
In the
Supreme Court of Maryland

September Term, 2023

No. 20

ROSEBERLINE TURENNE,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

On Writ of Certiorari to the
Appellate Court of Maryland

Brief of *Amici Curiae* ACLU of Maryland; Fred T. Korematsu Center for Law and Equality; Lambda Legal Defense and Education Fund, Inc.; National LGBTQ+ Bar Association and Foundation; Public Justice Center; Sayra and Neil Meyerhoff Center for Families, Children and the Courts; and 15 Law Professors in Support of Petitioner Roseberline Turenne (Filed by Motion)

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STATEMENTS OF INTEREST

Amici are nonprofit organizations whose work includes advancing the rights of LGBTQ people and families, and law professors who teach, write, or advocate on LGBTQ issues and, in some instances, criminal justice issues. The law professors file this brief in their individual capacities and not on behalf of the institutions with which they are affiliated. Individual statements of interest are contained in the attached appendix.

INTRODUCTION

Eighteen-year-old Roseberline Turenne was convicted of child sexual abuse and possession and production of child pornography because of her sexual orientation. The convictions for both crimes rested on an inference that she received sexual gratification from the photos at issue. But the key evidence from which the jury could have drawn such an inference was the evidence of her sexual orientation. Indeed, this is precisely what the prosecutor asked the jury to do—to infer from the fact that Ms. Turenne is, in the prosecutor’s words, “gay or bisexual” “that she ha[d] sexual gratification” from the photos. (E.350–51 (lines 136:21–137:1); *accord* E.322 (lines 108:22-25).)

The notion that LGBTQ adults are sexual threats to children has a long and disgraced history. It is a myth that was debunked decades ago. And although public opinion regarding LGBTQ people has shifted positively, that myth persists in a portion of the population. Indeed, in recent years, false and

widespread allegations that LGBTQ adults are “grooming” children and that the LGBTQ community includes pedophiles in its advocacy for equality have redoubled the force of this unfounded stereotype.

Stereotypes like this fuel hate crimes, bullying, custody disputes, and discriminatory policymaking. And they stigmatize LGBTQ people in ways that negatively impact mental and physical health, particularly in young people and people of color. Courts across the country have held that inaccurate stereotypes like these are so inflammatory of anti-LGBTQ bias that a defendant’s sexual orientation cannot be introduced as evidence in child sex crime cases. Statements that tap into jurors’ conscious or unconscious biases undermine the fairness of the criminal legal system and risk violating a defendant’s constitutional rights. Numerous LGBTQ people have been exonerated where the prosecution expressly relied, or the jury likely relied, on anti-LGBTQ bias.

This case presents an opportunity to repudiate the use of harmful stereotypes and assumptions about sexual orientation—and to make clear that they have no place in the Maryland court system. “Our law punishes people for what they do, not who they are.” *Buck v. Davis*, 580 U.S. 100, 123 (2017). Courts have a duty to ensure that verdicts are supported by sufficient evidence that is both relevant and not unduly prejudicial. The verdict against Ms.

Turenne was not. Amici respectfully urge this Court to reverse Ms. Turenne’s convictions.

ARGUMENT

I. SEXUAL ORIENTATION HAS NO BEARING ON ATTRACTION TO CHILDREN.

To secure Ms. Turenne’s convictions, the prosecutor appealed to the pernicious and baseless stereotype that LGBTQ¹ people are sexually attracted to children and have a propensity to commit sex crimes targeting children. On appeal to the Appellate Court of Maryland, the State contended that the prosecutor did not invoke that stereotype but was instead “relying on what may well be a commonly-held assumption regarding child molesters—that the gender of the child victims chosen by the perpetrator is consistent with the gender of adults the perpetrator is attracted to.” Br. Appellee at 39–40, Mar. 9, 2023. The Appellate Court of Maryland agreed. *See Turenne v. State*, 258 Md. App. 224, 263–64 (2023). This is a distinction without a difference, however, as neither the stereotype nor the State’s “assumption” is true.

¹ The umbrella term “LGBTQ” encompasses a variety of identities and personal experiences, and each LGBTQ person comes to their identity in a different way. The letters “LGB,” which stand for lesbian, gay, and bisexual, describe a person’s sexual orientation. “T,” which stands for transgender, describes a person’s gender identity. And “Q” means “queer”—an inclusive term that refers to the wide spectrum of identities that include and exist beyond LGBT—or “questioning” of one’s sexual orientation.

A. LGBTQ Adults Are Not More Likely Than Heterosexual People to Be Sexually Attracted to Children.

The prosecutor argued to the jury in closing that Ms. Turenne is “gay or bisexual, which obviously doesn’t matter, but it matters when you’re looking at whether she had any sexual gratification for taking these pictures.” (E.322 (lines 108:22-25).) On rebuttal, she reiterated: “There’s no inference made by the fact that she would be gay or bisexual. That’s irrelevant. The only reason we’re considering that is the inference that she has sexual gratification and that that connects the pictures themselves. That’s why it becomes relevant.” (E.350–51 (lines 136:21–137:1).)

There is no way to disguise the baseless bigotry of the prosecutor’s argument: The argument is that *because* of Ms. Turenne’s sexual orientation—*because* she is attracted to adult females—the jury was entitled to *infer* that she receives sexual gratification from photos of female toddlers. This is a straightforward invocation of the stereotype that people who are attracted to same-sex adults are *also* likely to be sexually attracted to children.

This harmful myth was debunked decades ago. *See, e.g.,* Gregory M. Herek, *Myths About Sexual Orientation: A Lawyer’s Guide to Social Science Research*, 1 *Law & Sexuality* 133, 152–56 (1991). In fact, research suggests that “gay men and lesbians are less likely than heterosexuals to sexually abuse children.” Sean Cahill & Sarah Tobias, *Policy Issues Affecting Lesbian, Gay,*

Bisexual, and Transgender Families 107 (2006). Approximately 90% of child molesters are men, and 98% are heterosexual. *Id.* It is undeniably false that LGBTQ adults are more likely than heterosexual adults to be attracted to children.

Other courts have recognized this empirical fact. *See, e.g., State v. Bates*, 507 N.W.2d 847, 852 (Minn. Ct. App. 1993) (“The belief that homosexuals are attracted to prepubescent children is a baseless stereotype.”); *State v. Ellis*, 820 S.W.2d 699, 702 (Mo. Ct. App. 1991) (“To the extent this contention is based upon the proposition that homosexuality per se establishes a propensity to engage in sexual activities with children under the age of consent we reject it out of hand.”); *State v. Young*, Nos. 102, 121, 2013 WL 6839328, at *19 (Kan. Ct. App. Dec. 27, 2013) (noting the “odious and unfounded stereotype that homosexuals are more likely to be pedophiles than heterosexuals”);² *State v. Blomquist*, 178 P.3d 42, 50 (Kan. Ct. App. 2008) (“We conclude . . . that it was unreasonable for the State to assume that a sexual desire for children is among those desires which define a homosexual orientation.”); *People v. Stowe*, 2022 IL App (2d) 210296, ¶ 61 (2022) (rejecting the “inference that sexual attraction to that class of adults is probative of sexual attraction to children of any kind”);

² This opinion is unpublished and non-precedential in Kansas. Amici cite it as illustrative of the statement that other courts have recognized the empirical fact discussed above—not as persuasive legal authority. *See* Md. Gen. Provisions § 1-104(b).

State v. Crotts, 820 N.E.2d 302, 306 (Ohio 2004) (denouncing “the reckless and bald assertion by the appellate court that the prosecutor argued, and the jury believed, that because [the defendant] is homosexual, he therefore is also a pedophile”); *Commonwealth v. Christie*, 53 N.E.3d 1268, 1274 (Mass. App. Ct. 2016) (“[T]he myth that homosexual men have an interest in sex with underage children has been discredited.”); *Blakeney v. State*, 911 S.W.2d 508, 515 (Tex. App. 1995) (observing that the inference that “homosexual men are also molesters of little boys” is “unsupported by evidence or logic”); *Sias v. State*, 416 So.2d 1213, 1217 (Fla. Dist. Ct. App. 1982) (“[T]here is absolutely no showing that homosexuals as a group are disposed to engage in pederasty.”).

B. Sexual Attraction to Adults of a Particular Gender Has Nothing to Do with Sexual Attraction to Prepubescent Children of that Gender.

The Appellate Court of Maryland accepted the State’s claim that the prosecutor asked the jury to rely on something different than the above stereotype: the “assumption” that the “gender of the child victims chosen by the perpetrator is consistent with the gender of adults the perpetrator is attracted to,” which the State claims explains why Ms. Turenne took photos of girls but not boys. *See* Br. Appellee, *supra*, at 39–40; *Turenne*, 258 Md. App. at 263–64 (“[T]he prosecutor was not arguing that Turenne was probably a child abuser because she was lesbian or bisexual, but rather that her sexual attraction to women might mean that she was sexually attracted to girls—

which in turn, would explain the photos she took exclusively of female infants' genitalia.”). But this assumption is also empirically unsupported, particularly with respect to prepubescent children.

“[T]he modern understanding of pedophilia is that it exists wholly independently from homosexuality.” *Crotts*, 820 N.E.2d at 306. “[A] defendants’ sexual attraction to *adults* of the same sex has nothing to do with whether they are attracted to *children* of the same sex.” *People v. Garcia*, 177 Cal. Rptr.3d 231, 240 (Cal. Ct. App. 2014) (emphases in original).

Trying to draw a connection between a child molester’s sexual orientation and a preference for children of one gender or the other is problematic to the point of counterproductivity. “Many child molesters cannot be meaningfully described as homosexuals, heterosexuals, or bisexuals (in the usual sense of those terms) because they are really not capable of a relationship with an adult man or woman. Instead of gender, their sexual attractions are based primarily on age.”

Id. (emphases added) (quoting Gregory M. Herek, *Facts About Homosexuality and Child Molestation*, <http://tinyurl.com/4uk6d26e> (last visited Jan. 2, 2024)) (citing other empirical research).³ Indeed, one study found that the “proportion

³ Gregory Herek is a Professor Emeritus in the Psychology Department at the University of California, Davis, and “an internationally recognized authority on prejudice against sexual minorities.” *Gregory M. Herek, Ph.D.*, UC Davis, <http://tinyurl.com/m77skr7p> (last visited Jan. 2, 2024). He chaired the American Psychology Association’s Committee on Lesbian and Gay Concerns, served on multiple academic journal editorial boards, and received multiple achievement awards for his contribution to psychological research on LGBTQ people. *Id.*

of [child molesters] with victims of both genders significantly increased as the victims' ages decreased." Jill S. Levinson et al., *The Relationship Between Victim Age and Gender Crossover Among Sex Offenders*, 20 Sex. Abuse 43, 43 (2008). Child molesters "with preschool-age victims were most likely to have abused both boys and girls." *Id.* The idea that Ms. Turenne's sexual orientation was relevant because one can infer that women who are attracted to women are also attracted to toddler girls simply is not true.

A lawyer and psychologist who studied judicial assumptions about LGBTQ people observes:

Preconceived ideas about pedophilia have led some judges to ignore or expressly contradict research findings in this area. In fact, "child molestation is unrelated to adult (mature) sexual orientation and results from a fixation on childishness as a sexual object [T]he gender of the child is unimportant."

David K. Flaks, *Gay and Lesbian Families: Judicial Assumptions, Scientific Realities*, 3 Wm. & Mary Bill Rts. J. 345, 345 n.a1, 360 (1994).

In *Garcia*, a California appellate court grappled with essentially the same argument that the State makes here. The government argued that the female defendant's sexual orientation was relevant but "only went to [her preference as to] the gender of her victim, not to her predilection for children over adults." *Garcia*, 177 Cal. Rptr. 3d at 240. The court discredited that position: "This argument assumes gay child molesters are more likely to victimize children of their own sex than those of the opposite sex. However,

‘there is no evidence that lesbians are especially likely to abuse girls’ as compared to boys.” *Id.* (quoting Mary E. Becker, *The Abuse Excuse and Patriarchal Narratives*, 92 *Nw. U. L. Rev.* 1459, 1467 (1998)); *see also Christie*, 53 *N.E.3d* at 1274 (rejecting the “use of evidence of an adult’s homosexuality to demonstrate a sexual interest in underage boys (or, indeed, underage children of either gender)”).

This Court recognized a similar principle in a case examining a probation condition imposed on a convicted child sex abuser. The defendant argued that prohibiting him from having unsupervised contact with any minor children was unreasonable as applied to his son because his victims were girls. *Allen v. State*, 449 *Md.* 98, 106–07, 109 (2016). In tension with its position in this case, the State argued that sex offenders do *not* limit their victims to one gender. *Id.* at 110. This Court agreed, finding the probation condition reasonable and rationally related to the defendant’s offense. *Id.* at 115, 120–21.

Simply put: There is no evidence that sexual attraction to adults of a particular gender correlates to an attraction to prepubescent children of that gender. The “assumption” relied upon by the State and the Appellate Court of Maryland is wrong.

In any event, it is far from clear that the jury relied on that assumption as opposed to the stereotype that LGBTQ people are sexual threats to children. First, the prosecutor did not clearly articulate it. (*See E.322–23* (lines 108:18–

109:5; E.350–51 (lines 136:18–137:13).) Indeed, Ms. Turenne’s defense counsel understood the prosecutor’s comments to invoke the latter, not the assumption pressed on appeal by the State. He told the jury in closing: “[T]hey’re trying to imply that because you’re gay somehow you then become an abuser.” (E.339 (lines 125:3-4.) Even the Appellate Court of Maryland, despite holding that the prosecutor was relying on the assumption, “note[d] that the prosecutor’s comments could be misinterpreted. . . . [and] came dangerously close to perpetuating a pernicious falsehood about sexual orientation.” *Turenne*, 258 Md. App. at 264.

Moreover, the facts do not support the State’s logic. Ms. Turenne testified that she was bisexual or confused about her sexual orientation, not that she was solely attracted to women. The prosecutor asked her:

Q. Okay. Is it a fair statement that you are attracted to women?

A. I wouldn’t say attracted to women . . . like, I’m not only [attracted to women], I will say, like, I’m bisexual . . . I’m still confused about what I like between men or women. But not children, no.

(E.267 (lines 53:8-13); *see also* E.269 (lines 55:10-20) (similarly testifying: “I will say, like, I’m kind of attracted to them [i.e., the pornographic images of adult men and women on her phone, E.267 (lines 53:14-16)] but not really because, like I say, I’m still confused about what I like or not.”). Despite the fact that Ms. Turenne is not *only* attracted to women, the State contends that

her sexual orientation is relevant to why she *only* took pictures of girls. But the idea that the gender of child victims matches the gender of the adults to whom an abuser is attracted would mean that Ms. Turenne would have taken photos of *both* boys and girls. She was bisexual, not solely attracted to women. In other words, the inference the State claims the jury made is not only empirically unsupported—it is also unsupported by the State’s own logic.

* * *

In sum, whichever notion the prosecution intended to invoke in Ms. Turenne’s trial—that LGBTQ adults are sexually attracted to children, or that the gender of pedophiles’ victims aligns with the pedophile’s sexual orientation—it is inaccurate and thus lacks any probative value in establishing the elements of the crimes charged.

II. BASELESS STEREOTYPES AND ASSUMPTIONS LIKE THOSE RELIED ON BY THE STATE HAVE NO PLACE IN THE CRIMINAL JUSTICE SYSTEM.

A. Bias Against LGBTQ People Persists.

The history of discrimination against LGBTQ people is well-known and recognized. *See, e.g., Obergefell v. Hodges*, 576 U.S. 644, 660–63 (2015); *303 Creative LLC v. Elenis*, 600 U.S. 570 (2023) (Sotomayor, dissenting); Brief of Org. of Am. Historians, *Obergefell*, 576 U.S. 644 (No. 14-556). LGBTQ people have faced animus and discriminatory treatment, not only with respect to the criminalization and repudiation of their relationships—*see, e.g., Bowers v.*

Hardwick, 478 U.S. 186 (1986), *overruled by Lawrence v. Texas*, 539 U.S. 558 (2003); 28 U.S.C. 1738C § 3 (Defense of Marriage Act or “DOMA”) (repealed 2022), *invalidated by United States v. Windsor*, 570 U.S. 744 (2013)—but reaching nearly every aspect of life. *See, e.g., Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000) (public accommodations) (permitting Boy Scouts to expel gay scoutmaster); *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021) (parenting) (requiring city to contract with foster care agency despite agency’s policy not to permit same sex couples to adopt); *Boutilier v. Immigr. & Naturalization Serv.*, 387 U.S. 118 (1967) (immigration) (upholding “homosexual activities” as grounds for deportation); *Evans v. Georgia Reg’l Hosp.*, 850 F.3d 1248 (11th Cir. 2017) (employment) (finding employment discrimination claim based on sexual orientation not actionable under federal law); *Steffan v. Perry*, 41 F.3d 677 (D.C. Cir. 1994) (military service) (holding that Navy could discharge men who identified as gay, absent any homosexual conduct).⁴ The breadth of this discriminatory treatment reflects long-standing bias against LGBTQ people.

Despite social and legal progress over the last couple of decades, this bias persists. The FBI’s annual statistics show that the number of reported hate crimes against LGBTQ people in 2022 increased 19% over the prior year’s

⁴ As with *Bowers* and DOMA, the holdings of some of these cases are no longer good law. Amici cite the cases not for their precedential value but to illustrate the wide range of historical discrimination that contributes to existing anti-LGBTQ bias.

record. Brooke Migdon, The Hill, *FBI Crime Statistics Show Anti-LGBTQ Hate Crimes on the Rise* (Oct. 16, 2023), <https://tinyurl.com/nbz7dxxv>. A recent study, conducted after marriage equality was affirmed by the U.S. Supreme Court, found that 46% of LGBTQ people are closeted at work and 28% are fully closeted. HRC Foundation, *A Workplace Divided: Understanding the Climate for LGBTQ Works Nationwide* (2018), <https://tinyurl.com/335jnesv>. Even the legal progress is being stifled. A record number of anti-LGBTQ bills were introduced in state legislatures this year, more than doubling the previous record set in 2022. Annette Choi, CNN Politics, *Record Number of Anti-LGBTQ Bills Have Been Introduced This Year* (Apr. 6, 2023), <https://tinyurl.com/9ej94uue>.

Similarly, recent years have seen rampant, unfounded allegations—in both social media networks and cable news outlets—that LGBTQ+ people are “grooming” children—i.e., “befriending a child for the purpose of molesting them”—and that the LGBTQ community embraces “pedosexuals” within its advocacy for equality and acceptance. *E.g.*, Melissa Block, NPR, *Accusations of “Grooming” Are the Latest Political Attack—with Homophobic Origins* (May 11, 2022), <https://tinyurl.com/yey9cnbh>; Reuters, *Fact Check: The LGBTQ Community Is Not Adding a “P” to Their Acronym* (June 2, 2020), <https://tinyurl.com/mr2me63e>. Dangerous rhetoric like this has deep roots in American culture and has long been used as a platform for anti-LGBTQ

initiatives. See Anthony Niedwiedcki, *Save Our Children: Overcoming the Narrative that Gays and Lesbians Are Harmful to Children*, 21 Duke J. of Gender L. & Pol’y 125, 142–63 (2013) (discussing Anita Bryant’s “Save Our Children” campaign and how the narrative that gays and lesbians are sexual predators was used to subvert equality and support discriminatory legislation).

B. Jurors’ Decisions Are Influenced by Anti-LGBTQ Bias.

Judges and juries are not immune to anti-LGBTQ bias, which can lead to violations of parties’ constitutional rights. A 2022 survey found that 22% of LGBTQ participants who had appeared in court—as a party, juror, witness, or court employee—reported that someone “made negative comments to or about them relating to sexual orientation, gender identity or expression, or HIV status.” Somjen Frazer et al., Lambda Legal, *Protected and Served? 2022 Survey of LGBTQ+ People and People Living with HIV’s Experiences with the Criminal Legal System* 36–37 (2023), <https://tinyurl.com/kkb44tke>. A study examining jury voir dire found that “some jurors, even in relatively liberal jurisdictions, continue to express disapproval of homosexuality.” Giovanna Shay, *In the Box: Voir Dire on LGBT Issues in Changing Times*, 37 Harv. J. L. & Gender 407, 427 (2014). Jurors’ answers to voir dire questions about LGBTQ people included: “I think that they are morally wrong”; “[M]y religious convictions tell me that homosexuality is a sin”; “I’m a Catholic, my religion”;

“I hope I would be able to see past that, but I can’t guarantee you that, no”; and “I just don’t like queers.” *Id.* at 427–28.

“It remains the case that ‘[t]here will be, on virtually every jury, people who would find the lifestyle and sexual preferences of a homosexual or bisexual person offensive.’” *United States v. Bates*, 590 F. App’x 882, 886 (11th Cir. 2014) (rejecting the lower court’s “optimism” that “our society is beyond prejudice on the basis of a person’s sexual orientation”). “While some jurors are not biased based on sexual orientation, some realistically are.” *Berthiaume v. Smith*, 875 F.3d 1354, 1359 (11th Cir. 2017) (internal citations omitted). “Given the long history of cultural disapprobation and prior legal condemnation of same-sex relationships, the risk that jurors might harbor latent prejudices on the basis of sexual orientation is not trivial.” *Id.*

Recognizing this reality, the Appellate Court of Maryland recently held that courts must conduct voir dire regarding anti-LGBTQ bias when the evidence directly or indirectly implicates the sexual orientation or preferences of a defendant or witness. *Muldrow v. State*, No. 1898, 2023 WL 8446110, at *15 (Md. App. Ct. Dec. 6, 2023). The court rejected a harmless error analysis: “Without asking whether prospective jurors were biased against homosexuality, there is no way to guarantee that all members of the empaneled jury convicted [the defendant] solely on the merits or if some were inclined from the outset to punish him for his sexual orientation.” *Id.* at *11.

This sentiment is amplified in Ms. Turenne’s case, where the prosecution exploited potential jurors’ biases through incendiary stereotypes. The jurors were not only permitted to hear about her sexual orientation but were told that they should infer from her sexual orientation that she received sexual gratification from the photos of toddlers.

The presence of jury bias is particularly alarming with respect to child sex crimes because the fallacious belief that there is some connection between sexual orientation and attraction to children has remained so persistent. A study examining the effect of a defendant’s sexual orientation on mock jurors’ decisions to convict the defendant of child sexual assault “reveal[ed] clear evidence of bias against gay defendants in child sexual abuse cases.” Tisha R. A. Wiley & Bette L. Bottoms, *Effects of Defendants’ Sexual Orientation on Jurors’ Perceptions of Child Sexual Assault*, 33 *Law & Hum. Behav.* 46, 55 (2009). Specifically, when the victim was the same sex as the defendant, jurors were more likely to convict if the defendant identified as gay than straight; but there was no significant difference when the victim was the opposite sex of the defendant. *Id.* The researchers explain that this shows anti-LGBTQ bias through a “plausibility” effect: Jurors were more likely to convict a straight defendant when they perceived the victim as “plausible”—i.e., the victim’s sex supported the assumption that child sex abusers choose victims that align with their sexual orientation—than when they perceived the victim as

“implausible”; but they were equally likely to convict a gay defendant whether the victim was perceived as “plausible” or “implausible.” *Id.*

This asymmetry clearly reflects an anti-gay bias [J]urors’ stereotypical assumptions about the relation between sexual orientation and child victim gender preference—that is, what type of defendant commits what type of abuse—fuel[] a bias that has potential negative consequences for gay defendants in child sexual abuse cases.

Id. at 55–56.

This finding goes to the heart of Ms. Turenne’s case and crystallizes the errors in the State’s argument and the Appellate Court of Maryland’s decision. As explained above, the assumption about gender preference is empirically unsupported. This study illustrates that that assumption is applied inconsistently with respect to LGBTQ and heterosexual defendants. It suggests that, even if the jury in Ms. Turenne’s case drew an inference based on the gender preference assumption pressed by the State, it might not have drawn that inference if Ms. Turenne were heterosexual and the photos were of boys.

C. Permitting the Use of Baseless Stereotypes and Assumptions About Sexual Orientation Harms Both LGBTQ Defendants and LGBTQ People More Broadly.

Stereotypes and misguided assumptions like those levied at Ms. Turenne are so inflammatory of anti-LGBTQ bias that courts across the country prohibit testimony about a defendant’s sexual orientation from being

introduced as evidence in child sex crime cases. Gillian R. Chadwick, *Reorienting the Rules of Evidence*, 39 *Cardozo L. Rev.* 2115, 2151 (2018) (“Courts generally exclude evidence of a defendant’s sexual orientation in child sex abuse cases, recognizing the low probative value and high risk of unfair prejudice.”); *see, e.g.*, cases cited *supra* pp. 5–6, 7–9. The Ninth Circuit, for example, has explained:

Because in our society homosexuality—and indeed any other sort of deviation from the norm of heterosexual procreative sex—is often equated with indecency, perversion, and immorality, and gay persons are often greeted with distrust and suspicion, particularly in their interactions with children, we cannot assume that the jury’s decision was not affected by biases and prejudices.

Guam v. Shymanovitz, 157 F.3d 1154, 1161 (9th Cir. 1998); *see also, e.g., State v. Woodard*, 769 A.2d 379, 383 (N.H. 2001) (reversing child sex abuse conviction of lesbian woman because “the potential for the jury to be unfairly influenced by whatever bias they might have concerning homosexual conduct created the danger of prejudice”); *Sias*, 416 So.2d at 1217 (“[A]ssuming some arguable relevance in this testimony [about the defendant’s sexual orientation], its probative value is clearly outweighed by its prejudicial effect.”).

Numerous LGBTQ people have been exonerated where the government expressly relied, or the jury likely relied, on anti-LGBTQ bias. *See* Nat’l Registry of Exonerations, <https://tinyurl.com/mr2atvjr> (last visited Jan. 12,

2024) (producing 23 results where sexual orientation was implicated). While most such cases have involved gay men, false accusations against lesbian women are not uncommon. *See generally* Valena Beety, *Manifesting Justice: Wrongfully Convicted Women Reclaim Their Rights* (2022).

In one illustrative case, four lesbians—three of whom were Hispanic—were convicted of sexually assaulting one of the women’s nieces in a purported “orgy” where the defendants allegedly held the children down and inserted objects like tampons into their vaginas. “The allegations came in the wake of more than a decade of national hysteria over claims of satanic ritual abuse of children,” largely in day care centers. Maurice Possley, *Elizabeth Ramirez*, Nat’l Registry of Exonerations, <https://tinyurl.com/mssnpebm> (Oct. 31, 2017). The doctor who examined the nieces insisted that a scar on one of the girl’s hymens indicated that sexual abuse had occurred, and she speculated that the women’s actions were “satanic related.” *Id.*

Years later, the women were exonerated. *See Ex parte Mayhugh*, 512 S.W. 3d 285 (Tex. Crim. App. 2016). The doctor’s testimony about hymen scars had been scientifically discredited. *Id.* at 292. And one of the alleged victims recanted her testimony, revealing that her abusive father had coerced her and her sister into making the false allegations to gain leverage in custody disputes with the girls’ mother. *Id.* at 288. The coercion was prompted by an incident wherein the girl and her cousin were pretending to French kiss, mimicking

behavior that they had witnessed her father engage in with other women. *Id.* at 294. The father, however, “insisted that she learned it from watching her lesbian aunt,” and then proceeded to coach the girls on what to report to the police and the doctor, striking them if they got the fabricated story wrong. *Id.*

Stories like this not only demonstrate the profound harm of securing criminal convictions and incarceration based on anti-LGBTQ bias; they also raise the specter that permitting the use of sexual orientation here would license its use in other legal settings. Indeed, the court in *Mayhugh* observed that the father created the false allegations to gain leverage in custody disputes.

The damage caused by inaccurate and biased assumptions like those in Ms. Turenne’s case stigmatizes LGBTQ people far beyond the courtroom as well. “Hundreds of studies conclude that experiencing anti-LGBTQ discrimination increases the risks of poor mental and physical health, including depression, anxiety, suicidality, PTSD, substance use, and psychological distress.” Dr. Nathaniel Frank, The Public Policy Research Portal, *Anti-LGBTQ Discrimination Inflicts Disproportionate Harm on People of Color 2* (2021), <https://tinyurl.com/yc6dpbbc>. Suicide attempts by LGBTQ youth decreased 7% in states that legalized same-sex marriage, *id.* at 3, illustrating that the stigma associated with being LGBTQ drives these effects. *See also* Herek, *Myths, supra*, at 143–48 (observing that the differences in

mental health outcomes are the result of the stigma associated with being homosexual). LGBTQ people of color experience even greater disparities, reporting higher rates than white LGBTQ people of negative workplace interactions, discriminatory treatment from health care providers, economic difficulties resulting from discrimination, and other negative impacts. See Lindsay Mahowald, *LGBTQ People of Color Encounter Heightened Discrimination: 2020 Survey Results on Experiences in Health Care, Housing, and Education*, Ctr. Am. Progress (June 24, 2021), <https://tinyurl.com/2vcc499s>; Lindsay Mahowald, *Black LGBTQ Individuals Experience Heightened Levels of Discrimination: 2020 Survey Results Highlight Disparities in the Workplace, in Police Interactions, and in Mental and Physical Health*, Ctr. Am. Progress (July 13, 2021), <https://tinyurl.com/9tasbjwk>.

**III. MS. TURENNE’S CONVICTIONS SHOULD BE REVERSED
BECAUSE THE JURY WAS TOLD TO RELY ON INACCURATE
AND BIASED ASSUMPTIONS ABOUT SEXUAL ORIENTATION.**

This case presents an opportunity for this Court to repudiate the use of inaccurate and biased assumptions about sexual orientation. The absence of an objection at trial to the prosecutor’s reliance on Ms. Turenne’s sexual orientation is no reason to ignore its impropriety. Some arguments are so out of bounds that courts must cure their prejudice. While the Court did not grant certiorari on this plain error question raised by Ms. Turenne, its review of the sufficiency of the evidence counsels the same result. Ms. Turenne’s sexual

orientation is impossible to separate out of the jury’s analysis of whether the prosecution met its evidentiary burden. The prosecutor expressly asked the jury to infer from Ms. Turenne’s sexual orientation that the photos were sexual in nature—a necessary component of both crimes. Moreover, in analyzing the sufficiency of the evidence, the Appellate Court of Maryland relied on Ms. Turenne’s sexual orientation. As to the child pornography convictions, the court held that the “lascivious exhibition” inquiry “requires consideration of all circumstances surrounding a depiction; not just the image itself, but the actions *and preferences* of the defendant.”⁵ *Turenne*, 258 Md. App. at 247 (emphasis added). It also stated that the “relevant facts” include that “all [of the photos] are taken of *female* infants.” *Id.* at 249 (emphasis added). Likewise, in assessing the child sex abuse convictions, the court held that the “sexual gratification” inquiry assesses the “totality of the circumstances,” including the “taking of photos of infants’ bare *vaginas*.” *Id.* at 257 (emphasis added). This Court’s review of the sufficiency of the evidence thus must address the use of Ms. Turenne’s sexual orientation at trial. (*Accord* Pet. Br. at 14–18.)

⁵ “Preferences” undeniably connotes Ms. Turenne’s sexual orientation. The court later quoted defense counsel’s statement that Ms. Turenne’s “preferences are in men and women.” *Turenne*, 258 Md. App. at 262.

“In determining whether [the] evidence was sufficient to support a conviction, an appellate court ‘defer[s] to any possible *reasonable* inferences [that] the trier of fact could have drawn from the . . . evidence.’” *Grimm v. State*, 447 Md. 482, 495 (2016) (emphasis added). Ms. Turenne’s convictions required that the photos were sexual in nature, and the jury was asked to infer from Ms. Turenne’s sexual orientation that she received sexual gratification from the photos. As discussed above, however, there is no empirical support for either the idea that people who are attracted to same-sex adults are likely to be sexually attracted to children, or the idea that gender of pedophiles’ victims aligns with the gender of adults to whom they are sexually attracted. Any such inference is therefore unreasonable.

The impact of the use of Ms. Turenne’s sexual orientation in this case is apparent by looking at other Maryland child sex abuse cases that, as here, required evidence of sexual gratification or exploitation. In *Raines*, the Appellate Court of Maryland affirmed the defendant’s convictions on the grounds that penetrating his daughter’s vagina with a vibrator, secretly recording her masturbating, and showing her a video of her mother masturbating could be “reasonably construed” as being “for the purpose of his sexual . . . gratification.” *Raines v. State*, 142 Md. App. 206, 218 (2002). In *Schmitt*, the fact that the defendant masturbated in the bedroom of a 15-year-old girl while holding an article of her clothing was a sufficient basis from

which to conclude that secretly recording her getting dressed constituted “exploitation of a sexual nature.” *Schmitt v. State*, 210 Md. App. 488, 492, 502 (2013). In *Brackins*, that court held that unbuttoning a 12-year-old girl’s blouse to take a picture of her breasts was “clear, positive evidence that he exposed her breasts for his own gratification.” *Brackins v. State*, 84 Md. App. 157, 160 (1990). In *Scriber*, a teacher sexually exploited an adolescent student by placing his phone under her skirt and taking pictures. *Scriber v. State*, 236 Md. App. 332, 351–52 (2018). And in *Walker*, the court concluded that letters from a teacher’s aide to an 8-year-old student wherein he professed his love for her, called her “beautiful” and “gorgeous,” and discussed fantasies of kissing and holding her constituted “ample evidence from which to decide that [the defendant’s] actions were sexually exploitative.” *Walker v. State*, 432 Md. 587, 623–24 (2013).

All of these cases required an inference that the defendants’ conduct, which did not involve direct sexual touching, was sexual in nature—and the inferences were drawn from circumstances that were overtly and obviously sexual. In Ms. Turenne’s case, by contrast, the prosecutor asked the jury to draw an inference that she received sexual gratification from the photos *from the fact of her sexual orientation*. The cases discussed above do not mention the defendants’ sexual orientation—underscoring its weight and improper use in this case.

Although Maryland courts, outside of this case, have not examined the relevant provision of the child pornography statute—“lascivious exhibition of the genitals”—a similar pattern is apparent in the cases from other jurisdictions cited in the Appellate Court of Maryland’s opinion in this case. See *Turenne*, 258 Md. App. at 237–39. In *Stewart*, the images were considered lascivious because the defendant had cropped what the court considered otherwise “innocuous” photos of naked children on a beach to focus solely on the genitalia or brightened the photos to distort the background and make the genitalia more visible. *United States v. Stewart*, 729 F.3d 517, 527 (6th Cir. 2013). In *Holmes*, screenshots of a teenage girl’s pubic area, which the defendant captured from secretly recorded videos of her in the bathroom, were considered lascivious. *United States v. Holmes*, 814 F.3d 1246, 1248–50, 1252 (11th Cir. 2016). In *Knox*, 10- to 17-year-old girls, “clad only in very tight leotards, panties, or bathing suits, were shown specifically spreading or extending their legs to make their genital and pubic region entirely visible,” and in some videos, “the child subject was shown dancing or gyrating in a fashion indicative of adult sexual relations.” *United States v. Knox*, 32 F.3d 733, 737, 747 (3d Cir. 1994). In *Johnson*, photos that captured the pubic area and breasts of 15- to 17-year-old female weightlifters conducting “weigh-ins” were considered lascivious. *United States v. Johnson*, 639 F.3d 433, 435, 440 (8th Cir. 2011). In *Kemmerling*, at least some of the photos at issue, which

included children’s genitals, “depict[ed] [the children] in a location or pose suggestive of sexual activity,” and the others were not simply “a clinical view of the . . . children’s anatomy.” *United States v. Kemmerling*, 285 F.3d 644, 646 (8th Cir. 2022). And in *Brown*, the defendant took photos of his step-grandchildren in the bathtub and on the toilet, as well as one photo of the child in bed touching her vagina, and he had downloaded images of other children in the bathtub, in the shower, and urinating. *United States v. Brown*, 579 F.3d 672, 676, 678 (6th Cir. 2009).

All of these cases required a finding that the images, which clearly showed children’s genitals, were sexual in nature; the fact that the children’s genitals were in the photos was insufficient to amount to lascivious exhibition. And, as with the sex abuse cases discussed above, the defendants’ sexual orientation was not discussed. Here, however, the prosecutor used Ms. Turenne’s sexual orientation to argue that she received sexual gratification from the photos and they were therefore lascivious.

If sexual orientation were relevant to child sex abuse and pornography, one would expect the government to introduce evidence of heterosexual defendants’ sexual orientation. But as other courts have ruled, sexual orientation is not relevant and is deeply prejudicial. *See supra* pp. 17–18. The appeal to Ms. Turenne’s sexual orientation unquestionably tainted the proceedings and must be considered in this Court’s sufficiency analysis. As

other courts have recognized and the research discussed above indicates, this Court “cannot assume that the jury’s decision was not affected by biases and prejudices.” *Shymanovitz*, 157 F.3d at 1161. Given the unreasonable inferences the jury was asked to draw from her sexual orientation, one cannot say that a rational factfinder could have found Ms. Turenne guilty of either crime absent the reliance on her sexual orientation. Criminal defendants have a constitutionally protected right to fair trials, where they are judged “for what they do, not who they are.” *Buck*, 580 U.S. 100 at 123. And courts must ensure that verdicts are supported by sufficient evidence that is both relevant and not unduly prejudicial. The verdict against Ms. Turenne was not.

CONCLUSION

For the foregoing reasons, amici respectfully urge this Court to reject the use of false and prejudicial inferences based on sexual orientation and reverse Ms. Turenne’s convictions.

January 12, 2024

Respectfully submitted,

/s/ Jared P. Marx _____

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**CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH
RULE 8-112**

1. This brief contains 6,345 words, excluding the parts of the brief exempted from the word count by Rule 8-503, and is typeset in 13-point Century Schoolbook font.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Jared P. Marx
Jared P. Marx

Appendix A
Individual Statements of Interest

American Civil Liberties Union of Maryland

The American Civil Liberties Union of Maryland (“ACLU of Maryland”) is a non-profit, non-partisan membership organization founded in 1931 to protect and advance civil liberties in Maryland, and is the state affiliate of the ACLU. It has approximately 30,000 members throughout the state. From its inception, the ACLU of Maryland has consistently sought to protect Marylanders’ right to be free from invidious discrimination, including on the basis of sexual orientation. The ACLU of Maryland has participated, either as counsel or as *amicus curiae*, in many cases in Maryland’s state and federal courts concerning statutory and constitutional protections against discriminatory treatment and the rights of LGBTQ+ persons.

Fred T. Korematsu Center for Law and Equality

The Fred T. Korematsu Center for Law and Equality (Korematsu Center) is a non-profit organization based at Seattle University School of Law that works to advance justice through research, advocacy, and education. Inspired by the legacy of Fred Korematsu, who defied the military orders during World War II that ultimately led to the incarceration of 120,000 Japanese Americans, the Korematsu Center works to advance social justice for all. The Korematsu Center has a strong interest in ensuring that courts do not allow damaging stereotypes about LGBTQ people to interfere with the fair

administration of justice. The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

Lambda Legal Defense and Education Fund, Inc.

Lambda Legal Defense and Education Fund, Inc. (“Lambda Legal”) is the oldest and largest national legal organization committed to achieving full recognition of the civil rights of LGBTQ+ people and everyone living with HIV. In 2005, Lambda Legal established its Fair Courts Project to expand access to justice in the courts for these communities and to support judicial independence and diversity. Lambda Legal has appeared as *amicus curiae* in cases across the country addressing anti-LGBTQ+ bias and discrimination within the courts. *See, e.g., Berthiaume v. Smith*, 875 F.3d 1354 (11th Cir. 2017) (specific voir dire as to bias based on sexual orientation required where sexual orientation is inextricably bound up with the issues at trial); *Smithkline Beecham Corp. v. Abbott Laboratories*, 740 F.3d 471 (9th Cir. 2014) (classifications based on sexual orientation are subject to heightened scrutiny and equal protection prohibits preemptory strikes based on sexual orientation); *Rhines v. Young*, 139 S.Ct. 1567 (U.S. 2019) (petition for writ of certiorari denied) (urging the U.S. Supreme Court to allow Mr. Rhines to present evidence that sexual orientation bias impacted the jury’s decision to sentence him to death). In 2023, Lambda Legal released *Protected and Served? 2022 Report*, a report on the experiences of LGBTQ+ people and people living with

HIV with the criminal legal system. The communities Lambda Legal represents depend upon a fair and impartial judicial system to enforce their constitutional and other rights.

National LGBTQ+ Bar Association and Foundation

The National LGBTQ+ Bar Association is a nonprofit membership-based 501(c)(6) professional association. The National LGBTQ+ Bar Association's more than 10,000 members and subscribers include lawyers, judges, legal academics, law students, and affiliated legal organizations supportive of lesbian, gay, bisexual, transgender, and queer ("LGBTQ+") rights. The National LGBTQ+ Bar Association and its members work to promote equality for all people regardless of sexual orientation or gender identity or expression, and fight discrimination against LGBTQ+ people as legal advocates. The National LGBTQ+ Bar Association is a membership organization and files this brief on behalf of its members, who value diversity in education on the bases of race and ethnicity, as well as sexual orientation and gender identity or expression.

Public Justice Center

The Public Justice Center ("PJC"), a non-profit civil rights and anti-poverty legal services organization founded in 1985, uses impact litigation, public education, and legislative advocacy to enforce the rights of people who are denied justice because of discrimination, bias, and inequity in all forms.

Its Appellate Advocacy Project expands and improves representation of disadvantaged persons and civil rights issues before the Maryland and federal appellate courts. The PJC has longstanding commitments to combating discrimination against LGBTQ+ individuals. *See, e.g., Doe v. Catholic Relief Servs.*, 484 Md. 640 (2023) (amicus); *Conaway v. Deane*, 401 Md. 219 (2007) (amicus); *Tyma v. Montgomery Cnty.*, 369 Md. 497 (2002) (amicus); Trans Health Equity Act, H.D. 283, 2023 Leg., 445th Sess. (Md. 2023). It is also committed to eradicating bias and related disparate impacts that pervade the criminal legal system. *See, e.g., Belton v. State*, 483 Md. 523 (2023) (amicus); *Smith v. State*, 481 Md. 368 (2022) (amicus).

**Sayra and Neil Meyerhoff Center for Families,
Children and the Courts**

The Sayra and Neil Meyerhoff Center for Families, Children and the Courts (“CFCC”) envisions communities where children and families thrive without unnecessary involvement in the legal system. Located inside the University of Baltimore School of Law, CFCC works alongside schools, parents, legislators, and community leaders to eliminate barriers to student success and family well-being. CFCC promotes child and family well-being while inspiring the next generation of attorneys to prioritize the power, voice, and needs of families. We believe that all people, regardless of race, gender, ethnicity, or sexual orientation deserve equitable and fair treatment under the

law. CFCC believes that gender stereotypes and negative stereotypes about LGBTQ people creates harm for individuals, families, and our larger community. CFCC does not, in this brief or otherwise, represent the official views of the University of Baltimore School of Law.

Professor Valena Beety

Valena Beety is the Robert H McKinney Professor of Law at Indiana University Maurer School of Law. She teaches Criminal Law, Wrongful Convictions, and Women, Gender, and the Law. She has researched and written, in particular, about how LGBTQ women are wrongly convicted and the stereotypes used to convict them. She was founding director of the West Virginia Innocence Project and is currently co-founder of the Indiana Innocence Project.

Professor Julia Belian

Julia Belian is a law professor who has written on and advocates for rights of same-sex spouses in many venues, including as a member of the American Association of Law Schools Section on Sexual Orientation & Gender Identity Issues. She is the author of *Law on the Front Lines: Pushing the Boundaries of "Marriage,"* 26 J. Civil Rts. & Econ. Dev. 591 (2012).

Professor Leonore F. Carpenter

Leonore F. Carpenter is an Associate Professor of Law at Rutgers Law School. She is an expert on LGBTQ legal issues; teaches a seminar on sexual

orientation, gender identity, and the law; and is the former legal director of an LGBTQ rights nonprofit organization.

Professor David S. Cohen

David S. Cohen is a professor of law at Drexel University's Kline School of Law, where he teaches constitutional law, reproductive rights, and sex discrimination. His scholarship focuses, among other things, on gender construction and LGBTQ rights.

Professor Frank Rudy Cooper

Frank Rudy Cooper is a Professor of Law at the University of Las Vegas School of Law, who studies the intersection of race, gender, sexualities, and the criminalization system. He teaches a course on Identities, Culture, and Law, which considers sexual orientation, as well as Criminal Law and Criminal Procedure.

Professor Ann Freedman

Ann Freedman is a professor at Rutgers Law School and a nationally recognized expert in sex discrimination law with over fifty years of experience teaching, advocating and litigating against gender bias and discrimination. She is a co-author of a pathbreaking textbook on sex discrimination law and one of the founders of the Women's Law Project, which advocates for sex and gender equality, including via Pennsylvania's Equal Rights Amendment. Through her work, she seeks to educate students, the

legal profession, and the public on recognizing and rejecting stereotypes based on sex, gender, and sexual orientation, including those which result in discriminatory enforcement of criminal and child protection laws.

Professor Leigh Goodmark

Leigh Goodmark is the Marjorie Cook Professor of Law at the University of Maryland Francis King Carey School of Law. Professor Goodmark's scholarship focuses on gender-based violence and the criminal legal system. Her Gender, Prison, and Trauma Clinic represents incarcerated survivors of gender-based violence in post-sentencing proceedings. Professor Goodmark has written on the problematic treatment of LGBTQ survivors of gender-based violence in the legal system, and represents LGBTQ survivors of gender-based violence who would be adversely affected both at trial and in their post-sentencing matters by the application of the stereotypes relied upon in this matter.

Professor Jack B. Harrison

Jack B. Harrison is a Professor of Law and the David and Nancy Wolf Chair in Ethics and Professional Identity at Salmon P. Chase College of Law at Northern Kentucky University. Professor Harrison teaches, among other things, Gender, Identity, and the Law and Professional Responsibility. His scholarship focuses, among other things, on rights related to sexual orientation and gender identity.

Professor Margaret E. Johnson

Margaret E. Johnson is a Professor of Law, Co-Director of the Center on Applied Feminism, and Director of the Bronfein Family Law Clinic at The University of Baltimore School of Law. The Bronfein Family Law Clinic is a law school course in which law students are licensed to represent clients in family law litigation and advocacy matters, including specializing in the representation of LGBTQ individuals. In addition, the Center on Applied Feminism applies feminist theory, including theory relevant to LGBTQ issues, to legal practice and the policy arena. Professor Johnson also teaches about LGBTQ and gender issues in her Family Law and Special Topics in Applied Feminism courses.

Professor Sarah H. Lorr

Sarah H. Lorr is an Assistant Professor at Brooklyn Law School. Her scholarship focuses on how race, class, disability, and gender impact the rights of parents to have and raise families. Her work has appeared or is forthcoming in multiple law reviews, including *Stanford Law Review*, *California Law Review*, *Oklahoma Law Review*, and *Columbia Journal of Race & the Law*. She previously served as co-director of the Brooklyn Law School's Disability and Civil Rights Clinic and as a Supervising Attorney at Brooklyn Defender Services Family Defense Practice, providing free legal representation to parents at risk of losing their children to foster care. She regularly trains

parent defenders, social workers, and other stakeholders in the family regulation system.

Professor Nancy Polikoff

Nancy Polikoff is Professor Emerita of Law at American University Washington College of Law. She is a nationally recognized expert on LGBT parents and the law, who, in 2011, received the highest honor bestowed by the National LGBTQ+ Bar Association—the Dan Bradley award—for her work. She has been writing about, teaching about, and litigating and advocating on behalf of LGBT families for over 45 years.

Professor Josephine Ross

Josephine Ross is Professor of Law at Howard University School of Law where she teaches criminal justice subjects including Criminal Procedure, Evidence, and a Reentry Clinic. In 1997, Ross created and taught a course on Sexual Orientation and the Law at Boston College Law School. Several of her early law review articles argued in favor of marriage equality, published more than a decade before the U.S. Supreme Court took up the issue. The focus of her most recent scholarship is on policing, including a book published by Cambridge University Press that employs feminist methodology to investigate unfair albeit constitutional practices.

Professor Stacey L. Sobel

Stacey L. Sobel is a Professor of Law at the Western State College of Law

at Westcliff University, where she has been teaching since 2009. She is an award-winning teacher who specializes in legal issues related to sexual orientation and gender identity. She teaches Constitutional Law, Criminal Law, Criminal Procedure, and Sexual Orientation, Gender Identity, and the Law. Professor Sobel previously taught as visiting faculty or a lecturer at: the University of California, Irvine School of Law; the University of Pennsylvania Carey Law School; Rutgers Law School—Camden; and the George Washington University School of Law. Her prior work experience includes national and state LGBTQ organizations such as: executive director for Equality Advocates Pennsylvania (formerly the Center for Lesbian and Gay Civil Rights); legal director for the Servicemembers Legal Defense Network; and a consultant to a variety of non-profits including the National LGBTQ Task Force.

Professor Shanta Trivedi

Shanta Trivedi is an Assistant Professor of Law and the Faculty Director of the Sayra & Neil Meyerhoff Center for Families, Children and the Courts at the University of Baltimore School of Law. She teaches family law, parents' and children's rights, and child welfare law.

Professor Marley S. Weiss

Marley S. Weiss is Professor of Law at the University of Maryland Francis King Carey School of Law, where she has been teaching since 1984. Prior to that, she was Associate General Counsel for the International Union,

United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), where she worked starting in 1974. She is a specialist in all aspects of labor and employment law, and in particular, in matters regarding employment discrimination on the basis of gender, sexual orientation, and gender identity as well as other forms of invidious discrimination in the workplace. The unfounded stereotypes that underly the jury verdict in the instant case pose similar issues to those arising in many employment law cases.

CERTIFICATE OF SERVICE

Pursuant to Maryland Rules 20-201(g)(3), 20-205(d), and 20-405, I certify that on January 12, 2024, I electronically filed the foregoing used the MDEC System, which sent electronic notification of filing to all persons entitled to service. This document does not contain confidential or restricted information as defined by Md. Rule 20-101(s).

/s/ Jared P. Marx
Jared P. Marx