

April 17, 2019

Texas House of Representatives
State Affairs Committee
P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0814

RE: House Bills 1035 and 3172

Dear Committee Chair Dade Phelan and Vice-Chair Ana Hernandez:

Lambda Legal 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 Legal advocates for the rights and protection of lesbian, gay, bisexual, transgender and questioning (“LGBTQ”) youth experiencing homelessness, in child welfare systems, and in juvenile justice settings. For more than 20 years, Lambda Legal has served our Texas LGBTQ community from its South Central Regional office in Dallas.

We submit this testimony to implore you not to pass House Bills 1035 and 3172, two dangerous bills which will impose substantial harm on a broad swath of Texans, including LGBTQ adults, students, and the State’s most vulnerable children, system-involved young people and youth experiencing homelessness. LGBTQ adults and young people face harassment, stigma, and discrimination in accessing housing, employment, healthcare, and other public accommodations. House Bills 1035 and 3172 would exacerbate this discrimination, worsening the negative public health and economic effects in the State of Texas. Further, if enacted, House Bills 1035 and 3172 would be vulnerable to a legal challenge at taxpayer expense for violating the Establishment Clause and other provisions of the U.S. Constitution, as well as other federal laws.

I. House Bills 1035 and 3172 Would Sanction Discrimination LGBTQ Individuals Already Face, Leading to Increased Negative Outcomes for Those Individuals, Public Health and the State’s Economy.

Texas is home to over 770,000 LGBTQ adults—including 83,000 same-sex couples—and 158,500 LGBTQ youth.¹ In addition, Texas ranks 5th in the United States in terms of adults

¹ Christy Mallory, Taylor N.T. Brown, Stephen Russell, & Brad Sears, *The Impact of Stigma and Discrimination Against LGBT People in Texas*, 1, 8, WILLIAMS INST. (April 2017),

who identify as transgender; the State is home to an estimated 125,000 transgender adults and thousands of transgender youth.² Contrary to popular perception, LGBTQ individuals do not live only in large urban centers, but are part of the fabric of rural America, including rural Texas.³ The passage of these two bills would be particularly harmful for LGBTQ people living in rural and suburban Texas, as they have fewer options to choose from when seeking housing, employment, or health care services. Being turned away because of who you are is harmful in and of itself, but for LGBTQ people in rural Texas not having another option at all means additional, and potentially life threatening harm.

According to the Williams Institute at UCLA School of Law, 79 percent of Texas residents think that LGBTQ people experience discrimination in the state.⁴ Research confirms that LGBTQ people face discrimination in every area of life and that this discrimination harms the public health and economy of the communities in which they live. Members of the LGBTQ community report discrimination and harassment while accessing health care,⁵ employment,⁶

<https://williamsinstitute.law.ucla.edu/wp-content/uploads/Texas-Impact-of-Stigma-and-Discrimination-Report-April-2017.pdf> [hereinafter “*Impact of Discrimination in Texas*”].

² Press Release, WILLIAMS INST., If Passed, Texas Senate Bill 6 Would Negatively Impact Over 125,000 Transgender Adults in Texas and Thousands of Transgender Youth (Jan. 6, 2017), <https://williamsinstitute.law.ucla.edu/press/if-passed-texas-senate-bill-6-would-negatively-impact-over-125000-transgender-adults-in-texas-and-thousands-of-transgender-youth/>.

³ See MOVEMENT ADVANCEMENT PROJECT, *Where We Call Home: LGBT People in Rural America* (April 2019), <http://www.lgbtmap.org/file/lgbt-rural-report.pdf>.

⁴ THE WILLIAMS INST., *LGBT People in Texas*, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Texas-fact-sheet.pdf> [hereinafter “WILLIAMS INST., *LGBT People in Texas*”].

⁵ Shabab Ahmed Mirza & Caitlin Rooney, *Discrimination Prevents LGBTQ People from Accessing Health Care*, CTR. FOR AM. PROGRESS (Jan. 18, 2018), <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>; NPR, ROBERT WOOD JOHNSON FOUNDATION, HARVARD T.H. CHAN SCHOOL OF PUB. HEALTH, *Discrimination in America: Experiences and Views of LGBTQ Americans* (2017), available at <https://www.npr.org/documents/2017/nov/nprdiscrimination-lgbtq-final.pdf> [hereinafter “*Discrimination in America*”]; *Impact of Discrimination in Texas*, at 4 (“LGBT adults in Texas . . . were significantly more likely to have been diagnosed with a depressive disorder by a health care professional than non-LGB adults who completed the survey (29.8% v. 16.8%). In addition, LGBT adults were significantly more likely to report binge drinking than non-LGBT adults (25.5% v. 14.3%).”).

⁶ *Discrimination in America; Impact of Discrimination in Texas*, at 2 (“of [transgender] respondents from Texas, 27% reported being fired, denied a promotion, or not being hired for a job they applied for in the year prior to the survey because of their gender identity, and 13% reported being verbally harassed at work in the year prior because of their gender identity.”)

housing,⁷ and other social services, including services for older and elderly adults.⁸ As a result of that discrimination, LGBTQ individuals are more likely to face economic instability, leading to reliance on government assistance programs,⁹ and are significantly overrepresented among people experiencing homelessness.¹⁰ In addition to increasing negative health disparities for LGBTQ adults, discrimination in healthcare negatively impacts the economy; the Williams Institute estimates that just mental health disparities for LGBTQ people in the state cost Texas up to \$550 million annually.¹¹

II. LGBTQ Youth Are Particularly Vulnerable to Stigma and Discrimination and Face Disparate Outcomes in Out-of-Home Care.

In 2017, Texas passed House Bill 3859, a harmful law which allows child welfare service providers receiving government funding to refuse to serve youth and potential foster and adoptive parents who do not meet their religious criteria and which allows for the religious education of children.¹² House Bills 1035 and 3172 double down on the discrimination invited by House Bill 3859 by expanding permission to refuse services on religious grounds to all services for youth by permitting those licensed, contracted, or certified by the State to deny young people services and to refuse to recognize the identity of LGBTQ youth.

⁷ *Impact of Discrimination in Texas*, at 2 (“22% of transgender respondents from Texas reported that they had experienced housing discrimination because of their gender identity within the past year[.]”).

⁸ See MOVEMENT ADVANCEMENT PROJECT & SAGE, *Understanding Issues Facing LGBT Older Adults* (2017), <https://www.sageusa.org/wp-content/uploads/2018/05/sageusa-understanding-issues-facing-lgbt-older-adults.pdf>

⁹ See M.V. Lee Badgett, Laura E. Durso, & Alyssa Schneebaum, *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community*, WILLIAMS INST. (2013), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Poverty-Update-Jun-2013.pdf>; Taylor N.T. Brown, Adam P. Romero, & Gary J. Gates, *Food Insecurity and SNAP Participation in the LGBT Community*, WILLIAMS INST. (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>; *Impact of Discrimination in Texas*, at 3-4 (“Gallup data also indicate that one-quarter of LGBT adults (26%) in Texas reported they do not have enough money for food compared [with] about one-fifth of non-LGBT adults (19%). Similar proportions of LGBT and non-LGBT people reported that they do not have enough money to meet their health care needs. The 2015 U.S. Transgender Survey found that 17% of respondents in Texas were unemployed, and 34% were living in poverty.”).

¹⁰ See NAT’L COALITION FOR THE HOMELESS, *LGBTQ Homelessness* (June 2017), <https://nationalhomeless.org/wp-content/uploads/2017/06/LGBTQ-Homelessness.pdf>; *Impact of Discrimination in Texas*, at 2 (“12% (of transgender respondents in Texas) reported that they had experienced homelessness because of their gender identity within the past year.”).

¹¹ *Impact of Discrimination in Texas*, at 6.

¹² TX HB 3859 (2017), <https://capitol.texas.gov/tlodocs/85R/billtext/pdf/HB03859F.pdf#navpanes=0>.

A refusal to affirm a youth's sexual orientation or gender identity often contributes to depression and suicidal ideation, among other serious health outcomes.¹³ For transgender and gender-nonconforming ("TGNC") youth in particular, refusals may exacerbate the distress commonly associated with gender dysphoria.¹⁴ TGNC youth are at an increased risk for self-harm: studies have shown that 40 percent of transgender people have attempted suicide; the vast majority of those attempts (92 percent) occurred before the person turned 25.¹⁵ With appropriate support, however, negative outcomes for TGNC youth can be mitigated.¹⁶ This is why all major 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 TGNC youth.¹⁷ In a recent case before the United States Supreme Court, the American Psychiatric Association, the

¹³ See Caitlyn 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), <https://bit.ly/2NEoLDr>; Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 J. OF ADOLESCENT HEALTH (forthcoming 2018) (manuscript at 3) (on file with author).

¹⁴ The Diagnostic and Statistical Manual of Mental Disorders ("DSM"), the American Psychiatric Association's handbook of official diagnoses, defines "gender dysphoria" as "the distress that may accompany the incongruence between one's experienced or expressed gender and one's assigned gender." *FAQ: Equal Access to Health Care*, LAMBDA LEGAL, <https://www.lambdalegal.org/know-your-rights/article/trans-related-care-faq> (last visited Sept. 12, 2018); see also *What Is Gender Dysphoria?*, AM. PSYCHIATRIC ASS'N (Feb. 2016), <https://www.psychiatry.org/patients-families/gender-dysphoria/what-is-gender-dysphoria>.

¹⁵ *Facts About Suicide*, THE TREVOR PROJECT, <https://www.thetrevorproject.org/resources/preventing-suicide/facts-about-suicide/#sm.000olacm118rldkzr8h2n8o0wnss4> (last visited Sept. 12, 2018).

¹⁶ Stephen T. Russell & Jessica N. Fish, *Mental Health in Lesbian, Gay, Bisexual, and Transgender (LGBT) Youth*, 12 ANN. REV. CLIN. PSYCHOL. 465 (2016), <https://bit.ly/2Dui00R>; 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 29, *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> [hereinafter "G.G. Amici Brief"]; Stephen T. Russell et al., *Chosen Name Use Is Linked to Reduced Depressive Symptoms, Suicidal Ideation, and Suicidal Behavior Among Transgender Youth*, 63 J. OF ADOLESCENT HEALTH (forthcoming 2018) (manuscript at 3) (on file with author).

¹⁷ See, e.g., 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>; ACAD. OF 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; AM. ACAD. OF FAMILY PHYSICIANS, *Discrimination, Patient* (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; NAT'L ADOPTION CTR., *Adoption by Members of the LGBT Community* (2008), <http://www.adopt.org/our-policies#LGBT>; NAT'L ASS'N OF SOC. WORKERS, *Social Work Speaks: National Association of Social Workers Policy Statements* at 340 (9th ed. 2012).

American Academy of Pediatrics, and 18 other physical and mental health professionals weighed in on the importance of affirming identity for the health of transgender youth.¹⁸

House Bill 3859 is already harmful to the many LGBTQ youth who are over-represented in the child welfare system. Despite making up only 5 to 7 percent of the general population nationwide, LGBTQ youth comprise as much as 25 percent of youth in foster care.¹⁹ LGBTQ youth also experience negative disparities in their experiences within the foster care system, including in a higher average number of foster care placements,²⁰ discrimination within the system,²¹ a higher likelihood of being hospitalized for emotional reasons,²² to have juvenile justice system involvement,²³ and to become homeless at some point in their life.²⁴

House Bills 1035 and 3172 would expand these harms to other system-involved LGBTQ young people by permitting discrimination by government contractors and license-holders. Youth in the juvenile justice systems and youth experiencing homelessness would be particularly

¹⁸ G.G. Amici Brief, *supra* note 23, at 24 (“[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.”).

¹⁹ 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 2* (Apr. 2017), <https://www.lambdalegal.org/publications/safe-havens> [hereinafter “*Safe Havens*”]; Angela Irvine & Aisha Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming, and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population*, 24 J. ON GENDER, SOC. POL’Y & THE L. 243, 247 (2016), [hereinafter “Irvine & Canfield”], http://impactjustice.org/wp-content/uploads/2016/07/irvine.canfield.jgspl_2016.pdf.

²⁰ 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 [hereinafter *Sexual and Gender Minority Youth in Foster Care*].

²¹ 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.

²² 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.

²³ Bianca D. M. Wilson et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, 46 J. OF YOUTH & ADOLESCENCE 1547 (2017), <https://link.springer.com/article/10.1007/s10964-017-0632-5>.

²⁴ 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. *Sexual and Gender Minority Youth in Foster Care*, *supra* note 13, at 38.

vulnerable, and, like with the child welfare system, LGBTQ young people are overrepresented in these populations. 20 percent of youth in the juvenile justice system and almost 50 percent of youth experiencing homelessness identify as LGBTQ.²⁵ In order to avoid creating yet more risk for these already vulnerable young people, these bills must not be enacted.

III. House Bills 1025 and 3172 Would Be Vulnerable to Legal Challenge at Taxpayer’s Expense.

The Establishment Clause of the First Amendment to the U.S. Constitution bars the State from endorsing and promoting religion. As described by the United States Supreme Court, “the core rationale underlying the Establishment Clause is preventing a fusion of governmental and religious functions.” *Larkin v. Grendel’s Den, Inc.*²⁶ By providing individuals, corporations, and organizations who receive licenses, funding, and contracts from the government with permission to discrimination based on their religious beliefs, the House Bills 1025 and 3172 would violate the Establishment Clause principle that “civil power must be exercised in a manner neutral to religion.” *Bd. Of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet.*²⁷

Additionally, the bills would be subject to challenge for privileging religion to the detriment of third parties. The First Amendment forbids accommodations of religion that impose substantial burdens on third parties.²⁸ In *Estate of Thorton v. Caldor, Inc.*, the Supreme Court rejected the argument that the government can accommodate religion even when it causes harm to third parties.²⁹ By allowing licensees, contractors, and others to use religious eligibility criteria when performing public services, House Bills 1035 and 3172 runs afoul of the Establishment Clause by imposing a significant burden on LGBTQ individuals throughout Texas.

Finally, House Bill 1035 in particular bill advances religious views over secular standards, such as religious beliefs which oppose equal treatment of same-sex couples and LGBTQ-identified individuals. In *Edwards v. Aguillard*, the Supreme Court struck down a

²⁵ 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 2* (Apr. 2017), <https://www.lambdalegal.org/publications/safe-havens> [hereinafter “*Safe Havens*”]; Irvine & Canfield, *The Overrepresentation of Lesbian, Gay, Bisexual, Questioning, Gender Nonconforming, and Transgender Youth Within the Child Welfare to Juvenile Justice Crossover Population*, 24 J. ON GENDER, SOC. POL’Y & THE L. at 247.

²⁶ *Larkin v. Grendel’s Den, Inc.*, 459 U.S. 116, 126 (1982) (quoting *Sch. Dist. of Abington Twp. V. Schempp*, 374 U.S. 203, 222 (1963)).

²⁷ *Bd. Of Educ. Of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687, 704 (1994).

²⁸ *Cutter v. Wilkinson*, 544 U.S. 709 (2005) (following *Estate of Thorton v. Caldor, Inc.*, 472 U.S. 703 (1985)).

²⁹ *Estate of Thorton v. Caldor, Inc.*, 472 U.S. 703, 708-09 (1985) (striking down a statute requiring “those who observe a Sabbath . . . must be relieved of the duty to work on that day, no matter what burden or inconvenience this imposes on the employer or fellow workers.”).

Louisiana law which forbade the teaching of evolution in public schools unless the lesson also included the theory of “creation science.”³⁰ In striking down the law, the Court made clear that because the law “advance[s] a particular religious belief, the Act endorses religion in violation of the First Amendment.”³¹ Similarly, House Bill 1035 facilitates the imposition of particular religious viewpoints—such as those opposing equal treatment of same-sex couples or denial of the existence of transgender individuals. By granting special status to specific religious beliefs, House Bill 1035 endorses religion in violation of the Establishment Clause.

IV. Conclusion

For all of the reasons stated above, Lambda Legal strongly opposes the enactment of House Bills 1035 and 3172 and implores you to reject them.

Respectfully submitted,

M. Currey Cook, Esq.
Youth in Out-of-Home Care Project Director
ccook@lambdalegal.org

Cathren Cohen, Esq.
Youth in Out-of-Home Care Project Law Fellow
ccohen@lambdalegal.org

Avery Belyeu
South Central Regional Director
abelyeu@lambdalegal.org

Jennifer C. Pizer, Esq.
Director of Law & Policy
jpizer@lambdalegal.org

³⁰ *Edwards v. Aguillard*, 482 U.S. 578, 581 (1987).

³¹ *Id.* at 593.