KARLA JAY, PHD

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Hi JD:

Here are the files about the Fifth Circuit case I was involved in involving Texas A&M. Please feel free to pass these along to whomever might be able to make use of them in research.

Thanks for all the good work you do!

Karla

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 82-2366

GAY STUDENT SERVICES ET AL.

VS.

TEXAS A&M UNIVERSITY ET AL.

THE STATE OF NEW YORK)

COUNTY OF NEW YORK)

AFFIDAVIT OF KARLA JAY

My name is Karla Jay, and I am of legal age and sound mind, and am competent to give the following affidavit.

I am currently an Associate Professor at Pace University, New York, New York. I have an A.B. from Barnard College of Columbia University (1968), a M. Phil. from New York University (1978), and am expecting my Ph.D. from New York University in October, 1983.

I am co-author with Dr. William Darrow of the Center for Disease Control and others of an article entitled "The Gay Report on Sexually Transmitted Diseases," which appeared in the American Journal of Public Health in 1981. I am also co-author with Allen Young of The Gay Report, and co-editor with Allen Young of three anthologies: Out of the Closets, After

You're Out, and Lavender Culture. My articles are syndicated in publications across the United States, and I have also written for Collier's Encyclopedia, Ms. Magazine, and other publications. My writing has recently won two journalism prizes, the Stonewall Foundation Award for Best Journalist--woman (1983) and the Gay Press Association Award for Excellence in Interviews (1983).

Two of my works, The Gay Report, and "The Gay Report on Sexually Transmitted Diseases," are referred to in an amicus curiae brief submitted by Dallas Doctors Against A.I.D.S. (DDAA). Their references to my work and to the subject of venereal disease among homosexuals are replete with errors, non sequiturs, incorrect inferences, distortions of statistics, and glaring omissions.

I am cited as a "medical authority" by DDAA, and am quite informed and knowledgable about health issues affecting the gay male and lesbian communities; I must first point out, however, that the book I co-authored with Allen Young, The Gay Report, was intended to be a popular book and was published by the trade division of Summit Books (Simon & Schuster).

Although The Gay Report surveyed over 5,000 gay men and lesbians (about 4,000 gay men and 1,000 lesbians), and is therefore most likely the largest study done on gay people, it is not a "scientific survey" as alleged by DDAA. DDAA brief at 16. Our survey was a self-selecting sample; in other words, we distributed the questionnaire as widely as possible through

magazines, groups, and gay meeting places, and responses were sent (usually anonymously) to our post office box. The introduction to the book clearly states that "(w)e do not claim to have a scientific or representative sample of lesbians and gay men." Jay & Young, The Gay Report at 10. "We approached this survey as writers and editors, with commitment to communication, not to social science." Id. at 12. Therefore, it is misleading and unfair for DDAA to present our statistics as scientific evidence when they were clearly not offered as such. "We were personally not inclined to produce a book filled with statistics and analysis--we were most excited about presenting excerpts from the comments and essays in a balanced, readable format, using the statistics we had in order to provide a context." Id. at 11-12.

Thus, while we used the statistics to balance the narrative material presented, DDAA misused the statistics to present misleading arguments. For example, the criterion we used to indicate whether or not a gay man participated in a particular sexual activity was the frequency with which the act was carried out. Our questionnaire and scale generally asked respondents whether they had participated in an act: "always/very frequently/ somewhat frequently/somewhat infrequently/very infrequently/ once/never." DDAA consistently cites statistics relating to one-time sexual experiences as if they indicate a pattern and practice of habitual behavior.

For example, DDAA falsely cites our study to prove that 22% of homosexual males engage in "handballing" or fisting." Our statistics show that only 5% of the gay men who responded

to our survey participated in this activity with any frequency at all. Furthermore, our report said nothing to indicate that "fisting experiences most commonly occur in an orgy setting." DDAA brief at 14. Only 10% (not 37% as indicated by DDAA on p. 14 of its brief) participated in sadomasochism with any meaningful frequency. Three percent (not 23% claimed by DDAA) participated in urination ("golden showers") and the figure for defecation ("scat") was less than one percent (not the 4% indicated by DDAA). Most homosexual activity among men does not "involve the potential oral and manual contact with human feces." DDAA brief at 14.

It is scientifically untenable to suggest, as does DDAA, by its misuse of our data, that someone who has participated in an activity once or twice is a habitual participant. Indeed, the opposite is likely to be true--that is, the person probably did not like the experience and therefore did not repeat it more than once. A simple analogy will indicate how illogical the assumptions of DDAA are. Alfred Kinsey and his associates (Kinsey et al., Sexual Behavior in the Human Male, 1948) created a scale from 0-6 to rate heterosexuality and homosexuality. According to the study "[i]ndividuals are rated as 0's if they make no physical contacts which result in erotic arousal or orgasm and make no psychic responses to individuals of their own sex." Id. at 639. In contrast, "individuals are rated as 6's if they are exclusively homosexual." Id. at 641. Most of the population fell between

1 and 5, with 37% having "at least some overt homosexual experience to the point of orgasm between adolescence and old age" and "30% of all males hav(ing) at least incidental homosexual experience or reactions (i.e. rate 1 to 6) over at least a three-year period between the ages of 16 and 55." Id. Thus, if DDAA applied the same criteria to the Kinsey Report that they do to The Gay Report, they would find that the majority of male Americans are homosexual!

Also, without attacking or supporting the activites cited from The Gay Report, I must say that these are the proclivities of a small minority within the gay community. It is most likely that an equal percentage of heterosexuals participate in these activites, yet DDAA probably would not suggest that sadomasochism and pleasure in scatological activities are inherent in all heterosexuals.

Although cited from another source, DDAA's allegations about the number of gay male sex partners and anonymous sex seem equally uninformed and untrue. Only 2% of our respondents had over seven sex partners in one week, hardly the "20 to 30 (sexual) contacts in a single night" indicated by DDAA. DDAA brief at 15. Only 17% of our respondents (not the 30% indicated by DDAA) claim to have had over 1000 sex partners in a lifetime. The source they cite, Bell and Weinberg, would tend to suggest a larger number of sexual partners per gay man than is nationally true, since Bell and Weinberg conducted their survey in San Francisco, where sex

partners are more readily obtainable. Our survey reached gay men in every state and in almost every province of Canada. And what is not mentioned by DDAA is that of our male respondents, 46% had a lover or boyfriend. The mean length of a relationship was over two years.

DDAA refers to furtive sexual activities, such as gay men engaging in homosexual acts outdoors or in semi-public places. Again DDAA distorts our statistics, citing one-time experiences as general behavior.

This might be the proper moment to point out the most obviously glaring omission from all this: that is, lesbians. While sometimes DDAA does specify that gay males are under discussion, they too often lump together lesbians and gay males under the all encompassing term "homosexuals." For example, the quote "homosexuals are more promiscuous than heterosexuals," DDAA brief at 15, is simply not true of lesbians. In our survey, 80% of the lesbians who responded were in a relationship. Again, the mean length of time was over two years. Over 62% of the lesbians had fewer than ten sex partners in a lifetime. Only one percent had over 50. Anonymous sex, oral/anal contact, and sadomasochism are extremely rare in the lesbian community. However, these facts are ignored by DDAA in their attempt to make "homosexuals" appear to be more deviant.

In addition to misrepresentations about my book, DDAA makes inaccurate statements about the article "The Gay Report

on Sexually Transmitted Diseases," of which I am one of the authors. DDAA uses our article to conclude that there is a "direct connection between homosexual activity and increased, even epidemic incidences of dangerous transmissible diseases." DDAA brief at 18. Our article made no such connection, but merely tried to see whether one could predict the type of venereal disease contracted by the type of sexual activity engaged in or the place where sexual activity occurred. Also, to cite the figure of 66.8% of male homosexuals as having pediculosis (pubic lice, commonly referred to as "crabs") and then to label that a "sexually transmitted disease, id. at 12-13, is absurd. For one thing, pediculosis is commonly transmitted by sheets, towels, and bedding, as well as by sexual acts. Since no surveys have ever been done on pediculosis among heterosexuals, there is no reason to assume that the rate is less great. One survey of a similar disease, scabies, among Navy personnel, found 12,000 cases in 1976 (L. Joseph Melton, "Scabies in the U.S. Navy." American Journal of Public Health, August 1978). Thus, to suggest that gay men be banned from meeting because they have once had pediculosis would be tantamount to prohibiting Navy personnel from landing in the United States because they are likely to have scabies.

As usual, our statistics are not quoted when they are lower than those found elsewhere. While DDAA located a study indicating "50% of the homosexual men investigated had chronic active hepatitis B," DDAA brief at 13, our survey indicated

that 87% had never had hepatitis from sex (as far as they knew).

Again, it is unfounded to presume that male homosexuals have more venereal disease than heterosexual males. Obviously, statistics about venereal disease vary according to the population under study. However, in a study conducted at a Denver university--a situation which would be most like the one under consideration at Texas A&M--it was found that 88.5% of the men with gonorrhea were heterosexual, 6.9% were homosexual, and 4.6% were bisexual. "The Establishment of a University-based Clinic" in Journal of the American Venereal Disease Association Vol. 1, 1975, at 70-79. It would be fair to conclude that gay male college students have venereal disease only in proportion to their numbers in the general college population.

Again, consideration of lesbians has been omitted. As Dr. William Darrow of the Center for Disease Control (Venereal Disease Division) will confirm, lesbians have the lowest rate of venereal disease in the United States. In fact, cases of venereal diseases in lesbians are almost nonexistent. Also, Dr. Darrow reported to me by telephone on June 30, 1983 that there has not been a single reported case of a lesbian with A.I.D.S.

In conclusion, to isolate gay men because they have more venereal disease is illogical because DDAA has not proven that gay men do have more venereal disease. And even if they did, it would be no more logical to prevent gay men from meeting than to prevent Navy personnel from landing on shore. Also,

if gay men were prevented from meeting because they are more likely to have A.I.D.S. or a venereal disease, it would be equally reasonable for the university to stop all heterosexuals from meeting to protect lesbians, since heterosexuals are much more likely to have venereal disease than are lesbians.

The most glaring lack of truth in DDAA's brief is the fact that most of the statistics they cite are irrelevant. Meetings of gay men and women at a university would no more increase the frequency of anonymous sex, visits to bath houses, or public sex than meetings of heterosexual men would increase the frequency of their visits to prostitutes. It is simply a non sequitur. In fact, giving gay people a place to meet, is, in my opinion, likely to lead to greater health. Those most at risk in the population are those who have anonymous sex, not people who know each other. Friends are more likely to tell each other if they have venereal disease than they would be to tell a stranger. This isn't science, merely common sense. It is sometimes the lack of meeting places that drives young people to riskier meeting places, such as toilets.

Sexual activity is also highly unlikely in campus meetings. After almost fifteen years writing about the gay movement and lecturing at dozens of college campuses all over the country, I can testify that I have <u>never</u> seen people having sex at a gay meeting.

DDAA cites the high rate of suicide among gays. With vicious and prejudiced groups like DDAA, the question isn't why gays kill

themselves, but how they survive in the face of such bigotry and oppression, and the lies they confront all their lives.

When Mr. Young and I wrote The Gay Report and our other works, we attempted to foster communication among gays and between gays and nongays. This is exactly what campus groups like the one at Texas A&M propose to do. What DDAA proposes to do is to silence gays so that it will be easier to spread more untruths instead of the fact that gays are the people next door--students in the classroom, teachers, doctors, lawyers, judges, mothers and fathers, sons and daughters. We found gay people in every profession and in every state in the country. Banning the group at Texas A&M University won't promote health, only ignorance, and that can never be healthy. The abridgment of First Amendment rights of any group in the country cannot help any of us.

Dated, this 8th day of July, 1983, at New York, New York.

Karla Jay
Karla Jay, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public or other official authorized to administer oaths, on this 8th day of July, 1983, by the foregoing Karla Jay, who appeared before me, identified herself, and stated that the contents of the foregoing affidavit were true and correct.

Steven Rosen
Notary Public in and for
_____ County, _____

My commission expires: _____.

STEVEN ROSEN
Notary Public, State of New York
No. 4762876
Qualified in N. Y. County
Term Expires March 30, 1984

NO. 82-2366

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

GAY STUDENT SERVICES, ET AL

Plaintiffs-Appellants

VS.

TEXAS A&M UNIVERSITY, ET AL,

Defendants-Appellees

On Appeal From The United States District Court
For The Southern District of Texas
Houston Division

BRIEF AMICUS CURIAE OF DALLAS DOCTORS AGAINST A.I.D.S., INC. IN SUPPORT OF DEFENDANTS-APPELLEES

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BRIEF AMICUS CURIAE OF
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IN SUPPORT OF DEFENDANTS-APPELLEES

STATEMENT OF THE COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE

The course of proceedings and the disposition in the Court below have been adequately set forth in Appellants' Brief and in Appellees' Brief and need not be reiterated here.

STATEMENT OF FACTS

Likewise, Appellees' Brief has adequately summarized the facts in this cause. Amicus Dallas Doctors Against A.I.D.S., Inc. ("DDAA") would merely emphasize several of the more relevant facts.

Texas A&M University ("A&M") refused official recognition of GSS by and through its then president, Dr. John Koldus. Dr. Koldus has also denied recognition to other fraternal and social organizations attempting to form on A&M's campus, including the Sigma Phi Epsilon Organization, as admitted by Appellants in their Brief at page 21.

At trial, Plaintiff's witness, Dr. Skinner, founder of GSS, admitted that: "Gay Student Services I don't believe could be construed to having a political element to it unless one felt--that seeking to foster understanding between gay and straight students was political. I would say that was more a social educational kind of thing." (TR. 48) In fact, GSS's own attorney admitted at trial that the organization's meetings "were basically designed to discuss normal student issues such as how do you get registered, what professor should I go to . . . ." (TR. 149)

Thus, it is evident that the purposes of GSS were primarily social and fraternal.

SUMMARY OF THE ARGUMENT

The record evidences the fact that GSS failed at trial to prove by a preponderance of the evidence that A&M's refusal to recognize GSS infringed upon its freedom of speech or association.

Even if A&M's refusal of recognition, did, arguendo, infringe upon GSS's freedom of speech or association, A&M obviously displayed several compelling state interests sufficient to uphold its action, namely, the public health and safety of its students and the public at large.

Moreover, since A&M's refusal did not in fact affect any fundamental right of GSS, A&M must show only a rational state basis for its action, and the record exhibits that A&M has amply met this test by enunciating its eminently rational stance of preventing criminal homosexual conduct.

Finally, any equal protection argument attempted to be raised at this point is specious, and, in any event, such argument has long since been waived or barred by laches.

ARGUMENT AND AUTHORITIES

I. Even If A&M's Refusal to Recognize GSS Arguably Infringed Upon Its Freedom of Speech and/or Association, A&M Clearly Demonstrated Compelling State Interests Sufficient to Uphold Its Refusal.

The trial court below expressly found that GSS failed to prove by a preponderance of the evidence that A&M's refusal to recognize GSS infringed upon its freedom of speech or association. (Findings of Fact and Conclusions of Law at 1) This finding by the district court, which clearly had the benefit of hearing the actual testimony and assessing the nature of the evidence first-hand, cannot be overturned on appeal unless "clearly erroneous." Gupta v. East Texas State Univ., 654 F.2d 411 (5th Cir. 1981); Wilson v. Thompson, 638 F.2d 801 (5th Cir. 1981).

DDAA maintains that the record in this case strongly supports this finding by the trial court. Indeed, GSS's own attorney effectively admitted at trial that the organization's meetings "were basically designed to discuss normal student issues such as how do you get registered, what professor should I go to . . . ." (TR. 149) The trial court found precisely this fact (Findings of Fact and Conclusions of Law at 4) and accordingly held that such a "social gatherings" group was not entitled to recognition because A&M's policy was not to recognize any such groups. (Id.) Thus, such finding should be upheld by this Court.

Even if, however, one assumes arguendo that A&M's refusal of recognition did infringe upon GSS's freedom of speech and/or association, A&M obviously displayed several compelling state interests unequivocally sufficient to uphold its refusal.

That is, assuming without admitting that A&M's action may have abridged GSS's freedom of speech or association, such action should be upheld, by GSS's own admission, if A&M can articulate "some overriding concern" or a "compelling state interest" to justify its refusal of recognition. See Appellants' Brief at 11-12, citing Familias Unidas v. Briscoe, 619 F.2d 391 (5th Cir. 1980); In the Matter of R ___ M. J ___, _____ U.S. _____, 102 S.Ct. 929 (1982). Again, even if one accepts these stated tests as the proper ones to apply in the instant situation, a review of the record in this cause manifests that A&M exhibited with clear and compelling evidence such a "compelling state interest" and "overriding concern": the public health threat to A&M's students and, indeed, the public at large from both a medical and psychological standpoint.

While GSS erroneously concludes that the "District Court found no compelling state interest to deny recognition" (Appellants' Brief at 27), the district court in fact expressly held as follows:

> At trial, Defendants did offer evidence that recognition of Gay Student Services would tend to encourage more homosexual conduct, resulting . . . in an increase in the number of persons with psychological and medical problems associated with homosexuality. The Court finds the testimony that male homosexuals pose a significant public health problem because they have a greater incidence of venereal disease to be credible. . . . the compelling need for all state agencies, including Texas A&M University, to discourage this public health risk might be a sufficient basis for denial of recognition of Gay Student Services . . . .

(Findings of Fact and Conclusions of Law at 3 n.1.) (emphasis added) In light of this obvious finding of "compelling need," it is inconceivable that GSS can argue to this Court that the trial court below found no compelling state interest to justify A&M's nonrecognition. As seen above, the district court in fact identified such overriding state concerns in the public health threat of GSS from both the medical and the psychological standpoints.

A. The Public Health and Safety Threat -- Medical Evidence. Despite GSS's protestations to the contrary, the record in this case is filled with uncontroverted evidence from medical experts that homosexuals pose a severe threat to both their own health and the health of the public because of the exceedingly high incidence rates of sexually transmitted diseases among the homosexual community.

Dr. Paul Cameron, A&M's expert psychological witness, testified at length that any gatherings of homosexual students

sponsored and encouraged by GSS would almost inevitably result in the performance of homosexual sex acts among some of the homosexual students or visitors involved. (TR. 145-52) Specifically, Dr. Cameron stated:

> Now, on the other hand, would I, given the Kinsey and the other data to which one has access, think that such a social group would, in fact, engage in homosexual activity, most definitely. I would be astounded, in fact, if it did not . . . We have a fair amount of empirical data regarding what homosexuals do when they are together as homosexuals in the social group. And they engage in homosexual behavior. . . . and homosexual recruitment. . . . and our evidence, including the evidence released by Bell and Weinberg and so forth suggest that we can well expect -- it would be a shock really, if there were not homosexual acts engaged in at or immediately after such a meeting.

(Id.) Dr. Cameron further testified that from his own personal psychology practice with homosexual patients and from his contacts with certain members of the gay community, "It would be highly likely, as I would see it, that at least some of these meetings would feature overt sexual activity. . . . at least some of the time, there would probably be overt sexual activity unless it [the GSS meeting] is held in an auditorium with an audience." (Id. at 152) Thus, the record evidence demonstrates a direct causal connection between the proposed campus meetings of GSS and overt homosexual sex acts; and, as will be seen below, such homosexual sex acts are directly responsible for the epidemic propor-

tions of sexually transmitted diseases in the homosexual community. Accordingly, it is incontestable that A&M has met its putative burden of demonstrating "some overriding concern" of the state by clear and compelling evidence.

Regarding the specific medical evidence adduced at trial, Dr. Charles Webb, a medical doctor and the chief epidemiologist of the Texas Department of Health, testified as A&M's expert medical witness that the incidence of many sexually transmitted or venereal diseases among homosexuals is exponentially higher than the incidence of these diseases among heterosexuals. Specifically, Dr. Webb testified that his officially compiled and recorded statistics on disease in Texas compelled the "recognition that homosexuals do compose considerably less than half of the male population, account for nearly half of the cases of infectious syphilis. And this holds true for other venereal diseases as well." (TR. 57) Dr. Webb then detailed a large number of specific sexually transmitted diseases that until recently were considered to be transmitted exclusively by food or water means but "are now being recognized to be sexually transmitted among homosexuals." (Id. at 58) The list of such diseases includes salmonella infection, shigella infection (bacillary dysentery), giardiasis, amebic dysentery, hepatitis B, and even typhoid fever. Again, Dr. Webb reiterated that this

phenomenon of extremely high disease rate incidence "is known only really to occur in homosexuals." (Id. at 58-59)

Dr. Webb's testimony then continued to attribute this high incidence rate to the fact that homosexuals are much more promiscuous than heterosexuals and to the types of sexual behavior engaged in by homosexuals, namely, "genital anal intercourse, oral genital intercourse and oral anal expressions of sexuality." (Id.)

In the face of this overwhelming and uncontroverted medical evidence demonstrating an obvious compelling state interest in the public health of A&M's students and the public at large, GSS's Appellants' Brief fails completely to address this medical issue, while the brief of amicus Lamda Legal Defense & Educational Fund, Inc. ("Lambda") responds with a short and wholly inadequate allegation that Dr. Webb's testimony was based solely on statistics and on the "presumed" homosexuality of Dr. Webb's respondents. Lambda Brief at 25. Understandably, Lambda fails to quote the entire basis for Dr. Webb's categorization of homosexual respondents in his testimony, which full quotation must include the fact that the extremely high disease rates reported by homosexuals "were found in individuals who reported same-sex contacts or who may be presumed to be homosexual." (TR. 56) If Lambda's definition of "homosexual"

does not involve individuals who engage in "same-sex contacts," then it is difficult to conceive of how Lambda would define a homosexual. Moreover, Lambda's railing against valid statistics only serves to further highlight the weakness of its protestations.

In fact, the overwhelming weight of published medical authority and sex research proves beyond question that Dr. Webb's testimony is medically correct and accurate with respect to the entire homosexual population of the United States.

The number of communicable diseases prevalent in the homosexual community and their extremely high incidences, compared to the small overall homosexual population, are almost staggering to the untutored mind. The most recent and authoritative scientific studies indicate that only approximately 4% of the total United States population is homosexual (specifically, 2% is homosexual and 2% bisexual). A. BELL, M. WEINBERG & S. HAMMERSMITH, SEXUAL PREFERENCE: STATISTICAL APPENDIX 618 (1981); Cameron & Ross, Social Psychological Aspects of the Judeo-Christian Stance Toward Homosexuality, 9 J. PSYCH. & THEOLOGY 40-57 (1981) [admitted at trial as Defendants' Exhibit 12]. Despite this relatively small 4% figure, homosexuals account for 44% or "nearly half" of the Texas cases of male infectious syphilis. (TR. 56, 57) Moreover, approximately 35% of hepatitis B incidence

is attributable to homosexuals. Hansfield, Sexually Transmitted Diseases in Homosexual Men, 71 AM. J. PUB. HLTH. 989-90 (1981). Approximately 40% of all hepatitis A cases are also attributable to homosexuals. Id.; Dritz, Medical Aspects of Homosexuality, 302 NEW ENG. J. MED. 463-64 (1980). In addition, 51% of all cases of throat gonorrhea are reported by homosexuals, Felman & Nikitas, Sexually Transmitted Diseases in the Male Homosexual Community, 30 CUTIS 706-24 (1982), and approximately 53% of all incidences of enteric diseases (intestinal infections such as shigellosis, amebiasis, giardiasis, and salmonellosis) are carried by homosexuals, Babb, Sexually Transmitted Infections in Homosexual Men, POST GRADUATE MED. J. No. 3, at 215-18 (March 1979); Schmerin et al., Giardiasis: Associa-tions With Homosexuality, 88 ANN. INT. MED. 801-03 (1978); William, The Sexual Transmission of Parasitic Infections in Gay Men, 5 J. HOMOSEXUALITY 291-94 (1980).

Finally, there is the dramatic correlation between homosexuals and the most significant and disturbing disease of all, Acquired Immune Deficiency Syndrome ("AIDS"). The initial manifestations of this disease were present in the late 1970's, and Dr. Charles Webb discussed some of the disease's early presentations at the trial in this cause. (TR. 67-71) As Dr. Webb testified, at the time of trial 97%

of the AIDS cases in the United States were homosexuals, and the opportunistic infectious diseases accompanying AIDS were "more serious and they are causing death . . . ." (TR. 68) Since the time of the trial AIDS has been spread to more segments of the general public so that presently 72% to 75% of the total AIDS cases are homosexuals. AIDS Epidemic Poses Serious Threat, 34 J. SAN FRANCISCO DENTAL SOC. 1 (1983); The AIDS Epidemic, NEWSWEEK, at 74-80 (April 18, 1983). This disease appears to be infectious and has been transmitted to hemophiliacs and others through blood transfusions, Desforges, AIDS and Preventive Treatment in Hemophilia, 308 NEW ENG. J. MED. 94 (1983), and even young children have apparently contracted AIDS from mere close (nonsexual) contact with homosexuals, Oleske et al., Immune Deficiency Syndrome in Children; 249 J. AM. MED. A. 2345 (1983). In addition, it appears probable that AIDS, like hepatitis B, can be passed from an infected patient to his attending dentist and then on to other patients of the dentist. Lozada et al., New Outbreak of Oral Tumors, Malignancies and Infectious Diseases Strikes Young Male Homosexuals, 10 CAL. DENTAL A. J. 39-42 (1982); Ahtone & Goodman, Hepatitis B and Dental Personnel: Transmission to Patients and Prevention Issues, 106 J. AM. DENTAL A. 219-22 (1983). More people have already died from AIDS than from

Toxic Shock Syndrome and Legionnaire's Disease combined, and AIDS is accordingly being called the public health threat of the century. The AIDS Epidemic, NEWSWEEK, supra. There is presently no known isolated agent or virus that causes AIDS, no vaccine, and no cure.

Not only do homosexuals account for an exponentially large proportion of the total U. S. disease incidences, but a very high percentage of individual homosexuals themselves also have or have had such diseases, according to authoritative professional medical and psychological sources. For example, fully 94% of all male homosexuals are carriers of cytomegalovirus (CMV), Gottlieb et al., Pneumocystis Carinii Pneumonia and Mucosal Candidiasis in Previously Healthy Homosexual Men, 305 NEW ENG. J. MED. 1425-30 (1981); Drew et al., Prevalence of Cytomegalovirus Infection in Homosexual Men, 143 J. INFECTIOUS DISEASES 188-92 (1981), which virus many experts now consider a contributing causative agent of AIDS, Siegal et al., Severe Acquired Immunodeficiency in Male Homosexuals, Manifested By Chronic Perianal Ulcerative Herpes Simplex Lesions, 305 NEW ENG. J. MED. 1439-44 (1981); Sonnabend et al., Acquired Immunodeficiency Syndrome, Opportunistic Infections, and Malignancies in Male Homosexuals, 249 J. AM. MED. A. 2370-74 (1983).

In a recent nationwide medical study and survey of over 4,200 homosexual respondents, 66.8% of these homosexuals

admitted having had at least the sexually transmitted disease known as pediculosis. Darrow et al., The Gay Report on Sexually Transmitted Diseases, 71 AM. J. PUB. HLTH. 1004-11 (1981). In another medical study, 50% of the homosexual men investigated had chronic active hepatitis B. Holmes, Future Directions in Research on Sexually Transmitted Diseases in Homosexual Men, 5 J. HOMOSEXUALITY 317, 321 (1980). Further studies reveal that 44% of all homosexual men examined were infected with anorectal gonorrhea. Babb, supra at 216. With respect to pharyngeal gonorrhea, the incidence of this disease in homosexual men is 25% (as compared to a 0.2% incidence in heterosexual men). Felman & Nikitas, supra at 713. Finally, a separate study revealed that 30% of the homosexual men were afflicted with hepatitis A. Corey & Holmes, Sexual Transmission of Hepatitis A in Homosexual Men, 302 NEW ENG. J. MED. 435 (1980). Other broad surveys have further indicated that 66.6% of all homosexual males have contracted at least one venereal disease. A. BELL & M. WEINBERG, HOMOSEXUALITIES: A STUDY OF DIVERSITY AMONG MEN AND WOMEN (1978).

These extremely high incidences of dangerous diseases among homosexuals become more understandable when the precise nature of homosexual sex acts is revealed; indeed, the medical literature expressly attributes these high disease incidences to the specific sex acts engaged in among homosexuals.

For example, by age 30 89% of male homosexuals admit to oral/anal sexual contact (anilingus or "rimming"). A. BELL & M. WEINBERG, supra. Even more alarming, 22% of the homosexual males admit to engaging in "handballing" or "fisting" (inserting the fist and arm into the anus of another). K. JAY & A. YOUNG, THE GAY REPORT (1979). Moreover, these fisting experiences most commonly occur in an orgy setting involving anywhere from eight to eighty individuals engaging in this activity. Navin, Medical and Surgical Risks in Handballing: Implications of an Inadequate Socialization Process, 6 J. HOMOSEXUALITY 67, 71 (1981).

Further statistics demonstrate that 37% of male homosexuals engage in sadomasochism, K. JAY & A. YOUNG, supra. while 23% admit to participating in "golden showers" or urination on each other, id. Of course, oral/ genital contact among homosexuals is practically universal, and 4% of the male homosexuals even admit to participation in "scat" activities, that is, defecation upon one another and manipulation of the feces. Id.

Obviously, any time that one's activities involve the potential oral and manual contact with human feces, as do most of the above-described activities, it may be expected that serious medical problems and diseases will result to those participating in such activities. These medical problems are further exacerbated by the frequency and anony-

mity of sexual contacts among homosexuals. Dr. Charles Webb testified at the trial of this cause that homosexual men commonly "have 20 to 30 [sexual] contacts in a single night." (TR. 75) Dr. Webb further testified that the anonymous nature of these homosexual contacts makes disease control extremely difficult among homosexuals: "The anonymous contact, of course, makes it almost impossible for a venereal disease control worker to find a person identified as a contact." (TR. 71) Dr. Webb also specifically identified the types of homosexual sex acts that cause the extremely high rates of sexually transmitted diseases among homosexuals as: "genital anal intercourse, oral genital intercourse and oral anal expressions of sexuality." (TR. 59) Again, referring to the frequency and anonymity of homosexual sex acts, Dr. Webb expressed his expert opinion that "homosexuals are more promiscuous than heterosexuals" (TR. 59), and other authoritative sources certainly corroborate Dr. Webb's testimony.

For example, the Kinsey Institute studies indicate that approximately 50% of homosexual males have had between 100 and 1,000 different (usually anonymous) sexual partners, while almost 30% of such homosexuals have had more than 1,000 such sexual contacts. A. BELL & M. WEINBERG, supra at 308.

Not only does the frequency, anonymity and large numbers of different sexual partners contribute to the homosexual disease epidemic, but the unsanitary places in which these activities are conducted further contribute to the disease problems. Scientific surveys demonstrate that 50% of the homosexual males admit to engaging in homosexual acts outdoors, 41% in public toilets, 60% in homosexual bathhouses, and 34% in homosexual bars. K. JAY & A. YOUNG, supra at 426, 501.

The published medical and professional authorities quite bluntly attribute the epidemic proportions of the homosexual disease problem to the above-described factors. That is, the occurrance and transmission of AIDS has been definitively linked to the "extensive sexual activity of a subset of male homosexuals" that exposes them regularly to saliva, semen, and urine and to the cytomegalovirus (carried by 94% of male homosexuals) contained in these excretions. Sonnabend et al., supra at 2371. As this authority concludes:

> Promiscuity, the resulting exposure, and immune responses to infectious agents and sperm are proposed to be the initiating and sustaining factors of AIDS.

Id. at 2373. See also Kornfeld et al., T-Lymphocyte Subpopulations in Homosexual Men, 307 NEW ENG. J. MED. 729-31 (1982) ("The reduced ratios in the promiscuous [homosexual]

subjects may have been due to a higher frequency of sexually transmitted viral infections, particularly cytomegalovirus infection. Other factors associated with homosexual practices include mucosal exposure to seminal plasma, which may have immunosuppressive properties, exposure to foreign HLA determinants on spermatozoa and the use of nitrates.").

With respect to homosexual syphilis, the medical authorities conclude:

> Specific sexual activities were also significantly associated with syphilis: men who frequently engaged in furtive sexual activites, particularly those who visited gay baths, and men who frequently paid for sex with money had the most cases, as did men who most often engaged in anal intercourse and anilingus.

Darrow et al., supra at 1006. Accord, Felman & Nikitas, supra at 710 ("Primary syphilis of the oral cavity results from contact with an infectious syphilitic lesion, commonly by way of fellatio."). Similarly, regarding homosexual gonorrhea:

> In addition to number of different lifetime sexual partners, gonorrhea was highly correlated with frequency of check-ups, frequent visits to the gay baths, and receiving money for sexual favors . . . gonorrhea was closely associated with . . . specific sexual activities, especially anal intercourse and anilingus.

Darrow et al., supra at 1006. Furthermore:

> The risk of contracting pharyngeal gonorrhea by oral-genital contact with an individual harboring genital

> gonorrhea is remarkably high. Homosexual men have demonstrated [high incidences] of pharyngeal gonorrhea . . . . fellatio is the primary mode of transmission of N. gonorrhoeae to the oral cavity . . . .

Felman & Nikitas, supra at 713. All of the above-described factors are well summarized by the following medical synopsis:

> Therefore, men with large numbers of different sexual partners, men who frequently had sexual encounters in gay bathhouses, were involved in homosexual prostitution, or engaged frequently in other furtive sexual activities, and men who often engaged in anal intercourse and anilingus appeared to be at greatest risk of contracting venereal infections . . . .

Darrow et al., supra at 1010.

In light of the staggering amount of medical and scientific authority described above that unequivocally details the direct connection between homosexual activity and increased, even epidemic, incidences of dangerous transmissible diseases, there can be no doubt that A&M has articulated a rational relationship between its refusal to recognize GSS and a compelling state interest, namely the public health and safety of A&M's students, as well as the public at large. A large body of Supreme Court case law unmistakably holds that public health and safety constitute legitimate and compelling state interests to be protected by state legislatures and agencies even when challenged under various constitutional claims. For example, in Jacobson v. Massachu-

setts, 197 U.S. 11 (1905), the Court upheld a state statute requiring vaccinations against infectious diseases in the face of a challenge based upon the explicit Constitutional guarantees of equal protection, personal liberty, and freedom of religion. Similarly, in Prince v. Massachusetts, 321 U.S. 158 (1944), the Court upheld a similar challenge to state statutes requiring compulsory vaccination for both children and adults, finding that the state may restrict a parent's liberty to expose the community to communicable diseases or to expose children to ill health or death. Accord, Crawford v. Board of Education, 50 U.S.L.W. 5016 (1982) (protecting . . . health and safety of the public is a compelling public interest of a state); Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc., 452 U.S. 264 (1981) (protection of health and safety of public is a paramount governmental interest); Berman v. Parker, 348 U.S. 26 (1954) (the public interest and the police power of states have traditionally included the public safety and public health).

Accordingly, in light of the powerful and uncontroverted medical testimony adduced by A&M at trial, supported by the voluminous medical and professional literature described above, this Court should find as a matter of law that even if GSS's freedoms of speech and/or association were arguably infringed, A&M has definitely demonstrated a compelling

state interest sufficient to uphold its refusal of recognition.

[Copies of the most relevant of these medical and psychological studies are included in the Appendix hereto for this Court's consideration.]

B. The Public Health and Safety Threat -- Psychological Evidence. In addition to the compelling medical testimony and evidence detailed above, A&M presented highly probative psychological evidence at trial clearly revealing a compelling state interest for A&M's refusal of recognition. Dr. Paul Cameron testified at length that homosexuals as a group tend to be more violent than heterosexuals, more inclined toward criminal activities, more frequently addicted to and abusive of drugs and alcohol, more frequently unemployed, and more suicidal. (TR. 93-140) DDAA maintains that not only is this testimony highly credible because of Dr. Cameron's expertise, but it is also substantiated by the great weight of published professional and statistical authorities.

Regarding the criminal tendencies of homosexuals, Dr. Cameron testified at trial that the published authorities demonstrated that homosexuals were more frequently involved in criminal activity than heterosexuals. (TR. 136-37) One set of Kinsey Institute data revealed that for every 45 homosexual males engaged in criminal activity there was only

1 heterosexual male so employed. P. GEBHARD & A. JOHNSON, THE KINSEY DATA: MARGINAL TABULATIONS OF THE 1938-63 INTERVIEWS CONDUCTED BY THE INSTITUTE FOR SEX RESEARCH (1979). A second study indicated that both homosexual men and women were more frequently criminal than their heterosexual counterparts. M. SAGHIR & E. ROBBINS, MALE AND FEMALE HOMOSEXUALITY: A COMPREHENSIVE INVESTIGATION (1973). The most recent Kinsey Institute information available also confirms a higher instance of criminal activity in homosexuals than in heterosexuals. A. BELL & M. WEINBERG, supra.

Dr. Cameron has also thoroughly documented his findings that homosexuals tend to be much more violent than heterosexuals. A study of the sexually flavored mass murders reported in the United States in the last 15 years indicates that 65% of the mass murder victims died in relation to homosexual activities or proclivities, and 48% of the perpetrators practiced homosexuality. Cameron, Is Homosexuality Disproportionately Associated With Murder?, THE CHRISTIAN NEWS 9-10 (January 31, 1983).

Moreover, many professional publications document the fact that alcohol and drug abuse is rampant among homosexuals. For example, one recent survey of homosexuals indicated that the vast majority reported weekly use of drugs. Kornfeld, supra at 731. In another more detailed study of homosexual males, the percentage of such homosexuals

reporting a history of illegal drug use was as follows: cocaine - 43% to 90%; amphetamines - 29% to 80%; methaqualone - 35% to 70%; nitrites - 37% to 100%; marijuana - 88% to 95%. Marmor et al., Risk Factors for Kaposi's Sarcoma in Homosexual Men, 1 LANCET 1083-87 (1982). Moreover, broader statistical surveys also indicate that both male and female homosexuals as a class more frequently had serious problems with alcohol and drugs. M. SAGHIR & E. ROBBINS, supra; Cameron & Ross, supra.

Similarly, unemployment is a much larger problem among homosexuals than heterosexuals. As Dr. Cameron testified at trial, the Kinsey Institute research exhibits that "homosexual males were categorized chronically unemployed in a ratio of 4 to 1 compared to mainly heterosexual males. And lesbians were characterized as chronically unemployed forty-four times more than heterosexual or mainly heterosexual females in the original Kinsey volume." (TR. 137-38) These Kinsey results are substantiated by another study of a large number of homosexual males and females, which study reported that the homosexuals were fired from their jobs more frequently than heterosexuals and were more job-unstable than heterosexuals. M. SAGIR & E. ROBBINS, supra.

Finally, regarding the comparative rates of suicide and attempted suicide as between homosexuals and heterosexuals, two published comparative scientific studies demonstrate

that homosexuals more frequently attempt suicide than their heterosexual counterparts. A. BELL & M. WEINBERG, supra; M. SAGHIR & E. ROBBINS, supra.

In light of this overwhelming medical and psychological authority and evidence regarding the extremely high incidence of homosexual diseases, violent tendencies, criminal activities, drug and alcohol abuse, unemployment, and suicide, it should be eminently manifest that the instant situation presented A&M with the most appropriate opportunity possible to apply its stated regulation and rule of granting recognition only to student organizations whose activites, purposes, and goals would be "consistent with the University's philosophy." (Findings of Fact and Conclusions of Law at 3) No sane institution's philosophy could reasonably countenance any organization whose activities would tend to promote disease transmission, violence, criminal actions, drug and alcohol abuse, unemployment, or suicide.

In fact, the Supreme Court has ruled many times that state legislatures and agencies have legitimate and compelling state interests in taking action to prohibit just such social evils, even when such prohibitions arguably infringe upon the First Amendment rights of certain individuals. Alfred L. Snapp & Son, Inc. v. Puerto Rico, 50 U.S.L.W. 5035 (1982) (state's interest in the health and well-being of its residents extends well beyond mere physical interests to

include moral interests, and state has a substantial interest in protecting its residents from such moral evils); H.L. v. Matheson, 450 U.S. 398 (1981) (challenged state statute upheld when it plainly serves the important state interests of family integrity and protecting minors); Parham v. Hughes, 441 U.S. 347 (1979) (state action upheld when rationally related to legitimate state interests of promoting a legitimate family unit and setting a standard of morality; state actions are generally entitled to a presumption of validity against Constitutional attack, and state classifications that have the effect of treating some people differently are valid unless they bear no rational relationship to a permissable state objective); Berman v. Parker, 348 U.S. 26 (1954) (public safety, public health, morality, peace and quiet, and law and order are "some of the more conspicuous examples" of legitimate state interests to be upheld under a state's police power; the legitimate state interest of public welfare is broad and inclusive, representing spiritual values as well as physical).

In fact, in Paris Adult Theater I v. Slaton, 413 U.S. 49 (1973), the Supreme Court, in an obscenity case, encountered a situation very similar to the case at bar. In Slaton the trial had produced considerable published authority and expert testimony "that there is at least an arguable correlation between obscene material and crime." 413 U.S.

at 58 (emphasis added). That is, the Court specifically noted "references to expert opinions that obscene material may induce crime and antisocial conduct" and the fact that "there are medical experts who believe that such stimulation [from pornography] frequently manifests itself in criminal sexual behavior or other antisocial conduct . . . particularly abnormal and perverted practices." Id. The Court then went on to note specific legitimate state interests in suppressing obscene material, such as "the total community environment" and "the public safety itself" and expressly held that a state could legitimately act on such published authorities and expert opinion to protect the social interest in order and morality. Id. at 61. It should be noted that Slaton involves a challenge to the state's action based on the First Amendment, just as in the instant cause.

In the same fashion, the above-described testimony of both Dr. Cameron and Dr. Webb undoubtedly proves "at least an arguable correlation" between the recognition of GSS and the tendency toward public health problems from transmissible diseases, increased violence and criminal activity, drug and alcohol abuse, unemployment, and suicide, all obviously constituting "antisocial conduct." Thus, A&M in the instant situation most definitely has a valid and compelling interest to protect its students from such dangerous diseases and antisocial conduct and, indeed, to protect "the social interest in order and morality" on its own campus.

Accordingly, this Court should uphold A&M's refusal of recognition of GSS even if such refusal arguably infringes upon First Amendment rights due to the compelling public health and safety threats described above.

II. Since A&M's Refusal Does Not in Fact Impact a Fundamental Right of GSS, A&M Must Show (And Has Shown) Merely a Rational State Basis For Its Refusal.

As detailed above, the district court in this case expressly found that GSS failed to prove by a preponderance of the evidence that A&M's refusal of recognition infringed upon GSS's fundamental rights of freedom of speech or association, and DDAA maintains that GSS cannot demonstrate that this finding was clearly erroneous. Accordingly, A&M must enunciate merely a rational state basis for its refusal of recognition, and, as noted by this Court, this rational basis test is normally quite simple to meet. United States v. Giles, 640 F.2d 621 (5th Cir. 1981).

A&M's public health and safety rationales for its action have been exhaustively explained above from the medical and psychological standpoints, and these compelling state interests are certainly more than sufficient to satisfy the rational basis requirement. Even absent the public health and safety factors, however, A&M has set forth and can easily demonstrate a rational basis for its actions in the prevention of criminal homosexual conduct.

A. Prevention of Criminal Homosexual Conduct. The Supreme Court has upheld state actions as rational, even under a challenge based on a fundamental First Amendment right, when the state has exhibited an arguable correlation between the state-prohibited action and criminal sexual behavior or other antisocial conduct. E.g., Paris Adult Theater I v. Slaton, supra at 58. Thus, when a fundamental First Amendment right is not even at issue, such a showing by the state or state agency of an arguable correlation between the prohibited activity and criminal sexual behavior obviously should suffice to meet the minimal rational basis test.

In the case at bar Dr. John Koldus of A&M expressed the following as one reason for his refusal to recognize GSS:

> Homosexual conduct is illegal in Texas, and therefore it would be most inappropriate for a state institution officially to support a student organization which is likely to incite, promote and result in acts contrary to and in violation of the Penal Code of the State of Texas.

(Plaintiffs' Exhibit 1) At the time of Dr. Koldus' refusal in 1976, at the time of the trial in this case, and to the present date, Texas Penal Code section 21.06 (Homosexual Conduct) declared it a misdemeanor for a person to engage in "deviate sexual intercourse" with another individual of the same sex, and deviate sexual intercourse was defined to

include any contact between any part of the genitals of one person and the mouth or anus of another person. As explained above at length, A&M's expert Dr. Cameron testified convincingly that meetings of homosexual students sponsored by GSS would almost inevitably result in the performance of homosexual sex acts. Such activities would clearly violate section 21.06 as of the time of Dr. Koldus' refusal and as of the time of the trial in this cause. Accordingly, without more, A&M has met the rational basis test under the Slaton rationale.

Although Baker v. Wade, 553 F. Supp. 1121 (N.D. Tex. 1982), is not cited by GSS in its Appellants' Brief, amicus Lambda attempts to make much of the fact that the district court opinion in Baker issued a permanent injunction against the enforcement of section 21.06 with respect to homosexual acts between consenting adults. Lambda Brief at 23-24. Lambda argues that since section 21.06 has been enjoined by a federal district judge, increased homosexual conduct at A&M can no longer result in violations of criminal law; thus, one of A&M's justifications for denial of recognition is no longer valid.

This argument is deficient in several respects. First, the final judgment of the Baker court was not issued until September 30, 1982, long after the final judgment in the instant case and six years after Dr. Koldus' initial refusal

of recognition of GSS. Consequently, under Slaton, A&M's refusal of recognition was entirely justified at the time and should remain so today.

Second, as Lambda indicates at page 23 of its brief, the Baker opinion is presently being vigorously appealed by District Attorney Danny Hill, one of the original members of the class of defendants in that case, and it is entirely possible that the district court's judgment will be overturned by this Court on appeal. The Baker appeal is currently before this Court as appeal number 82-1590, and within the past two weeks the three-judge panel of Chief Judge Clark, Judge Politz, and Judge Higginbotham has decided several motions in favor of Appellant Danny Hill.

Moreover, even the proceedings at the district court level in Baker are not yet completed, since Danny Hill has also filed a Federal Rule of Civil Procedure 60(b) motion to set aside the final judgment and reopen the evidence in that case based, in part, on medical evidence very similar to that at issue in the instant cause. In addition, Danny Hill has filed with the district court a Federal Rule of Civil Procedure 24(a) motion to intervene and to be substituted as the class representative. To date the district court judge has not ruled on either of these motions. The motions, furthermore, are based in part on the assertion that several of the alleged psychological experts testifying on behalf of

the plaintiff Baker in that case committed fraud and misrepresentation in their testimony, which assertion casts doubt on Lambda's reliance on these experts' testimony cited in Lambda's Brief at pages 26 and 27. [Copies of both of these filed motions are included in the Appendix hereto for this Court's consideration.]

Thus, the Baker v. Wade case is far from final, and any reliance on the district court's Baker opinion in the instant cause is, at the least, premature.

Consequently, based upon A&M's expert testimony in the trial of this case and upon the Slaton opinion, this Court should find that A&M has easily met the rational basis test to substantiate its refusal of recognition based upon probable violations of the Texas criminal homosexual conduct statute.

III. Amicus Lambda's Equal Protection Argument is Specious and, in Any Event, Cannot Now Be Raised.

As the district court in this cause noted in a finding of fact, A&M has never, up to the time of the trial, granted official recognition to fraternal organizations or student groups constituting primarily social organizations. (Findings of Fact and Conclusions of Law at 3-4) In fact, the record demonstrates, and GSS itself points out in its brief at page 21, that A&M has also denied recognition to at least one other social and fraternal organization, Sigma Phi Epsilon,

on precisely these same grounds. Accordingly, Lambda's attempted equal protection argument is specious ab initio and should be disregarded.

A. Rational Relationship Test Clearly Met. Even if one assumes, arguendo, that A&M may have violated the equal protection rights of GSS, Supreme Court case law patently dictates that a state's or state agency actions arguably violating equal protection rights may be sustained merely by meeting the "rational relationship" test. That is, a state classification or discrimination in treatment must be sustained as against an equal protection challenge unless the state's action is patently arbitrary and bears no rational relationship to a legitimate governmental interest. Frontiero v. Richardson, 411 U.S. 677 (1973). So long as a state's action can be shown to bear some rational relationship to a legitimate state purpose, that action must be upheld against an equal protection claim. San Antonio School District v. Rodriquez, 411 U.S. 1 (1973). A&M's interest in the public health and safety of its students (and, indeed, the general population) has been shown above to constitute a compelling state interest, not merely a legitimate state interest, and the rational relationship between prohibiting the formally recognized congregation of homosexuals and this public health and safety interest has been explained and substantiated in detail above.

Thus, even if Lambda's equal protection claim were not specious, the required rational relationship test is definitely met in the instant situation, and the equal protection argument must, therefore, fail.

B. A Party Has Never Raised This Argument, and It Is Thus Waived or Barred By Laches. Lambda, itself only an amicus and not a party to this action, at this late date in the proceedings now attempts to raise an equal protection argument never apparently voiced by any party to this action to the present date. It is highly inappropriate for Lambda as an amicus to attempt to inject this new argument into the proceedings at this time, and the Court should accordingly ignore this claim. United States v. Allegheny-Ludlum Indus., Inc., 517 F.2d 826, 840 n. 13 (5th Cir. 1975).

In any event, since the argument has never been raised until the briefing on appeal, the claim has long since been waived and is furthermore barred by the doctrine of laches. Hill York Corp. v. American Int'l Franchises, Inc., 448 F.2d 680, 690 (5th Cir. 1971); D. H. Overmyer Co., Inc. v. Loflin, 440 F.2d 1213, 1215 (5th Cir. 1971). Thus, this Court should dismiss the claim without further ado.

CONCLUSION

For all of the reasons set forth above, DDAA submits that the district court correctly decided all of the issues in this case, and its decision should therefore be affirmed.

Respectfully submitted,

JACKSON, WALKER, WINSTEAD, CANTWELL
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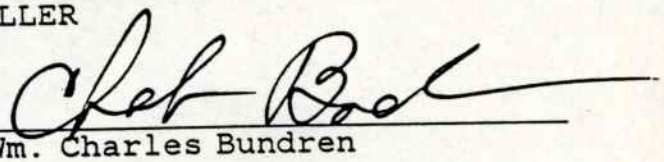
By: 

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I hereby certify that true and correct copies of the foregoing Brief Amicus Curiae of Dallas Doctors Against A.I.D.S., Inc. have been mailed by U.S. mail, postage prepaid, to counsel for both parties and to both amici curiae at the following addresses, on this 20th day of June, 1983:

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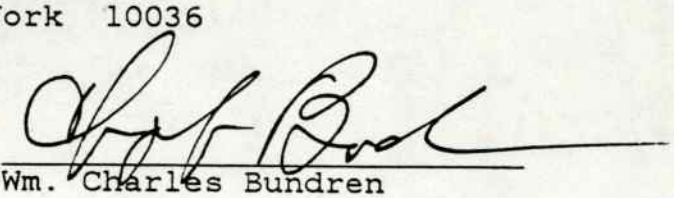

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