

Case No. 19-2064

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Christopher Doyle, LPC, LCPC,
individually and on behalf of his clients,

Plaintiff-Appellant,

v.

LAWRENCE J. HOGAN, JR.,
Governor of the State of Maryland, in his official capacity, and
BRIAN E. FROSH,
Attorney General of the State of Maryland, in his official capacity,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
CASE NO. 1:19-CV-00190 BEFORE HONORABLE DEBORAH K. CHASANOW

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF
PROPOSED AMICUS CURIAE THE TREVOR PROJECT
IN SUPPORT OF DEFENDANTS-APPELLEES**

Corey G. Singer
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, C.A. 90071-3197
CSinger@gibsondunn.com
Telephone: (213) 229-7418
Facsimile: (213) 229-6418

Howard S. Hogan*
Stuart D. Delery
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
HHogan@gibsondunn.com
SDelery@gibsondunn.com
Telephone: (202) 887-3640
Facsimile: (202) 530-9550

Counsel for Proposed Amicus Curiae
**Counsel of Record*

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

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If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 19-2064 Caption: Christopher Doyle v. Lawrence J. Hogan, Jr.

Pursuant to FRAP 26.1 and Local Rule 26.1,

The Trevor Project
(name of party/amicus)

who is proposed amicus curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
2. Does party/amicus have any parent corporations? ☐ YES ☒ NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☒ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☒ NO
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5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☒ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☒ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Howard S. Hogan

Date: 12/30/2019

Counsel for: Proposed Amicus Curiae

CERTIFICATE OF SERVICE

I certify that on December 30, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Howard S. Hogan
(signature)

December 30, 2019
(date)

INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), proposed *amicus curiae* The Trevor Project respectfully moves for leave to file the accompanying brief as *amicus curiae* in support of defendants-appellees. Counsel for proposed *amicus curiae* timely notified counsel of record for the parties of its intent to file this motion, and they consented to the filing of this motion and *amicus* brief.

Where, as here, *amicus curiae* has a unique perspective or specific information that can assist the court beyond what the parties can provide, courts routinely accept *amicus* briefs. *See Peters v. Jenney*, 327 F.3d 307, 319 n.13 (4th Cir. 2003) (noting that *amicus curiae* brief was “helpful to the court”). On issues concerning conversion therapy, The Trevor Project offers specialized knowledge and can assist the Court in explaining why Maryland’s statute prohibiting the practice of conversion therapy on minors is necessary to prevent significant and potentially lifelong harm.

IDENTITY AND INTEREST OF AMICI CURIAE

Founded in 1998, The Trevor Project is the nation’s largest lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ”) youth crisis intervention and suicide prevention organization. It is the only nationwide organization that offers accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. These services are used by thousands

of youth each month. Through analyzing and evaluating data obtained from these services, The Trevor Project produces innovative research that brings new knowledge, with clinical implications, to issues affecting LGBTQ youth.

The Trevor Project has a substantial interest in supporting the enforcement of laws prohibiting the practice of conversion therapy against the LGBTQ youth it serves. The Trevor Project works firsthand with LGBTQ youth, many of whom are survivors of conversion therapy or have a credible fear that their family members will compel them to receive conversion therapy. The Trevor Project helps LGBTQ youth cope with the damage inflicted on them by conversion therapy. The Trevor Project is therefore acutely aware of the devastating, often lifelong mental health effects that conversion therapy can inflict on LGBTQ youth.

DESIRABILITY AND RELEVANCE OF THE PROPOSED BRIEF

By drawing on its own experiences as well as recent social science research, The Trevor Project can offer this Court a unique perspective about the significant and lasting harm to LGBTQ youth that would result from reversing the district court's decision to grant the defendants-appellees' motion to dismiss. The Trevor Project sought and was granted leave to file an *amicus curiae* brief in this action in the District of Maryland. *Doyle v. Hogan*, No. 1:19-cv-00190, Dkt. 66 (D. Md. August 1, 2019). Other federal courts addressing challenges to similar legislation have also granted leave to file *amicus curiae* briefs. *See, e.g., Otto v. City of Boca*

Raton, Fla., No. 19-10604 (11th Cir. July 3, 2019) (granting motion of The Trevor Project to appear as *amicus curiae*); *Schwartz v. City of New York*, No. 1:19-cv-00463-RJD-ST, Dkt. 26 (E.D.N.Y. Apr. 12, 2019) (same); *Otto v. City of Boca Raton, Fla.*, No. 9:18-cv-80771, Dkt. 73 (S.D. Fla. Sept. 4, 2018) (same).

CONCLUSION

For the foregoing reasons, The Trevor Project respectfully moves this Court for leave to appear as *amicus curiae* in support of the defendants-appellees, and to file the *amicus* brief accompanying this motion.

Dated: December 30, 2019

Respectfully submitted,

/s/ Howard S. Hogan

Howard S. Hogan*

Stuart D. Delery

GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5306

Telephone: (202) 887-3640

Facsimile: (202) 530-9560

Corey G. Singer

GIBSON, DUNN & CRUTCHER LLP

333 South Grand Avenue

Los Angeles, C.A. 90071-3197

Telephone: (213) 229-7418

Facsimile: (213) 229-6418

Counsel for Proposed Amicus Curiae

**Counsel of Record*

CERTIFICATE OF COMPLIANCE

On behalf of proposed *amicus curiae* The Trevor Project, I hereby certify pursuant to Federal Rule of Appellate Procedure 32(g)(1) that the foregoing motion is proportionally spaced, has a typeface of 14 points or more, is set in Times New Roman, and contains 537 words, as counted by Microsoft Word, excluding the items that may be excluded under Federal Rule of Appellate Procedure 27(a)(2)(B).

Dated: December 30, 2019

By: /s/ Howard S. Hogan
Howard S. Hogan

CERTIFICATE OF SERVICE

I, Howard S. Hogan, a member of the Bar of this Court, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on December 30, 2019. I certify that to my knowledge all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: December 30, 2019

By: /s/ Howard S. Hogan
Howard S. Hogan

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Washington, D.C. 20036-5306
HHogan@gibsondunn.com
SDelery@gibsondunn.com
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If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Howard S. Hogan

Date: 12/30/2019

Counsel for: Amicus Curiae

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/s/ Howard S. Hogan
(signature)

December 30, 2019
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I. INTEREST OF *AMICUS CURIAE*

The Trevor Project, which is the nation's largest lesbian, gay, bisexual, transgender, queer, and questioning ("LGBTQ") youth crisis intervention and suicide prevention organization, respectfully submits this *amicus curiae* brief in support of defendants-appellees. The Trevor Project is the only nationwide organization that offers only accredited, free, and confidential phone, instant message, and text messaging crisis intervention services for LGBTQ youth. These services are used by thousands of youth each month. Through analyzing and evaluating data obtained from these services, The Trevor Project produces innovative research that brings new knowledge, with clinical implications, to issues affecting LGBTQ youth.

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Project is therefore acutely aware of the devastating, often lifelong mental health effects that conversion therapy can inflict on LGBTQ youth.¹

II. ARGUMENT

Section 1-212.1 of the Health Occupations Article of the Maryland Annotated Code is the only legal barrier in Maryland protecting LGBTQ youth from conversion therapy, which is a widely discredited and dangerous practice that has no legitimate medical or therapeutic basis. Conversion therapy refers to any attempt to change a person's sexual orientation, gender identity, or gender expression through counseling, psychotherapy, or other forms of "treatment." Every major medical and mental health association has concluded that this practice is harmful and ineffective. Conversion therapy providers exploit and exacerbate the fears of concerned parents while simultaneously deceiving them about the likelihood that their remedies will lead to the results they promise.

Conversion therapy is a pervasive problem. A January 2018 study by the Williams Institute, a leading research institute at UCLA focused on LGBTQ issues, estimates that approximately 700,000 LGBTQ adults in the United States have undergone conversion therapy at some point in their lives, including about

¹ No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person other than amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

350,000 who were subjected to the practice as adolescents.² The report further estimates that 20,000 LGBTQ youth currently between the ages of 13 and 17 will receive conversion therapy from a licensed health care professional before they reach the age of 18.³

The Trevor Project regularly hears how damaging the practice of conversion therapy is from the LGBTQ youth it serves. In a June 2019 national survey of over 25,000 LGBTQ respondents conducted by The Trevor Project, two-thirds of LGBTQ youth who responded reported that someone tried to convince them to change their sexual orientation or gender identity, and 5% reported undergoing conversion therapy.⁴ Of the LGBTQ youth who reported undergoing conversion therapy, 42% reported a suicide attempt within the 12 months preceding the survey.⁵

Governmental action has thus been necessary to safeguard LGBTQ youth. Maryland is among a growing bipartisan chorus of state and local governments that have determined that the practice of conversion therapy causes significant harm to

² Christy Mallory et al., Williams Inst., *Conversion Therapy and LGBT Youth* 1 (Jan. 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Conversion-Therapy-LGBT-Youth-Jan-2018.pdf>.

³ *Id.*

⁴ The Trevor Project, *National Survey on LGBTQ Youth Mental Health* (June 2019), at 3, <https://www.thetrevorproject.org/wp-content/uploads/2019/06/The-Trevor-Project-National-Survey-Results-2019.pdf>.

⁵ *Id.*

minors who lack authority to make their own medical and mental health decisions. To date, 18 states, as well as Puerto Rico and the District of Columbia and dozens of cities and counties, have prohibited the practice of conversion therapy for minors.⁶ The Movement Advancement Project, an independent think tank that researches LGBTQ equality, estimates that about 44% of the LGBTQ population lives in states that have laws prohibiting conversion therapy on minors.⁷ A decision by this Court affirming the district court's decision to grant the defendants-appellees' motion to dismiss is therefore critical to protect LGBTQ minors from this dangerous practice.

A. The Trevor Project's Data Confirms That Conversion Therapy Causes Significant Harm to LGBTQ Youth.

The Trevor Project is uniquely positioned to understand the dangers of conversion therapy. In the last decade alone, The Trevor Project has communicated

⁶ These states include: California, Cal. Bus. & Prof. Code § 865 et seq. (2019); Colorado, 2019 Colo. Legis. Serv. H.B. 19-1129; Connecticut, Conn. Gen. Stat. § 19a-907 et seq. (2017); Delaware, Del. Code tit. 24, §§ 3510(d), 3514(a)(13)–(14) (2018); Hawaii, Haw. Rev. Stat. § 453J-1 (2018); Illinois, 405 Ill. Comp. Stat. 48/1 et seq. (2016); Maine, 2019 Me. Legis. Serv. Ch. 165 (H.P. 755); Maryland, Md. Code, Health Occ. § 1-212.1 (2018); Massachusetts, 2019 Mass. Leg. Serv. Ch. 8 (H.B. No. 140); Nevada, Nev. Rev. Stat. § 629.600 (2018); New Hampshire, N.H. Rev. Stat. § 332-L:2 (2018); New Jersey, N.J. Stat. § 45:1-55 (2013); New Mexico, N.M. Stat. Ann. § 61-1-3.3 (2017); New York, N.Y. Educ. Law §§ 6509-e, 6531-a (2019); Oregon, Or. Rev. Stat. § 675.850 (2015); Rhode Island, 23 R.I. Gen. Laws Ann. § 23-94-1 et seq. (2017); Vermont, Vt. Stat. Ann. tit. 18, § 8351 et seq. (2016); Washington, Wash. Rev. Code § 18.130.180 (2018).

⁷ Movement Advancement Project, *Equality Maps: Conversion Therapy Laws*, http://www.lgbtmap.org/equality-maps/conversion_therapy.

with hundreds of individuals specifically about their experiences undergoing conversion therapy or their credible fear that they will be subjected to it.

In June 2019, The Trevor Project released the results of a cross-sectional survey with over 25,000 LGBTQ individuals between the ages of 13 and 24 with representation from all 50 states and the District of Columbia.⁸ It is the largest survey of LGBTQ youth mental health ever conducted. Two-thirds of LGBTQ youth who responded reported that someone had tried to convince them to change their sexual orientation or gender identity.⁹

Individuals were also asked whether they had undergone conversion therapy seeking to change their sexual orientation or gender identity. Five percent of LGBTQ youth reported had undergone conversion therapy.¹⁰ Forty-two percent of LGBTQ youth who underwent conversion therapy reported a suicide attempt in the past year.¹¹ These individuals reported attempting suicide in the past 12 months more than twice the rate of their LGBTQ peers who did not report undergoing conversion therapy (42% vs. 17%). The highest rate of attempted suicide (57%) was

⁸ The Trevor Project, *National Survey on LGBTQ Youth Mental Health*, *supra* note 4, at 1.

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.*

found among transgender and non-binary individuals who reported being subjected to conversion therapy.¹²

Other key findings from The Trevor Project's report are:

- 39% of LGBTQ youth seriously considered attempting suicide in the past year, with more than half of transgender and non-binary youth having seriously considered suicide in the past year.¹³
- 71% of LGBTQ youth reported feeling sad or hopeless for at least two weeks in the past year, with nearly one-fifth of LGBTQ respondents attempting suicide in the past year.¹⁴
- Less than half of LGBTQ respondents were out to an adult at school, with youth less likely to disclose their gender identity than sexual orientation.¹⁵
- 71% of LGBTQ youth in The Trevor Project's study reported discrimination due to their sexual orientation or gender identity.¹⁶

The Trevor Project recognizes and attempts to heal the wounds caused by discrimination against the LGBTQ community by providing several crisis intervention and suicide prevention services. Specifically, TrevorLifeline is a telephone counseling service that LGBTQ youth can call for support in times of stress and trouble, and TrevorChat and TrevorText are online chat and text messaging services, respectively, that LGBTQ youth can use as an alternative to

¹² *Id.*

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 4.

speaking on the telephone.¹⁷ The Trevor Project also hosts a social networking site called TrevorSpace that allows LGBTQ youth to connect with one another.¹⁸ The Trevor Project provides comprehensive training for staff and volunteers who serve as counselors or moderators on its platforms so that they are prepared to help LGBTQ youth facing a difficult period and, if necessary, refer them to resources where they could find help from mental health professionals.¹⁹

The Trevor Project maintains statistical data regarding the people who use its crisis and suicide prevention services. Many LGBTQ youth who contact The Trevor Project in moments of crisis describe concerns or stresses associated with conversion therapy.²⁰ Supervisors for The Trevor Project's crisis services report that conversion therapy-related issues come up regularly, as often as weekly. These impressions are borne out by data collected on TrevorLifeline, TrevorText, and TrevorChat, as

¹⁷ The Trevor Project, *Get Help Now*, <https://www.thetrevorproject.org/get-help-now/>.

¹⁸ The Trevor Project, *TrevorSpace*, <https://www.trevorspace.org/>.

¹⁹ The Trevor Project, *Trainings for Youth-Serving Professionals*, <https://www.thetrevorproject.org/education/trainings-for-youth-serving-professionals/>.

²⁰ The information in this paragraph and the remainder of this section is derived from anonymized data that The Trevor Project has collected, compiled, and reviewed on its platforms—TrevorLifeline, TrevorText, TrevorChat, and TrevorSpace—pertaining to youth expressing concerns regarding access to restrooms and other facilities in school. In order to protect the privacy of the youth using its services, The Trevor Project does not make this data publicly available.

hundreds of people have reached out to The Trevor Project with specific concerns about conversion therapy. Terms like “conversion therapy,” “reparative therapy,” and “ex-gay” appear on these platforms hundreds of times.

While each LGBTQ youth might have a different way to describe what their experience with conversion therapy is, the common thread that connects them is that these experiences are uniformly difficult. For many LGBTQ people, conversion therapy is a source of deep anxiety. Some of these LGBTQ individuals contact The Trevor Project because their families are threatening to send them to conversion therapy and they fear what will happen to them when they are sent away. The Trevor Project has also counseled numerous LGBTQ minors who are afraid to come out to their family members because of the fear that their family members will force them to undergo conversion therapy. Some users of TrevorLifeline, TrevorText, and TrevorChat report that this fear is reinforced by derogatory remarks regularly made by family members—for instance, that being LGBTQ “is a choice” or “demonic,” or that conversion therapy is necessary to “fix” them. Still other LGBTQ youth contact The Trevor Project because they are in conversion therapy, it is not working, and their feelings of isolation and failure contribute to suicidal thoughts and behaviors.

The harm caused by conversion therapy is not limited to the child subjected to it, but also spreads to anyone who cares about the child and the pain the child is

experiencing. LGBTQ youth regularly reach out to The Trevor Project because friends and loved ones are subjected to conversion therapy, and they are worried about what is happening to them or wonder what they can do to help them. For example, one individual called TrevorLifeline because the caller's relative was being sent to conversion therapy by their family, and the individual wanted to know whether anything could be done to stop them. LGBTQ youth have also contacted The Trevor Project in a state of distress because a loved one has died by suicide during or after being subjected to conversion therapy.

The legal availability of conversion therapy exists as a coercive force in the lives of too many LGBTQ minors. Some who have contacted The Trevor Project have explained that, after coming out to their parents as LGBTQ, their unaccepting family members responded by threatening to cut off contact and support unless they agreed to attend conversion therapy. Others have been estranged from family, with the restoration of relationships conditioned explicitly on the person's consent to conversion therapy. This rejection caused these individuals considerable distress, and they felt like conversion therapy might be their "only" alternative.

B. Social Science Evidence Overwhelmingly Confirms the Significant Harm of Conversion Therapy on LGBTQ Youth.

Contemporary science has recognized that being LGBTQ is part of the natural spectrum of human identity and is not a disease, disorder, or illness.²¹ Yet recent research conducted by leading research organizations confirms the challenges that the LGBTQ community experiences as a result of ongoing discrimination, including the pressure faced by many LGBTQ youth to undergo conversion therapy. The Trevor Project’s experience is consistent with this research.

Recently, data on exposure to gender identity conversion efforts (“GICE”) from the 2015 US Transgender Survey, a cross-sectional study of over 27,000 transgender adults in the U.S., have been published in two separate peer-reviewed manuscripts.²² The first study examined the overall prevalence of GICE, finding

²¹ See, e.g., Richard D. Lyons, *Psychiatrists, in a Shift, Declare Homosexuality No Mental Illness*, N.Y. TIMES (Dec. 16, 1973), <https://www.nytimes.com/1973/12/16/archives/psychiatrists-in-a-shift-declare-homosexuality-no-mental-illness.html>; Ben Pickman & Brandon Griggs, *The World Health Organization will stop classifying transgender people as mentally ill*, CNN (June 20, 2018), <https://www.cnn.com/2018/06/20/health/transgender-people-no-longer-considered-mentally-ill-trnd/index.html>; Mary Papenfuss, *World Health Organization Removes Gender Nonconformity From List Of Mental Disorders*, HUFFINGTON POST (May 31, 2019), https://www.huffpost.com/entry/transgender-right-world-health-organization-no-longer-mental-disorder_n_5cf0ade0e4b0e346ce7bbd93.

²² Jack L. Turban, Noor Beckwith, Sari L. Reisner & Alex S. Keuroghlian, *Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults*, JAMA Psychiatry 1, 1 (2019), <https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2749479>

that 13.5% of those in the sample reported lifetime exposure, with 5% of transgender adults reporting exposure to GICE between 2010 and 2015.²³ These results varied, with GICE being far more prevalent in particular states. For example, upwards of 25% of transgender people in Wyoming reported lifetime exposure to GICE, and 16% of South Dakota respondents reported exposure to GICE between 2010 and 2015.²⁴ The study concluded that despite the fact GICE is ineffective and unethical, the practice has continued in every state.²⁵ The second study focused on the 71.3% of the sample who reported ever speaking with a professional about their gender identity.²⁶ Twenty percent of those who spoke with a professional about their gender reported lifetime exposure to GICE.²⁷ Exposure to GICE was significantly associated with a more than 50% increased likelihood of severe psychological

(hereinafter referred to as “*Exposure to GICE and Psychological Distress*”); Jack L. Turban, Dana King, Sari L. Reisner & Alex S. Keuroghlian, *Psychological Attempts to Change a Person’s Gender Identity From Transgender to Cisgender: Estimated Prevalence Across US States*, 2015, 109 Am. J. Pub. Health 1452, 1452 (2019), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2019.305237> (hereinafter referred to as “*Psychological Attempts to Change a Person’s Gender Identity*”).

²³ Jack L. Turban et al., *Psychological Attempts to Change a Person’s Gender Identity*, *supra* note 22, at 1453.

²⁴ *Id.*

²⁵ *Id.* at 1453–54.

²⁶ Jack L. Turban et al., *Exposure to GICE and Psychological Distress*, *supra* note 22.

²⁷ *Id.* at 3.

distress in the prior month and more than double increased likelihood of lifetime suicide attempts compared with transgender adults who had discussed gender identity with a professional but who were not exposed to GICE.²⁸ Additionally, those who were exposed to GICE before the age of 10 had a more than four-fold increased likelihood of lifetime suicide attempts.²⁹

Moreover, a study released in November 2018 examined young adults' retrospective reports of parent-initiated efforts to change their sexual orientation during adolescence.³⁰ The study concluded that "parent/caregiver efforts to change an adolescent's sexual orientation are associated with multiple indicators of poor health and adjustment in young adulthood."³¹ For instance, rates of attempted suicide by LGBTQ young adults whose parents tried to change their sexual orientation during adolescence were more than double (48%) the rate of LGBTQ young adults who reported no conversion experience (22%), and those rates were nearly triple for LGBTQ young adults who reported both home-based efforts to change their sexual orientation by parents *and* intervention efforts by therapists and

²⁸ *Id.* at 4, 6.

²⁹ *Id.* at 2, 4, 6.

³⁰ Caitlin Ryan et al., *Parent-Initiated Sexual Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment*, J. Homosexuality (Nov. 7, 2018), <https://www.tandfonline.com/doi/full/10.1080/00918369.2018.1538407>.

³¹ *Id.* at 9.

religious leaders (63%).³² The study found a similar trend for depression—rates were more than double (33%) for LGBTQ young adults whose parents tried to change their sexual orientation compared with those who reported no change efforts (16%), and more than triple (52%) for LGBTQ young adults who reported both home-based efforts to change their sexual orientation by parents and intervention efforts by therapists and religious leaders.³³ LGBTQ youth whose parents, therapists, and/or religious leaders sought to change their sexual orientation are also more likely to experience lower socioeconomic status as young adults.³⁴

The Centers for Disease Control and Prevention (“CDC”) confirmed in a June 2018 study that high school students who self-identify as lesbian, gay, or bisexual (“LGB”) experience a greater incidence of emotional distress than those who self-identify as heterosexual.³⁵ Researchers determined that LGB individuals are more than twice as likely to feel sad and hopeless; more than three times more likely to have seriously considered suicide; more than three times more likely to have made a suicide plan; four times more likely to have attempted suicide; and more than four

³² *Id.* at 10.

³³ *Id.*

³⁴ *Id.*

³⁵ Laura Kann et al., *Youth Risk Behavior Surveillance — United States, 2017*, 67 Ctrs. for Disease Control & Prevention Morbidity & Mortality Wkly. Rep. (June 15, 2018), at 23–28, <https://www.cdc.gov/mmwr/volumes/67/ss/pdfs/ss6708a1-H.pdf>.

times more likely to have been injured in a suicide attempt.³⁶ Recently, the CDC released a report focused on transgender high school students, with similar disparities in suicidality found among transgender compared to cisgender students as between LGB and straight students.³⁷

LGBTQ youth experience a greater incidence of emotional distress not because of their sexual orientation, gender identity, or any other aspect of who they are, but because of persistent discrimination by those around them.³⁸ Support and acceptance can benefit LGBTQ youth significantly. Indeed, studies have shown that when LGBTQ students receive support through nondiscriminatory policies, like the ordinances at issue here, they report lower levels of depressive symptoms, higher self-esteem, and greater educational achievement.³⁹

³⁶ *Id.*; see also Eliana Dockterman, *Transgender Teen's Death Sparks Outcry From Advocates*, TIME (Dec. 31, 2014), <http://time.com/3651037/leelah-alcorn-transgender/>.

³⁷ Michelle M. Johns et al., *Violence Victimization, Substance Use, and Suicide Risk Among Sexual Minority High School Students — United States, 2015–2017*, 67 Morbidity and Mortality Weekly Report 1211–15 (2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6743a4.htm>.

³⁸ Joanna Almeida et al., *Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation*, 38 J. Youth & Adolescence 1001, 1002 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3707280/pdf/nihms261853.pdf>.

³⁹ See Joseph G. Kosciw et al., GLSEN, *The 2015 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools* 45, 49 (2016), <https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20->

The Maryland statute is therefore vital in showing LGBTQ youth that society will accept them for simply being who they are.

C. Every Major Medical and Mental Health Organization Has Rejected Conversion Therapy as Scientifically Unsound, Harmful to the Patient, and Ineffective at Changing Sexual Orientation, Gender Identity, or Gender Expression.

The Trevor Project's experiences with LGBTQ individuals who have experienced or have contemplated conversion therapy are further validated by the nation's leading professional medical and mental health associations, which have uniformly rejected the practice of conversion therapy, finding it dangerous and devoid of any scientific merit. The American Medical Association, the American Psychiatric Association, the American Academy of Pediatrics, the American Counseling Association, the American Psychological Association, the American School Counselor Association, the National Association of Social Workers, the American Academy of Nursing, the United States Department of Health and Human Services, and the World Health Organization have all denounced conversion therapy and declared that the practice cannot "cure" someone of their sexual orientation, gender identity, or gender expression.⁴⁰ Indeed, there is nothing to "cure."

%20Full%20Report_0.pdf; see also Caitlin Ryan et al., *Family Acceptance in Adolescence and the Health of LGBT Young Adults*, 23 J. CHILD & ADOLESCENT PSYCHIATRIC NURSING 205, 210 (2010).

⁴⁰ See, e.g., Am. Psychol. Ass'n, *Just the Facts About Sexual Orientation and Youth* 6 (2008), <http://www.apa.org/pi/lgbt/resources/just-the-facts.aspx>; Am. Med. Ass'n, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and*

On November 19, 2019, the American Medical Association (“AMA”) announced its support for a ban on conversion therapy in the United States.⁴¹ The AMA will develop model state legislation and advocate for federal legislation to ban conversion therapy for sexual orientation and gender identity.⁴² One of the AMA’s board members, Dr. William Kobler, underscored that “[c]onversion therapy has no foundation as scientifically valid medical care and lacks credible evidence to support its efficacy or safety.”⁴³ Accordingly, “[i]t is clear to the AMA that conversion therapy needs to end in the United States given the risk of deliberate harm to LGBTQ people” such as depression, post-traumatic stress disorder, or suicidal ideation.⁴⁴

Queer Populations H-160.991 § 1(c), <https://policysearch.ama-assn.org/policyfinder> (search for H-160.991); World Health Org., “*Cures*” *For An Illness That Does Not Exist: Purported Therapies Aimed At Changing Sexual Orientation Lack Medical Justification And Are Ethically Unacceptable* 1 (May 17, 2012), http://www.paho.org/hq/?option=com_docman&task=doc_view&gid=17703&Itemid=270&lang=en.

⁴¹ Oscar Lopez, *American Medical Association Announces Support For U.S. Ban On Conversion Therapy*, Reuters (Nov. 19, 2019), <https://www.reuters.com/article/us-usa-lgbt-therapy-trfn/american-medical-association-announces-support-for-u-s-ban-on-conversion-therapy-idUSKBN1XT2PJ>.

⁴² *AMA Adopts New Policies During First Day Of Voting At Interim Meeting*, AMA (Nov. 19, 2019), <https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-during-first-day-voting-interim-meeting>.

⁴³ *Id.*

⁴⁴ *Id.*

The American Psychiatric Association has issued a public position statement that conversion therapy is “based on developmental theories whose scientific validity is questionable. . . . In the last four decades, ‘reparative’ therapists have not produced *any rigorous scientific research to substantiate their claims of cure*.”⁴⁵ Not only has the American Psychiatric Association determined that practitioners lack credible scientific evidence to justify this practice, but it has also found that “the potential risks of ‘reparative therapy’ are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient.”⁴⁶

The American Psychological Association “opposes portrayals of [LGBTQ] youth and adults as mentally ill due to their sexual orientation” and “supports the dissemination of accurate scientific and professional information about sexual orientation in order to counteract bias that is based in lack of knowledge about sexual orientation.”⁴⁷ The American Academy of Pediatrics warns its members to “avoid

⁴⁵ Am. Psychiatric Ass’n, *Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies): Supplement* (emphasis added), <https://www.semanticscholar.org/paper/Position-statement-on-therapies-focused-on-attempts/60f59c20edc207f63cee5022203ef7678a204543>.

⁴⁶ *Id.*

⁴⁷ Am. Psychol. Ass’n, *Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts* 31 (Aug. 5, 2009), <https://www.apa.org/about/policy/sexual-orientation.pdf>.

any treatments that claim to be able to change a person's sexual orientation, or treatment ideas that see homosexuality as a sickness.”⁴⁸ The American Academy of Nursing similarly finds that “reparative therapies aimed at ‘curing’ or changing same-sex orientation to heterosexual orientation are pseudo-scientific, ineffective, unethical, abusive and harmful practices that pose serious threats to the dignity, autonomy and human rights as well as to the physical and mental health of individuals exposed to them.”⁴⁹

In addition, leading associations representing counselors and social workers who regularly work with LGBTQ youth vigorously assail any efforts to change a student's sexual orientation or gender identity. The American School Counselor Association advises that “it is not the school counselor's role to attempt to change a student's sexual orientation or gender identity,” and recognizes the “profound harm intrinsic to therapies alleging to change an individual's sexual orientation or gender identity.”⁵⁰ The American Counseling Association condemns conversion therapy

⁴⁸ Am. Acad. of Pediatrics, Cal., *Letter of Support for AB 1779 (Nazarian) Sexual Orientation: Change Efforts* 1 (Apr. 2, 2018), <http://aap-ca.org/letter/ab-1779-nazarian-sexual-orientation-change-efforts/?format=pdf>.

⁴⁹ Am. Acad. of Nursing, *American Academy of Nursing Position Statement on Reparative Therapy* 1 (2015), [http://www.nursingoutlook.org/article/S0029-6554\(15\)00125-6/pdf](http://www.nursingoutlook.org/article/S0029-6554(15)00125-6/pdf).

⁵⁰ Am. Sch. Counselor Ass'n, *The School Counselor and LGBTQ Youth* 37 (2016), https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_LGBTQ.pdf.

and “opposes portrayals of [LGBTQ] individuals as mentally ill due to their sexual orientation.”⁵¹ The National Association of Social Workers avers that conversion therapies “can negatively affect one’s mental health and cannot and will not change sexual orientation or gender identity” and that “*no data* demonstrate that . . . conversion therapy is effective.”⁵²

The Substance Abuse and Mental Health Services Administration, a branch of the Department of Health and Human Services, released a comprehensive report in October 2015 condemning conversion therapy. It made three key findings: First, that “[s]ame-gender sexual orientation . . . and variations in gender identity and gender expression are a part of the normal spectrum of human diversity and do not constitute a mental disorder”; second, that despite limited research on conversion therapy, “none of the existing research supports the premise that mental or behavioral health interventions can alter gender identity or sexual orientation”; and third, that “[i]nterventions aimed at a fixed outcome, such as gender conformity or

⁵¹ Am. Counseling Ass’n, *Ethical Issues Related to Conversion or Reparative Therapy* (Jan. 16, 2013), <https://www.counseling.org/news/updates/2013/01/16/ethical-issues-related-to-conversion-or-reparative-therapy>.

⁵² Nat’l Ass’n of Soc. Workers, *Sexual Orientation Change Efforts (SOCE) and Conversion Therapy with Lesbians, Gay Men, Bisexuals, and Transgender Persons* 4 (May 1, 2015), <https://www.socialworkers.org/LinkClick.aspx?fileticket=IQYALknHU6s%3d&portalid=0>.

heterosexual orientation, including those aimed at changing gender identity, gender expression, and sexual orientation are coercive, can be harmful, and should not be part of behavioral health treatment.”⁵³

The Trevor Project’s experiences corroborate the overwhelming professional opinion that conversion therapy is harmful and ineffective. The Trevor Project has spoken frequently with LGBTQ youth who have undergone conversion therapy (usually at the direction of family members) who routinely report to The Trevor Project that this “treatment” was entirely ineffective in changing their sexual orientation, gender identity, or gender expression. Worse, their exposure to conversion therapy actually caused them to experience further depression and anxiety, contributing to increased suicidal ideation and actual self-harm.

D. Federal Courts Agree That The Practice of Conversion Therapy Lacks Any Medical or Scientific Foundation.

Federal courts have resoundingly echoed the consensus professional opinion that efforts to change an individual’s sexual orientation, gender identity, or gender expression is devoid of any medical or scientific foundation.

As the district court held, and this Court should affirm, plaintiff-appellant’s free speech and free exercise arguments fail to state a claim. *Doyle v. Hogan*, 2019

⁵³ Substance Abuse & Mental Health Servs. Admin., *Ending Conversion Therapy: Supporting and Affirming LGBTQ Youth* 1 (Oct. 2015), <https://store.samhsa.gov/product/Ending-Conversion-Therapy-Supporting-and-Affirming-LGBTQ-Youth/SMA15-4928>.

WL 4573382, at *10 (D. Md. Sept. 20, 2019). In dismissing the plaintiff-appellant's challenge to Maryland law prohibiting a mental health or child care practitioner from engaging in conversion therapy with minors, the district court relied on the findings of the American Psychological Association Task Force, the American Psychiatric Association, the American School Counselor Association, and the American Academy of Child and Adolescent Psychiatry. *Id.* at *5–6. Taken together, the court found that “[t]hese sources indicate that conducting conversion therapy on minors could potentially harm their emotional and physical well-being and, thus, prohibiting the practice of conversion therapy on minors would abate the harmful outcomes caused by conversion therapy.” *Id.* at *6.

Earlier this year, the Southern District of Florida considered a free speech challenge to similar legislation in the City of Boca Raton and Palm Beach County, and denied a preliminary injunction motion in its entirety. In doing so, the court determined that “official position statements of major medical and mental health organizations . . . present a consistent position that conversion therapy is harmful or potentially harmful to all people, and especially to minors.” *Otto v. City of Boca Raton*, 353 F. Supp. 3d 1237, 1262 (S.D. Fla. 2019), *appeal docketed*, 19-10604 (11th Cir. Feb. 14, 2019). The court was correct to conclude that the City of Boca Raton and the Palm Beach County “could properly find that the research about the dangers of conversion therapy, particularly for minors, was ‘overwhelming.’” *Id.*

In affirming New Jersey’s statute prohibiting conversion therapy on minors, the Third Circuit found in *King v. New Jersey*, 767 F.3d 216 (3d Cir. 2014), that “over the last few decades a number of well-known, reputable professional and scientific organizations have publicly condemned the practice of SOCE [i.e., sexual orientation change efforts], expressing serious concerns about its potential to inflict harm.” *Id.* at 238. The court held that “this evidence is substantial” and that “[l]egislatures are entitled to rely on the empirical judgments of independent professional organizations that possess specialized knowledge and experience concerning [SOCE], particularly when this community has spoken with such urgency and solidarity on the subject.” *Id.*

Likewise, the Ninth Circuit upheld California’s statute protecting minors from conversion therapy in *Pickup v. Brown*, because “[t]he legislature relied on the report of the Task Force of the American Psychological Association” and “the opinions of many other professional organizations” that “the overwhelming consensus was that SOCE was harmful and ineffective.” 740 F.3d 1208, 1232 (9th Cir. 2014). The court thus had “no trouble concluding that the legislature acted rationally by relying on that consensus.” *Id.*

Here, Maryland’s law prohibiting the practice of conversion therapy on minors clearly serves a legitimate interest in protecting minors from harmful conduct. The challenged statute is part of the growing recognition by federal courts

that conversion therapy should be prohibited for the well-being of children in their communities. As the lower court held, this law passes constitutional muster under both rational basis review and intermediate scrutiny and must stand.

III. CONCLUSION

Permitting therapists to engage in the widely discredited and harmful practice of conversion therapy punishes LGBTQ minors in Maryland for simply being who they are. The Trevor Project's experiences as well as the overwhelming mental health research demonstrate that exposure to conversion therapy places LGBTQ youth at greater risk for mental health problems. For the foregoing reasons, The Trevor Project requests that this Court affirm the district court's order granting the defendants-appellees' motion to dismiss.

Dated: December 30, 2019

Respectfully submitted,

/s/ Howard S. Hogan

Howard S. Hogan*

Stuart D. Delery

GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5306

Telephone: (202) 887-3640

Facsimile: (202) 530-9560

Corey G. Singer
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: (213) 229-7418
Facsimile: (213) 229-6418

Counsel for Amicus Curiae
**Counsel of Record*

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On behalf of *amicus curiae* The Trevor Project, I hereby certify pursuant to Federal Rule of Appellate Procedure 32(g)(1) that the foregoing brief is proportionally spaced, has a typeface of 14 points or more, is set in Times New Roman, and contains 4,884 words, as counted by Microsoft Word, excluding the items that may be excluded under Federal Rule of Appellate Procedure 27(a)(2)(B).

Dated: December 30, 2019

By: /s/ Howard S. Hogan
Howard S. Hogan

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I, Howard S. Hogan, a member of the Bar of this Court, hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on December 30, 2019. I certify that to my knowledge all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: December 30, 2019

By: /s/ Howard S. Hogan
Howard S. Hogan

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COUNSEL FOR: The Trevor Project

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/s/ Howard S. Hogan
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Howard S. Hogan
 Name (printed or typed)

202-887-3640
 Voice Phone

Gibson, Dunn & Crutcher LLP
 Firm Name (if applicable)

202-530-9550
 Fax Number

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5306
 Address

hhogan@gibsondunn.com
 E-mail address (print or type)

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