

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

CHRISTOPHER DOYLE, LPC, LCPC,  
individually and on behalf of his clients,

Plaintiff,

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.

Civil Action No. 1:19-cv-190

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**THE TREVOR PROJECT’S MOTION FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF IN OPPOSITION TO  
PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

The Trevor Project moves the Court for leave to file an *amicus curiae* brief in opposition to Plaintiff’s motion for preliminary injunction. Dkt. 25. Plaintiff has filed a constitutional challenge to Section 1-212.1 of the Health Occupations Article of the Maryland Annotated Code, which prevents minors from being subjected to conversion therapy, and now seeks a preliminary injunction enjoining Defendants from enforcing this law. Dkt. 1, 2. The Trevor Project, as the nation’s largest lesbian, gay, bisexual, transgender, queer, and questioning (“LGBTQ”) youth crisis intervention and suicide prevention organization, has a special interest in this litigation and can offer this Court an additional, unique perspective on the relevant facts and law, based on what it has learned firsthand from the LGBTQ youth it serves. Counsel for The Trevor Project has contacted all parties regarding this motion. Plaintiff opposes this motion, and Defendants do not oppose this motion. The grounds for The Trevor Project’s motion for leave to file an *amicus* brief are set forth in the memorandum of law.

**MEMORANDUM OF LAW**

This Court has an inherent authority to allow an *amicus curiae* to participate and assist the Court. See *Bryant v. Better Bus. Bureau of Greater Md., Inc.*, 923 F. Supp. 720, 728 (D. Md. 1996). Because The Trevor Project has a “special interest in the subject matter of [this] suit” and its brief provides “timely and useful” information for this Court to consider when adjudicating Plaintiff’s motion for preliminary injunction (*id.*), The Trevor Project respectfully requests that this Court grant leave to file the *amicus curiae* brief attached hereto as Exhibit A in opposition to Plaintiff’s motion for preliminary injunction. See Dkt. 25.

**INTEREST OF THE TREVOR PROJECT**

Founded in 1998, The Trevor Project is the nation’s largest 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 individuals each month. Through monitoring, analyzing, and evaluating data obtained from these services, The Trevor Project produces innovative research that brings new knowledge, with clinical implications, regarding issues affecting LGBTQ youth.

The Trevor Project has a special interest in supporting the enforcement of laws prohibiting the practice of conversion therapy because many of the young people who The Trevor Project serves 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 recover from the damage inflicted on them by conversion therapy. Because The Trevor Project has witnessed firsthand the devastating impact that conversion therapy can inflict on LGBTQ youth, it can

provide a unique and important perspective for the Court regarding the potential harm of granting this preliminary injunction.

### ARGUMENT

District courts have “inherent authority” to grant leave to file an *amicus curiae* brief. *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008); *Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (recognizing that interested persons can “make useful contributions to litigation” by “seeking leave to file amicus briefs [] in the district court”). An *amicus curiae* “assist[s] the court in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *Newark Branch, NAACP v. Town of Harrison, N.J.*, 940 F.2d 792, 808 (3d Cir. 1991) (internal quotation omitted). This Court therefore has broad “discretion whether to grant” leave to a non-party to participate as an *amicus curiae*. *Am. Humanist Ass’n v. Maryland-Nat’l Capital Park & Planning Comm’n*, 303 F.R.D. 266, 269 (D. Md. 2014).

When exercising this discretion, district courts assess whether the proposed amici “have a special interest in the subject matter of the suit.” *Bryant*, 923 F. Supp. at 728. The court should grant the motion if it “deems the [amici’s] proffered information timely and useful.” *Id.* (internal quotation omitted). For example, this Court granted leave to a proposed *amicus curiae* who “demonstrated a special interest in the outcome of the suit and . . . provide[d] helpful information to the court regarding positions taken by the” parties. *Washington Gas Light Co. v. Prince George’s Cty. Council*, No. CIV. A. DKC 08-0967, 2012 WL 832756, at \*3 (D. Md. Mar. 9, 2012). “An amicus brief should normally be allowed . . . when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to

provide.” *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997); *see also Peters v. Jenney*, 327 F.3d 307, 319 n.13 (4th Cir. 2003) (noting that *amicus curiae* brief was “helpful to the court”).

The Trevor Project offers this Court “unique information and perspective” about how the practice of conversion therapy threatens LGBTQ youth by drawing on The Trevor Project’s own experiences with LGBTQ youth as well as academic literature. *See Ryan*, 125 F.3d at 1063. Proponents of conversion therapy rely upon the archaic and erroneous belief that being LGBTQ is a disorder, and that it can somehow be eradicated. Research unequivocally demonstrates that treating sexual orientation and gender identity as a mental disorder, in and of itself, can have devastating life-long effects on LGBTQ youth. For example, conversion therapy can irreparably fracture the relationship between a child and parent. LGBTQ youth who report high levels of family rejection are “8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, and 3.4 times more likely to use illegal drugs,” when “compared with peers from families that reported no or low levels of family rejection.”<sup>1</sup> LGBTQ youth experience conversion therapy as a severe form of family rejection. It is no surprise that fifteen states, as well as dozens of cities and counties and the District of Columbia, prohibit the practice of conversion therapy on minors. Section 1-212.1 of the Health Occupations Article of the Maryland Annotated Code’s protection of minors is necessary to prevent serious, life-long harm to LGBTQ youth in Maryland. The Trevor Project’s perspective on this matter justifies the exercise of the Court’s discretion to permit *amicus* participation.<sup>2</sup>

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<sup>1</sup> Caitlin Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 *Pediatrics* 346, 346 (2009), <http://pediatrics.aappublications.org/content/123/1/346>.

<sup>2</sup> Pursuant to Standing Order 2018-07, The Trevor Project and its counsel were responsible for authoring the *amicus* brief in whole. No party to this litigation contributed any money to fund the preparation and/or submission of this *amicus* brief.

Moreover, federal courts addressing challenges to similar legislation prohibiting the practice of conversion therapy on minors have liberally granted leave to file *amicus curiae* briefs in several district courts. *E.g.*, *Vazzo v. City of Tampa*, No. 8:17-cv-2896-T-36AAS, 2018 WL 1629216, at \*6 (M.D. Fla. Mar. 15, 2018) (granting motion of Equality Florida to appear as *amicus curiae*). Indeed, both The Trevor Project and Equality Florida sought and were granted leave to file *amicus curiae* briefs in the Southern District of Florida. *See Otto v. City of Boca Raton, Florida*, No. 9:18-cv-80771, Dkt. 73 (S.D. Fla. Sept. 4, 2018).

### CONCLUSION

The Trevor Project has a special interest in this litigation as well as familiarity and knowledge of the significant harms that LGBTQ youth would face if Maryland therapists were permitted to practice conversion therapy on minors. Accordingly, The Trevor Project requests leave of the Court to file its proposed *amicus curiae* brief attached hereto as Exhibit A.

Dated: March 15, 2019

Respectfully submitted,

/s/ Howard S. Hogan

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**BRIEF OF *AMICUS CURIAE* THE TREVOR PROJECT IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

**TABLE OF CONTENTS**

	<u>Page</u>
<u>INTEREST OF THE TREVOR PROJECT</u> .....	1
<u>INTRODUCTION</u> .....	1
<u>ARGUMENT</u> .....	4
I. Conversion Therapy Can Cause Significant Harm to LGBTQ Youth, Which the Trevor Project Regularly Witnesses Through Its Suicide Prevention and Crisis Intervention Services. ....	4
II. Social Science Evidence Overwhelmingly Demonstrates the Harm of Conversion Therapy on LGBTQ Youth.....	6
III. 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.....	9
IV. Laws Prohibiting the Practice of Conversion Therapy on Minors Are Designed and Intended to Prevent These Harms to LGBTQ Youth.....	14
<u>CONCLUSION</u> .....	15

**TABLE OF AUTHORITIES**

<b>Cases</b>	<u>Page(s)</u>
<i>King v. New Jersey</i> , 767 F.3d 216 (3d Cir. 2014).....	13
<i>Munaf v. Geren</i> , 553 U.S. 674 (2008).....	3
<i>Obergefell v. Hodges</i> , 135 S. Ct. 2584 (2015).....	14
<i>Otto v. City of Boca Raton, Florida</i> , No. 9:18-cv-80771, 2019 WL 588645 (S.D. Fla. Feb. 13, 2019).....	3, 13, 14
<i>Pickup v. Brown</i> , 740 F.3d 1208 (9th Cir. 2014) .....	13
<i>Weinberger v. Romero-Barcelo</i> , 456 U.S. 305 (1982).....	3

**Statutes**

23 R.I. Gen. Laws Ann. §§ 23-94-1 <i>et seq.</i> (West 2017).....	15
405 Ill. Comp. Stat. An. 48/1 <i>et seq.</i> (West 2016).....	15
Cal. Bus. & Prof. Code §§ 865 <i>et seq.</i> (West 2019) .....	15
Conn. Gen. Stat. §§ 19a-907 <i>et seq.</i> (West 2017).....	15
24 Del. Admin. Code § 3514 (West 2018) .....	15
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405 Ill. Comp. Stat. An. 48/1 <i>et seq.</i> (West 2016).....	15
Md. Code Ann., Health Occ. § 1-212.1 (West 2018) .....	1, 3, 14, 15
N.H. Rev. Stat. § 332-L:2 (West 2018) .....	15
N.J. Stat. Ann. § 45:1-55 (West 2013).....	15
N.M. Stat. Ann. § 61-1-3.3 (West 2017) .....	15
N.Y. Educ. Law § 6509-e (West 2019) .....	15
N.Y. Educ. Law § 6531-a (West 2019) .....	15
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**TABLE OF AUTHORITIES**

(continued)

	<u>Page</u>
Or. Rev. Stat. § 675.850 (West 2015).....	15
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**TABLE OF AUTHORITIES**

(continued)

	<u>Page</u>
Caitlin Ryan et al., <i>Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults</i> , 123 <i>Pediatrics</i> 346 (2009).....	9
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Merriam-Webster Dictionary, <i>Cisgender</i> , <a href="https://www.merriam-webster.com/dictionary/cisgender">https://www.merriam-webster.com/dictionary/cisgender</a> .....	6
Movement Advancement Project, <i>Equality Maps: Conversion Therapy Laws</i> , <a href="http://www.lgbtmap.org/equality-maps/conversion_therapy">http://www.lgbtmap.org/equality-maps/conversion_therapy</a> .....	2, 3

**TABLE OF AUTHORITIES**

(continued)

	<u>Page</u>
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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Civil Procedure 7.1 and Local Rule 103.3, The Trevor Project is a 501(c)(3) organization. The Trevor Project does not have a parent corporation. The Trevor Project is not a publicly traded company, and no publicly held corporation owns 10% or more of its stock.

### **INTEREST OF THE TREVOR PROJECT**

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

The Trevor Project has a special interest in supporting the enforcement of laws prohibiting the practice of conversion therapy because many of the young people who The Trevor Project serves 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 recover from the damage inflicted on them by conversion therapy. Because The Trevor Project has witnessed firsthand the devastating impact that conversion therapy can inflict on LGBTQ youth, it can provide a unique and important perspective for the Court regarding the potential harm of granting this preliminary injunction.

### **INTRODUCTION**

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 the known dangers of conversion therapy, which is a dangerous practice that has no legitimate medical or therapeutic basis. Conversion therapy refers to any attempts to change a person's sexual orientation, gender identity, or gender expression through counseling, psychotherapy, or other forms of "treatment." 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.

The Trevor Project is uniquely positioned to understand the dangers of conversion therapy. Since 2010, The Trevor Project has communicated with hundreds of individuals specifically about their experiences undergoing conversion therapy or their credible fear that they will be subjected to it. The Trevor Project has witnessed how detrimental and damaging this practice has been on the LGBTQ youth it serves. These harmful practices serve no purpose, as every major medical and mental health association has corroborated The Trevor Project's experience in warning that conversion therapy is ineffective.

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 about 700,000 LGBTQ adults in the United States have undergone conversion therapy at some point in their lives, including about 350,000 who received treatment as adolescents.<sup>1</sup> 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.<sup>2</sup> Given the prevalence of conversion therapy, governmental action has been necessary to protect LGBTQ youth. Fifteen states and the District of Columbia, along with 43 cities and counties, have enacted legislation to protect minors and their families from these serious harms.<sup>3</sup> The Movement Advancement Project, an independent think tank that researches LGBTQ equality, estimates that

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<sup>1</sup> 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>.

<sup>2</sup> *Id.*

<sup>3</sup> Movement Advancement Project, *Equality Maps: Conversion Therapy Laws*, [http://www.lgbtmap.org/equality-maps/conversion\\_therapy](http://www.lgbtmap.org/equality-maps/conversion_therapy).

about 40% of the LGBTQ population currently live in states that have laws prohibiting the practice of conversion therapy on minors.<sup>4</sup>

The harms caused by conversion therapy are particularly relevant to the Court’s analysis of Plaintiff’s preliminary injunction motion, as a “preliminary injunction is an ‘extraordinary and drastic remedy.’” *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008). “In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). Indeed, federal courts considering this question have found the extraordinary remedy of a preliminary injunction to be inappropriate under similar circumstances. Just last month, the U.S. District Court for the Southern District of Florida denied a preliminary injunction motion seeking to enjoin similar legislation in the City of Boca Raton and Palm Beach County on free speech grounds. *Otto v. City of Boca Raton, Florida*, No. 9:18-cv-80771, 2019 WL 588645, at \*2 (S.D. Fla. Feb. 13, 2019). The district court agreed that that government has “a compelling interest in protecting the safety and welfare of minors” and that there was “extensive credible evidence of the damage that conversion therapy inflicts.” *Id.* Similarly here, Plaintiff has failed to show—and cannot show—that the balance of harms in the continued enforcement of Section 1-212.1 of the Health Occupations Article of the Annotated Code of Maryland weighs in favor of allowing therapists to subject LGBTQ youth in Maryland to the harmful practice of conversion therapy. Because Plaintiff has not met the high burden required to warrant a preliminary injunction, this Court should deny his motion in its entirety.

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<sup>4</sup> *Id.*

## ARGUMENT

### **I. Conversion Therapy Can Cause Significant Harm to LGBTQ Youth, Which the Trevor Project Regularly Witnesses Through Its Suicide Prevention and Crisis Intervention Services.**

The Trevor Project offers unique suicide prevention and crisis intervention services to LGBTQ youth and, through its services, has direct knowledge of the harm the practice inflicts on the individuals subjected to it. TrevorLifeline is a telephone hotline 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 speaking on the telephone. The Trevor Project also hosts an online forum called TrevorSpace that allows LGBTQ youth to connect with one another. The Trevor Project provides comprehensive in-person training for 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 mental health professionals.

Many of the LGBTQ youth who contact The Trevor Project in moments of crisis describe concerns or stresses associated with conversion therapy. Supervisors for The Trevor Project's crisis services, such as TrevorText and TrevorChat, 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 hundreds of contacts have reached out to The Trevor Project with specific concerns around conversion therapy. Terms like "conversion therapy," "reparative therapy," and "ex-gay" appear on these platforms hundreds of times.

The specific experiences with conversion therapy that the LGBTQ youth describe vary, but their experiences are uniformly difficult. For many LGBTQ youth, conversion therapy is a source of deep anxiety. Some of these LGBTQ youth contact The Trevor Project because their parents 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 youth who are afraid to come out to their family members because of their 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 just limited to the child being 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 being 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 youth. Some of the youth 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 youth's consent to conversion therapy. This rejection caused these youth considerable distress, and they felt like conversion therapy might be their "only" alternative.

The Trevor Project's experience corroborates the scientific evidence that conversion therapy is not effective. 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.

## **II. Social Science Evidence Overwhelmingly Demonstrates the Harm of Conversion Therapy on LGBTQ Youth.**

Contemporary science has long recognized that being LGBTQ is part of the natural spectrum of human identity and is not a disease, disorder, or illness. Yet, recent research speaks to 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.

Last year, The Trevor Project conducted a cross-sectional survey that examined the experiences of over 25,000 LGBTQ youth between the ages of 13 and 24 with representation from each of the 50 states and the District of Columbia. Youth were asked whether they had undergone reparative or conversion therapy efforts to change their sexual orientation or gender identity. Among cisgender<sup>5</sup> lesbian, gay, bisexual and queer/questioning ("LGBQ") youth, 4% reported undergoing reparative or conversion therapy. Compared to cisgender LGBQ youth who did not

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<sup>5</sup> Cisgender is defined as "a person whose gender identity corresponds with the sex the person had or was identified as having at birth." Merriam-Webster Dictionary, *Cisgender*, <https://www.merriam-webster.com/dictionary/cisgender> (last accessed March 12, 2019).

report undergoing reparative conversion therapy, these youth experienced higher rates of depressed mood (77% vs. 64%), considering suicide (52% vs. 30%), and suicide attempts (32% vs. 12%) in the past 12 months. The highest rates of depressed mood (91%), considering suicide (75%), and suicide attempts (57%) were found among the more than 5% of transgender and gender diverse youth who reported receiving reparative or conversion therapy.

The Trevor Project’s findings are corroborated by a groundbreaking study released in November 2018 examining young adults’ retrospective reports of parent-initiated efforts to change their sexual orientation during adolescence.<sup>6</sup> 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.”<sup>7</sup> Specifically, conversion therapy brands LGBTQ identity with a deep stigma and often translated into real harm to LGBTQ young adults. For instance, rates of attempted suicide by LGBT youth whose parents tried to change their sexual orientation were more than double (48%) the rate of LGBT youth who reported no conversion experience (22%), and those rates were nearly triple for LGBT youth who reported both home-based efforts to change their sexual orientation by parents and intervention efforts by therapists and religious leaders (63%).<sup>8</sup> The study found a similar trend for high levels of depression—rates were more than double (33%) for LGBT youth whose parents tried to change their sexual orientation compared with those who reported no conversion experience (16%), and more than triple (52%) for LGBT youth who reported both home-based efforts to change their sexual orientation by parents and

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<sup>6</sup> Caitlin Ryan et al., *Parent-Initiated Sexual Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment*, *Journal of Homosexuality* (Nov. 7, 2018), <https://www.tandfonline.com/doi/full/10.1080/00918369.2018.1538407>.

<sup>7</sup> *Id.* at 9.

<sup>8</sup> *Id.* at 10.

intervention efforts by therapists and religious leaders. LGBT youth whose parents, therapists, and/or religious leaders sought to change their sexual orientation were also associated with lower young adult socioeconomic status, with less educational attainment and lower weekly income.<sup>9</sup>

The Centers for Disease Control and Prevention recently 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.<sup>10</sup> Researchers determined that LGB individuals are more than two times more 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 times more likely to have been injured in a suicide attempt.<sup>11</sup> Another study explains that a potential reason LGBTQ adolescents experience a greater incidence of emotional distress is not because of their sexual orientation, gender identity, or any other aspect of who they are, but instead because of the reactions of those around them: “these youth must deal with stressors related to having a stigmatized identity . . . . [S]ocial stigma associated with homosexuality, as well as toward deviation from socially-prescribed gender roles, remains pervasive, particularly for young people.”<sup>12</sup> Conversion therapy, with its false premise that one’s LGBTQ identity can and should be changed, severely exacerbates this stigma.

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<sup>9</sup> *Id.*

<sup>10</sup> 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>.

<sup>11</sup> *Id.*

<sup>12</sup> 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>.

As is true for everyone, LGBTQ youth simply want their loved ones to accept and affirm them for who they are—as LGBTQ—without fear of punishment or stigma. The Trevor Project has witnessed conversion therapy aggravate the isolation many LGBTQ youth already feel, as familial support for the “treatment” is perceived as a form of rejection. Indeed, research has found that LGB youth who report “higher levels of family rejection during adolescence [are] 8.4 times more likely to have attempted suicide, 5.9 times more likely to report depression, and 3.4 times more likely to have tried illegal drugs” when compared to individuals who do not feel rejected.<sup>13</sup> In some unfortunate cases, LGBTQ youth have died by suicide after being subjected to conversion therapy.<sup>14</sup> Suicide is the second leading cause of death for youth in the United States between the ages of 10 and 24, and lesbian, gay, and bisexual youth are more than four times more likely to attempt suicide than their heterosexual peers.<sup>15</sup>

### **III. 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 youth who have experienced or have contemplated being subjected to 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 as dangerous and lacking any scientific merit. The American Psychiatric Association, the American Academy of Pediatrics, the American Medical Association, the American Counseling Association, the American Psychological Association, the American School

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<sup>13</sup> Caitlin Ryan et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 *Pediatrics* 346, 346 (2009).

<sup>14</sup> See, e.g., Eliana Dockterman, *Transgender Teen’s Death Sparks Outcry From Advocates*, *Time* (Dec. 31, 2014), <http://time.com/3651037/leelah-alcorn-transgender/>.

<sup>15</sup> The Trevor Project, *Preventing Suicide: Facts About Suicide*, <https://www.thetrevorproject.org/resources/preventing-suicide/facts-about-suicide/#sm.0001m8u8qmde4dtzs6d11iekdzol8> (last accessed March 8, 2019).

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 publicly denounced the practice of conversion therapy, and they affirmatively state that the practice cannot “cure” someone of their sexual orientation, gender identity, or gender expression.<sup>16</sup> Indeed, there is nothing to “cure.”

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.*”<sup>17</sup> 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.”<sup>18</sup>

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<sup>16</sup> See, e.g., Am. Psychol. Ass’n, *Just the Facts About Sexual Orientation and Youth*, <http://www.apa.org/pi/lgbt/resources/just-the-facts.aspx> (last accessed March 8, 2019); Am. Med. Ass’n, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations H-160.991* § 1(c), <https://policysearch.ama-assn.org/policyfinder> (search for H-160.991) (last accessed March 9, 2018); 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](http://www.paho.org/hq/?option=com_docman&task=doc_view&gid=17703&Itemid=270&lang=en).

<sup>17</sup> 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> (last accessed March 8, 2019).

<sup>18</sup> Am. Psychiatric Ass’n, *Position Statement on Psychiatric Treatment and Sexual Orientation*, <https://www.semanticscholar.org/paper/Position-statement-on-therapies-focused-on-attempts/60f59c20edc207f63cee5022203ef7678a204543>.

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 in order to counteract bias that is based in lack of knowledge about sexual orientation.”<sup>19</sup> The American Academy of Pediatrics warns its members to “avoid any treatments that claim to be able to change a person’s sexual orientation, or treatment ideas that see homosexuality as a sickness.”<sup>20</sup> 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.”<sup>21</sup>

In addition, leading associations representing counselors and social workers who regularly work with LGBTQ youth in schools and clinics vigorously assail any suggestion that efforts should be made 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.”<sup>22</sup> The American Counseling Association condemns the practice of conversion therapy and “opposes portrayals of

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<sup>19</sup> 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>.

<sup>20</sup> 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>.

<sup>21</sup> Am. Acad. 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).

<sup>22</sup> Am. Sch. Counselor Ass’n, *The School Counselor and LGBTQ Youth* 37 (2016), [https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS\\_LGBTQ.pdf](https://www.schoolcounselor.org/asca/media/asca/PositionStatements/PS_LGBTQ.pdf).

[LGBTQ] youth and adults as mentally ill due to their sexual orientation.”<sup>23</sup> 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.”<sup>24</sup>

The Substance Abuse and Mental Health Services Administration (“SAMHSA”), a branch of the U.S. Department of Health and Human Services, released a comprehensive report in October 2015 condemning conversion therapy. The SAMHSA made three key findings: First, that “[s]ame-gender sexual orientation (including identity, behavior, and attraction) 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 as applied to children and adolescents, “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 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.”<sup>25</sup>

Multiple federal courts have credited the professional consensus that efforts to change an individual’s sexual orientation or gender identity lack any medical or scientific foundation. In affirming New Jersey’s statute prohibiting conversion therapy on minors, the Third Circuit found

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<sup>23</sup> 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>.

<sup>24</sup> 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>.

<sup>25</sup> 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>.

in *King v. New Jersey*, 767 F.3d 216, 238 (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.” 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.*

A month ago, 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. *Otto*, 2019 WL 588645, at \*2-3. In doing so, the district court determined that these “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.” *Id.* at \*19. The district court concluded that the government “could properly find that the research about the dangers of conversion therapy, particularly for minors, was ‘overwhelming.’” *Id.*

**IV. Laws Prohibiting the Practice of Conversion Therapy on Minors Are Designed and Intended to Prevent These Harms to LGBTQ Youth.**

The statute challenged by Plaintiff is designed to prevent the direct harm caused to patients by conversion therapy. The preamble to SB 1028 asserts a clear intent: “Maryland has a compelling interest in protecting the physical and psychological well-being of minors, including LGBT youth, and in protecting minors against exposure to serious harm caused by sexual orientation change efforts.” Dkt. 1-1 at 4. The health committees of the Maryland House of Delegates and Maryland Senate, respectively, heard extensive oral and written testimony regarding this legislation. *See* Dkt. 25 at 6-7. By prohibiting a practice that tells minors that their sexual orientation, gender identity, or gender expression is somehow defective or “wrong,” SB 1028 rejects the artificial stigma of difference and demonstrates that the state of Maryland fully accepts LGBTQ youth for who they are and desires to protect them from harm. The Southern District of Florida recently held that the government “ha[s] a legitimate, compelling interest in protecting minors in their communities from the harms of SOCE” and that “[t]his compelling interest satisfies Defendants’ burden under all levels and types of scrutiny.” *Otto*, 2019 WL 588645, at \*20.

Section 1-212.1 of the Health Occupations Article of the Maryland Annotated Code serves as a powerful proclamation that a youth who identifies as LGBTQ is deserving of equal treatment by society. The Supreme Court has agreed with the importance of this equal treatment, including in its 2015 landmark ruling recognizing the constitutional right of same-sex couples to marry, where it found that unequal treatment of LGBTQ people “works a grave and continuing harm” that “serves to disrespect and subordinate” gays and lesbians. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2604 (2015). The Supreme Court affirmed the importance of dispelling such pernicious stigma “[e]specially against a long history of disapproval of [LGBTQ] relationships.” *Id.* Studies have shown that when LGBTQ students receive support through nondiscriminatory policies, like

the statute at issue here, they report lower levels of depressive symptoms, higher self-esteem, and greater educational achievement.<sup>26</sup>

Maryland is among a growing chorus of state and local governments that have determined that the practice of conversion therapy has the potential to harm minors who lack the legal authority to make their own medical and mental health decisions. To date, fifteen states, as well as dozens of cities and countries and the District of Columbia, have prohibited the practice of conversion therapy for minors—many with nearly identical language to Maryland’s statute.<sup>27</sup> Section 1-212.1 is part of the growing recognition that conversion therapy is an unsound and unsafe practice that should be prohibited for the well-being of children in their communities.

### **CONCLUSION**

Permitting therapists to engage in the flawed and harmful practice of conversion therapy, even on a temporary basis, punishes LGBTQ youth in Maryland for simply being who they are. Research demonstrates 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 deny Plaintiff’s motion for a preliminary injunction.

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<sup>26</sup> Joseph G. Kosciw et al., GLSEN, *The 2015 National School Climate Survey* 45, 49 (2016), [https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%20Full%20Report\\_0.pdf](https://www.glsen.org/sites/default/files/2015%20National%20GLSEN%202015%20National%20School%20Climate%20Survey%20%28NSCS%29%20-%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).

<sup>27</sup> These states include: California, Cal. Bus. & Prof. Code §§ 865 *et seq.* (West 2019); Connecticut, Conn. Gen. Stat. §§ 19a-907 *et seq.* (West 2017); Delaware, 24 Del. Admin. Code § 3514 (West 2018); Hawaii, Haw. Rev. Stat. § 453J-1 (West 2018); Illinois, 405 Ill. Comp. Stat. An. 48/1 *et seq.* (West 2016); Maryland, Md. Code Ann., Health Occ. § 1-212.1 (West 2018); Nevada, Nev. Rev. Stat. § 629.600 (West 2018); New Hampshire, N.H. Rev. Stat. § 332-L:2 (West 2018); New Jersey, N.J. Stat. Ann. § 45:1-55 (West 2013); New Mexico, N.M. Stat. Ann. § 61-1-3.3 (West 2017); New York, N.Y. Educ. Law §§ 6509-e, 6531-a (West 2019); Oregon, Or. Rev. Stat. § 675.850 (West 2015); Rhode Island, 23 R.I. Gen. Laws Ann. §§ 23-94-1 *et seq.* (West 2017); Vermont, Vt. Stat. Ann. tit. 18, §§ 8351 *et seq.* (West 2016); Washington, Wash. Rev. Code Ann. § 18.130.180 (West 2018).

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record on the Service List below.

/s/ Howard Hogan

Howard Hogan