-health&catid=740%3Apress-releases&Itemid=1926&lang=en)

not to work, inflicts well-documented and profound suffering, and is far outside the bounds of any ethical or acceptable medical practice today.

## **II. Passage of S 132 Will Help all LGBT Youth, Not Just Those Who May be Subjected to “Conversion Therapy.”**

Although Vermont has been among our nation’s leaders in establishing legal equality for LGBTQ people, LGBTQ youth continue to face very stark realities. Family rejection of children’s sexual orientation and/or gender identity is the primary factor contributing to homelessness amongst LGBTQ youth.<sup>5</sup> Negative perceptions and attitudes about LGBTQ people puts LGBTQ youth at increased risk for violence.<sup>6</sup> In Vermont, students who identify as gay, lesbian, bisexual, or questioning are six times more likely than their peers to report attempting suicide, and are almost three times as likely to have been threatened with a weapon at school.<sup>7</sup> The presence of a supportive adult in the life of an LGBTQ youth can decrease suicide risk by forty percent.<sup>8</sup>

The harms that come to LGBTQ youth as a result of negative feelings about their own identities, as well as the prevalence of bullying and harassment by others, can be traced in significant part to the underlying notion of abnormality or “otherness.” LGBTQ youth devalue themselves and are devalued by others because our society has not yet fully eradicated the

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<sup>5</sup> Laura E. Durso & Gary J. Gates, *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless*, 3-4 (2012), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf>.

<sup>6</sup> CDC, *Lesbian, Gay, Bisexual, and Transgender Health, LGBT Youth* (November 12, 2014), <http://www.cdc.gov/lgbthealth/youth.htm>.

<sup>7</sup> Vt. Dep’t of Health., *Lesbian, Gay, Bisexual and Questioning Students and Selected Behaviors - Data Brief: 2013 Vermont Youth Risk Behavior Survey 1-2* (2013), [http://healthvermont.gov/research/yrbs/documents/data\\_brief\\_201404\\_lgb.pdf](http://healthvermont.gov/research/yrbs/documents/data_brief_201404_lgb.pdf).

<sup>8</sup> Melissa Murray & Steffie Rapp, U.S. Dep’t of Justice, Office of Juvenile Justice and Delinquency Prevention, *Working with LGBTQ Youth in Rural Vermont*, StopBullying.gov (June 5, 2014), <http://www.stopbullying.gov/blog/2014/06/05/working-lgbtq-youth-rural-vermont>.



historical conception that it's not okay to be lesbian, gay, bisexual, transgender, or queer.

Passage of S 132 will send a powerful and important message to all people: there is nothing about one's sexual orientation or gender identity that needs to be changed because being gay, lesbian, bisexual, transgender, or queer is normal and healthy.

### **III. S 132 is Well Within the Scope of the State's Long-Established Authority to Regulate Health Care.**

States have a long-standing and well-established power to regulate health care and to ensure that health care practices are safe and effective. The state's right to regulate health care is beyond cavil. *See Watson v. State of Maryland*, 218 U.S. 173, 176 (1910) ("There is perhaps no profession more properly open to such regulation than that which embraces the practitioners of medicine."); *In re Miller*, 186 Vt. 505, 518 (2009) (describing the state's "substantial interest in safeguarding the public health and safety" (internal quotations omitted)). Moreover, as the Supreme Court of Vermont has recognized, "Vermont law reflects [an] enhanced concern for the protection and well-being of minors." *State v. Searles*, 159 Vt. 525, 528 (1993); *see also State v. Barlow*, 160 Vt. 527, 529 (1993) (recognizing that the state has a "compelling interest in protecting minors"). In fact, Vermont invokes its broad regulatory powers in a variety of contexts affecting the health and safety of children. *See, e.g.*, Vt. Stat. Ann. tit. 23, § 1258 (fining drivers for children not wearing seat belts); Vt. Stat. Ann. tit. 23, § 1095a (prohibiting portable electronic device usage by minors while driving); Vt. Stat. Ann. tit. 7, § 1007 (prohibiting sale or gift of tobacco to minors); Vt. Stat. Ann. tit. 7, § 658 (prohibiting sale or gift of alcohol to minors under 21). Prohibiting the practice of conversion therapy on minors is well within Vermont's power to ensure the well-being, health, and safety of minors.

Federal appeals courts have upheld states' authority to regulate the practice of healthcare and to ban conversion therapy. In *Pickup v. Brown* and *Welch et al. v. Brown et al.*, the U.S.

Court of Appeals for the Ninth Circuit ruled that a California law prohibiting state-licensed therapists from trying to change the sexual orientation or gender expression of a patient under 18 years old could be enforced. *Pickup v. Brown*, 740 F.3d 1208, 1232 (2014) and *Welch et al. v. Brown et al.* 134 S.Ct. 2881, 2881 (2014). Similarly, in *King v. Governor of N.J.*, the U.S. Court of Appeals for the Third Circuit affirmed that a New Jersey law prohibiting conversion therapy was constitutional. *King v. Governor of N.J.*, 767 F.3d 216, 229 (2014).

The Vermont legislature clearly has the authority to pass this law to regulate the practice of healthcare, particularly in the area of the welfare of children. S 132 is therefore consistent with the state's compelling interest in regulating health care.

### **Conclusion**

S 132 is narrowly tailored to prevent a well-documented risk of harm to minors and to eradicate a purported health care practice that is contrary to medical science and based on discredited views of sexual orientation and gender identity. GLAD strongly supports S 132.