



February 13, 2018

Senator Jesse Stone  
Chairman, Senate Judiciary Committee  
325-A Coverdell Legislative Office Building  
Atlanta, Georgia 30334

Email: [jesse.stone@senate.ga.gov](mailto:jesse.stone@senate.ga.gov)

RE: SB 375 “Keep Faith in Adoption and Foster Care Act”

Dear Senator Stone:

Lambda Legal, with offices in Atlanta and five other cities, is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people, and everyone living with HIV through impact litigation, education, and public policy work. Through the Youth in Out-of-Home Care Project, Lambda advocates for the rights and protection of lesbian, gay, bisexual, transgender and questioning (“LGBTQ”) young people experiencing homelessness, in foster care and in juvenile justice settings.

We write to you today to express our strong opposition to SB 375, and urge you and all Senate Judiciary Committee members to vote against this bill which will harm Georgia’s most vulnerable children. SB 375 would decrease the number of foster and adoptive homes available to youth in Georgia’s child welfare system and permit child welfare providers to discriminate against the very children they are tasked with serving. By permitting providers to discriminate against children and families, SB 375 violates recommended professional standards of child welfare experts, such as the Child Welfare League of America.<sup>1</sup> And, if enacted, SB 375 may be vulnerable to a legal challenge, at taxpayer expense. For these reasons, Lambda Legal opposes the enactment of this bill.

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<sup>1</sup> See Child Welfare League of Am., et al., *Recommended Practices to Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of or Living with HIV in Child Welfare Settings* (2012), <https://www.lambdalegal.org/sites/default/files/publications/downloads/recommended-practices-youth.pdf>. These recommendations will be discussed in more detail in Section III.

## **I. SB 375 Would Decrease the Number of Foster and Adoptive Homes for Youth**

SB 375 would decrease access to permanent, loving homes for foster children. It is estimated that around 20,000 youth “age out” of the foster care system across the country each year, leaving them vulnerable to higher rates of poverty, homelessness, incarceration, and early parenthood.<sup>2</sup> Bills that permit discrimination against LGBTQ parents, or other parents to whom child welfare providers may assert religious objections, serve to decrease the number of eligible placements for youth in foster care. In fact, it has been demonstrated that same-sex couples are four times more likely to adopt or foster children than opposite-sex couples.<sup>3</sup> Rather than increasing opportunities for foster youth, SB 375 will decrease the number of safe and loving homes available.

Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.<sup>4</sup> Thus, there is no reasonable justification for SB 375 when considering the best interest of children in foster care, who would be harmed by decreasing the number of potential foster and adoptive homes for them.

## **II. SB 375 Would Allow for Discrimination against LGBTQ Youth in Care**

LGBTQ youth have the same basic needs as their non-LGBTQ and gender-conforming peers, but often have unique life experiences that drive them into care in disproportionate numbers and require particular services. In addition, LGBTQ children are at heightened risk for emotional and physical victimization, trafficking, self-harm, and other negative health outcomes while in care and, too often, exiting care to homelessness. LGBTQ youth make up almost half of youth experiencing homelessness, and many of them cite lack of acceptance in foster care as a reason they ended up on the street: According to a study from New York City conducted before comprehensive nondiscrimination policies and accompanying training were put in place, 78 percent of LGBTQ youth were removed or ran away from foster care because of abuse or discrimination, and 56 percent chose live on the street rather than stay in a foster care placement because they felt safer there.<sup>5</sup> Child welfare agencies are statutorily required to ensure the safety permanency and well-being and to ensure that the civil rights of the youth in their care are protected. The increased risk of victimization and other poor outcomes LGBTQ youth face in care necessitate that state child welfare agencies enact specific policies to protect and serve this population, not laws which permit discrimination against vulnerable children.

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<sup>2</sup> ECDF Act Facts, FAMILY EQUALITY COUNCIL (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/).

<sup>3</sup> Gary J. Gates, *LGBT Parenting in the United States*, WILLIAMS INST. (Feb. 2013), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>.

<sup>4</sup> ECDF Act Facts, FAMILY EQUALITY COUNCIL (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/).

<sup>5</sup> Lambda Legal, Children’s Rights & Ctr. for the Study of Soc. Policy, *Safe Havens: Closing the Gap Between Recommended Practice and Reality for Transgender and Gender-Expansive Youth in Out-of-Home Care* (Apr. 2017), [https://www.lambdalegal.org/sites/default/files/publications/downloads/tgnc-policy-report\\_2017\\_final-web\\_05-02-17.pdf](https://www.lambdalegal.org/sites/default/files/publications/downloads/tgnc-policy-report_2017_final-web_05-02-17.pdf).

LGBTQ youth are over-represented in child welfare systems across the country.<sup>6</sup> According to one recent federally-funded study by the Williams Institute at UCLA School of Law, 19 percent of youth in foster care identify as LGBTQ.<sup>7</sup> Given the number of LGBTQ youth in the general population, the data collected in this survey shows that LGBTQ youth are disproportionately represented in foster care: it is estimated that there are between 1.5 and 2 times as many LGBTQ youth living in foster care than living outside foster care.<sup>8</sup>

The Williams Institute Study also documented that LGBTQ youth experience negative disparities in their experiences within the foster care system. In addition to having a higher average number of foster care placements, LGBTQ youth are more likely to be living in a group home environment.<sup>9</sup> They are also more likely to report being treated badly by the child welfare system,<sup>10</sup> are more likely to be hospitalized for emotional reasons,<sup>11</sup> and are more likely to become homeless at some point in their life.<sup>12</sup>

Rather than serving the most vulnerable youth in care, SB 375 would add to the harms already being experienced by LGBTQ youth in care. In order to improve the wellbeing of children in foster care, SB 375 should not be enacted.

### **III. SB 375 Goes Against Professional Standards Recommended by Child Welfare Organizations**

Under federal law, state child welfare agencies are required to provide care consistent with professional standards. Professional organizations that advocate for the rights of children and the treatment of youth in care have repeatedly recognized the importance of affirming and supporting LGBTQ youth.<sup>13</sup> In a recent case before the United States Supreme Court, the

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<sup>6</sup> U.S. Dep't of Health & Human Servs., Admin. on Children, Youth & Families, Information Memorandum ACYF-CB-IM-11-03, *Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care* (Apr. 6, 2011). See also Shannan Wilber, Caitlin Ryan & Jody Marksamer, *CWLA Best Practice Guidelines for Serving LGBT Youth in Out-of-Home Care* 1 (2006); Child Welfare League of Am. & Lambda Legal, *Getting Down to Basics: Tools to Support LGBTQ Youth in Care* (2010) [hereinafter *Getting Down to Basics*].

<sup>7</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST., at 6 (Aug. 2014), [https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS\\_report\\_final-aug-2014.pdf](https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf) [hereinafter *Sexual and Gender Minority Youth in Foster Care*].

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

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

<sup>10</sup> 18.5 percent of all youth in the Williams Institute study reported having experienced some form of discrimination based on their actual or perceived sexual orientation, gender identity, or gender expression. *Id.* at 35.

<sup>11</sup> The Williams Institute concluded that 13.47 percent of LGBTQ youth in foster care were hospitalized for emotional reasons, compared to 4.25 percent of non-LGBTQ youth. *Id.* at 38.

<sup>12</sup> Compared with 13.90 percent of non-LGBTQ respondents, 21.09 percent of LGBTQ youth surveyed in the Williams Institute study reported that they had ever been homeless. *Id.*

<sup>13</sup> See, e.g., Am. Acad. Child & Adolescent Psychiatry, *Sexual Orientation, Gender Identity, and Civil Rights* (rev'd 2009),

[https://www.aacap.org/AACAP/Policy\\_Statements/2009/Sexual\\_Orientation\\_Gender\\_Identity\\_and\\_Civil\\_Rights.aspx](https://www.aacap.org/AACAP/Policy_Statements/2009/Sexual_Orientation_Gender_Identity_and_Civil_Rights.aspx); Am. Acad. Family Physicians, *Discrimination, Patient* (rev'd 2015),

<https://www.aafp.org/about/policies/all/patient-discrimination.html>; Am. Medical Ass'n, *Support of Human Rights and Freedom H-65.965* (2017), <https://policysearch.ama->

[assn.org/policyfinder/detail/\\*?uri=%2FAMADoc%2FHOD.xml-0-5094.xml](https://policysearch.ama-assn.org/policyfinder/detail/*?uri=%2FAMADoc%2FHOD.xml-0-5094.xml); Nat'l Adoption Ctr., *Adoption by Members of the LGBT Community* (rev'd 2008), <http://www.adopt.org/our-policies#LGBT>; Nat'l Ass'n Soc.

Workers, *Social Work Speaks: National Association of Social Workers Policy Statements* at 340 (9th ed. 2012).

American Psychiatric Association, the American Academy of Pediatrics, and 16 other physical and mental health professionals weighed in on the importance of affirmation of identity for the health of transgender youth. “[E]vidence confirms that policies excluding transgender individuals from facilities consistent with their gender identity . . . undermine well-established treatment protocols for gender dysphoria and exacerbate the condition; expose these individuals to stigma and discrimination as well as potential harassment and abuse by singling them out from their peers; harm their physical health by causing them to avoid restroom use; and impair their social and emotional development, leading to poorer health outcomes throughout life.”<sup>14</sup>

Notably, in 2012 the Child Welfare League of America (“CWLA”) and several national experts consolidated and summarized the work of multiple leaders in the fields of medicine, law, and social sciences to draft the *Recommended Practices to Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of or Living with HIV in Child Welfare Settings*.<sup>15</sup> The *Recommended Practices* explicitly outlines the need for providers to support and affirm youth in their sexual orientation, gender identity, and gender expression (“SOGIE”). CWLA’s Blueprint for Excellence requires agencies to protect youth from discrimination and harassment on account of SOGIE and ensure that they receive supportive and affirming care and services. However, Georgia’s proposed SB 375 would allow for child welfare service providers to dramatically depart from the recommended practices of professional organizations, and would leave the state with no ability to take action against agencies who are harming children based in the name of their religious beliefs.

#### **IV. SB 375 Would Be Vulnerable to Legal Challenge At Taxpayer’s Expense**

Among the potential constitutional and other legal infirmities of SB 375, which would put the state at potential risk of having to defend the bill through state-funded litigation, are those related to excessive entanglement between state funding and religion, and the bill’s potential facilitation of the unlawful use of religion to harm others.

Although some supporters of SB 375 have invoked the recent Supreme Court case *Trinity Lutheran Church v. Comer*,<sup>16</sup> that case does not provide constitutional cover for the type of religion-cloaked discrimination by recipients of state contracts that is likely to occur under this legislation. This is the case because there is a substantial difference between the type of public funding that is constitutionally allowed under *Trinity Lutheran* and the type of public funding of discriminatory conduct that SB 375 could enable. *Trinity Lutheran* requires that both religious and secular schools be considered eligible for public funding put to secular use—in that case, funding for the use of recycled materials to resurface playgrounds. What SB 375 would allow, in contrast, is state funding for discriminatory conduct by those asserting religious beliefs as

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<sup>14</sup> Brief of Amici Curiae Am. Acad. of Pediatrics, Am. Psychiatric Ass’n, Am. College of Physicians & 17 Additional Medical & Mental Health Orgs. in Support of Respondent at 24, *Gloucester Cty. Sch. Bd. v. G.G. ex rel. Grimm*, 136 S. Ct. 2442 (2016) (<https://www.aclu.org/legal-document/gloucester-county-school-board-v-gg-american-academy-pediatrics-et-al>).

<sup>15</sup> Child Welfare League of Am., et al., *Recommended Practices to Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of or Living with HIV in Child Welfare Settings* (2012), <https://www.lambdalegal.org/sites/default/files/publications/downloads/recommended-practices-youth.pdf>.

<sup>16</sup> *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017).

justification for the discrimination. Chief Justice Roberts and other members of the Supreme Court in *Trinity Lutheran* indeed cautioned against such a broad application of that case, explaining in footnote 3 of that case that, “This case involves express discrimination based on religious identity with respect to playground resurfacing. We do not address religious uses of funding or other forms of discrimination.”<sup>17</sup> Consequently, that case only addresses public funding of secular programs, not funding of discriminatory conduct explicitly cloaked in religion.

Furthermore, courts of appeals across the country have addressed many recent attempts to create religious exemptions from compliance with anti-discrimination laws and professional standards, creating a powerful body of published precedents that religion cannot be used as a weapon to violate others’ civil rights. Indeed, the U.S. Supreme Court’s 2014 decision in *Burwell v. Hobby Lobby* reinforced that accommodation of religious rights of some must not have adverse impacts on the rights of others.<sup>18</sup> There is no reason to believe that the Court will suddenly take a different approach in *Masterpiece Cakeshop* and condone using religion as a means of discriminating against others in this country. In the meantime, legislation that would threaten to enable the violation of the constitutional and civil rights of youth in out-of-home-care or their prospective foster or adoptive parents is vulnerable to being challenged in court. Rather than risk wasting taxpayer money in such a manner, it would be prudent for the legislature to avoid exposing children to further harm in a system that already struggles to adequately keep them safe and meet their needs.

Respectfully submitted,



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<sup>17</sup> *Id.* at 2024 n.3.

<sup>18</sup> *Trump Administration Plans to Expand Religious Refusal Rights of Health Professionals: Legal Issues and Concerns*, LAMBDA LEGAL (Jan 18, 2018), <https://www.lambdalegal.org/health-care-analysis>.