Case Nos. 14-2386, 14-2387, 14-2388, 14-2526

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MARILYN RAE BASKIN, et al.,
Plaintiffs-Appellees,
v.
GREG ZOELLER, et al.,
Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of Indiana, Case Nos. 1:14-cv-0355-RLY-TAB, 1:14-cv-00404-RLY-TAB, and 1:14-cv-00406-RLY-MJD (The Honorable Richard L. Young)

VIRGINIA WOLF, et al.,
Plaintiffs-Appellees,
v.
SCOTT WALKER, et al.,
Defendants-Appellants.

On Appeal from the United States District Court for the Western District of Wisconsin, Case No. 1:14-cv-0064-BBC (The Honorable Barbara B. Crabb)

Brief of the American Psychological Association, Wisconsin Psychological Association, American Psychiatric Association, American Academy of Pediatrics, Wisconsin Chapter of the American Academy of Pediatrics, American Association for Marriage and Family Therapy, National Association of Social Workers, National Association of Social Workers Indiana Chapter, and National Association of Social Workers Wisconsin Chapter as *Amici Curiae* in Support of Plaintiffs-Appellees

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Nathalie F.P. Gilfoyle
AMERICAN PSYCHOLOGICAL ASSOCIATION
750 First Street NE
Washington, DC 20002
Tel: (202) 336-6100
Fax: (202) 336-6069
Ngilfoyle@apa.org

Paul M. Smith
JENNER & BLOCK LLP
1099 New York Ave. NW
Suite 900
Washington, DC 20001
Tel: (202) 639-6000
Fax: (202) 639-6066
Psmith@jenner.com

Aaron M. Panner
KELLOGG HUBER HANSEN TODD EVANS & FIGEL PLLC
1615 M St. NW, Ste. 400
Tel: (202) 326-7900
Fax: (202) 326-7999
apanner@khhte.com

Counsel for Amici Curiae

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

The American Psychological Association ("APA") is a scientific and educational organization dedicated to increasing and disseminating psychological knowledge; it is the world's largest professional association of psychologists. The APA has adopted multiple research-based policy statements supporting the rights of gay and lesbian people, including a 2011 policy statement supporting full marriage equality for same-sex couples.[2]

The Wisconsin Psychological Association ("WPA") is the Wisconsin affiliate of the APA. Its mission is to advance psychology as a profession that promotes human welfare through the ethical application of psychological principles in research, teaching and practice. As part of that mission, the WPA addresses the concerns of our communities by responding to the psychological and social needs of Wisconsin citizens.

The American Psychiatric Association is the Nation's largest organization of physicians specializing in psychiatry. It joins this brief for the reasons expressed in its 2005 position statement, *Support of Legal Recognition of Same-Sex Civil Marriage* ("In the interest of maintaining and promoting mental health, the

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[1] No party's counsel authored this brief in whole or in part, and no person other than *Amici* contributed money that was intended to fund preparing or submitting this brief.

[2] APA, *Resolution on Marriage Equality For Same-Sex Couples* (2011) (denial of marriage equality "perpetuates the stigma historically attached to homosexuality, and reinforces prejudice against lesbian, gay, and bisexual people").

American Psychiatric Association supports the legal recognition of same-sex marriage with all rights, benefits, and responsibilities conferred by civil marriage.").[3]

The American Academy of Pediatrics ("AAP") is the largest professional association of pediatricians in the world. Through education, research, advocacy, and the provision of expert advice, AAP seeks the optimal physical, mental, and social health and well-being for infants, children, adolescents, and young adults. The Wisconsin Chapter of the AAP supports pediatricians in the state and works to assure optimal health and safety for Wisconsin's children and their families. The AAP supports marriage equality for all capable and consenting couples, including those who are of the same gender, to guarantee all legal rights and benefits for their children.[4]

The American Association for Marriage and Family Therapy ("AAMFT"), founded in 1942, is a national professional association representing the field of marriage and family therapy and the professional interests of over 50,000 marriage and family therapists in the United States. AAMFT joins this brief for the reasons expressed in its 2005 *Position on Couples and Families*.[5]

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[3] Am. Psychiatric Ass'n, *Position Statement: Support of Legal Recognition of Same-Sex Civil Marriage* (2005).
[4] AAP, *Policy Statement, Promoting the Well-Being of Children Whose Parents are Gay or Lesbian*, 131 Pediatrics 827, 828 (2013).
[5] AAMFT, *Position on Couples and Families* (2005).

The National Association of Social Workers ("NASW") is the largest association of professional social workers in the United States with over 130,000 members in 55 chapters. The Indiana Chapter has 2,500 members, and the Wisconsin Chapter has 1,800 members. NASW develops policy statements on issues of importance to the social work profession. Consistent with those statements, NASW supports full legal acceptance of lesbian, gay, and bisexual people, including their right to marry.[6]

All parties have consented to the filing of this brief.

ARGUMENT

I. The Scientific Evidence Presented in This Brief.

This brief presents an accurate summary of the current state of scientific and professional knowledge concerning sexual orientation and families relevant to this case. *Amici* have made a good faith effort to take into account the findings of all valid, published studies in this area.

Amici rely on the best empirical research available. Before citing a study, *Amici* have critically evaluated its methodology, including the reliability and validity of the measures and tests it employed, and the quality of its data-collection procedures and statistical analyses.

[6] NASW, *Policy Statement: Lesbian, Gay, and Bisexual Issues, in Social Work Speaks* 219, 221 (9th ed. 2012).

Scientific research is a cumulative process, and no empirical study is perfect in its design and execution. Accordingly, *Amici* base their conclusions as much as possible on findings that have been replicated across studies rather than on the findings of any single study.

Even well-executed studies may be limited in their implications and generalizability. Many studies cited herein discuss their own limitations and provide suggestions for further research. This is consistent with the scientific method and does not impeach these studies' overall conclusions.

Most of the empirical studies and literature reviews cited herein have been published in reputable, peer-reviewed academic journals. Some academic books, book chapters, and technical reports, which typically are not subject to the same peer-review standards as journal articles, may also be cited, provided that they report research employing rigorous methods, are authored by established researchers, and accurately reflect professional consensus about the current state of knowledge.

II. Homosexuality Is A Normal Expression of Human Sexuality, Is Generally Not Chosen, and Is Highly Resistant to Change.

Sexual orientation refers to an enduring disposition to experience sexual, affectional, or romantic attractions to males, females, or both. It also encompasses an individual's sense of personal and social identity based on those attractions, behaviors expressing them, and membership in a community of others who share

them.[7] Although sexual orientation ranges along a continuum from exclusively heterosexual to exclusively homosexual, it is usually discussed in terms of three categories: *heterosexual* (having sexual and romantic attraction primarily or exclusively to members of the other sex), *homosexual* (having sexual and romantic attraction primarily or exclusively to members of one's own sex), and *bisexual* (having a significant degree of sexual and romantic attraction to both sexes).

When the American Psychiatric Association published the first *Diagnostic and Statistical Manual of Mental Disorders* ("DSM") in 1952, homosexuality was listed as a mental disorder. However, this classification reflected social stigma rather than empirical research findings. Recognizing the lack of scientific evidence for this classification,[8] the American Psychiatric Association removed homosexuality from the DSM in 1973, stating that "homosexuality *per se* implies no impairment in judgment, stability, reliability, or general social or vocational

[7] *See* Nat'l Academy of Sciences' Institute of Medicine, *Report: The Health of Lesbian, Gay, Bisexual, and Transgender People* (2011); A.R. D'Augelli, *Sexual Orientation*, in 7 *Encyclopedia of Psychology* 260 (A.E. Kazdin ed., 2000); G.M. Herek, *Homosexuality*, in 2 *Corsini Encyclopedia of Psychology* 774-76 (I.B. Weiner & W.E. Craighead eds., 4th ed. 2010).

[8] *See, e.g.*, E. Hooker, *The Adjustment of the Male Overt Homosexual*, 21 J. Projective Techniques 17 (1957); B.F. Riess, *Psychological Tests in Homosexuality, in Homosexual Behavior* 296 (J. Marmor ed., 1980); C. Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality, in Homosexuality* 115 (J.C. Gonsiorek & J.D. Weinrich eds., 1991).

capabilities."[9] In 1975, the APA adopted a policy reflecting the same conclusion.[10] For decades, the consensus of mainstream mental health professionals and researchers has been that homosexuality and bisexuality are normal expressions of human sexuality; that they pose no inherent obstacle to leading a happy, healthy, and productive life; and that gay and lesbian people function well in the full array of social institutions and interpersonal relationships.

Most gay men and lesbians do not experience their sexual orientation as a voluntary choice. In a U.S. national probability (i.e., "representative") sample of 662 self-identified lesbian, gay, and bisexual adults, 88% of gay men and 68% of lesbians reported feeling they had no choice at all about their sexual orientation, while only 5% of gay men and 16% of lesbians felt they had a fair amount or a great deal of choice.[11]

Although some groups and individuals have offered clinical interventions that purport to change sexual orientation from homosexual to heterosexual—sometimes called "conversion" therapies—these interventions have not been

[9] Am. Psychiatric Ass'n, *Position Statement: Homosexuality and Civil Rights* (1973), *in* 131 Am. J. Psychiatry 497 (1974).

[10] APA, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975).

[11] G.M. Herek et al., *Demographic, Psychological, and Social Characteristics of Self-Identified Lesbian, Gay, and Bisexual Adults in a U.S. Probability Sample*, 7 Sexuality Res. & Soc. Policy 176 (2010); *see also* G.M. Herek et al., *Internalized Stigma Among Sexual Minority Adults*, 56 J. Counseling Psychol. 32 (2009). Comparable data for heterosexuals' perceptions of their own sexual orientation are not available.

shown to be effective or safe. A review of the scientific literature by an APA task force concluded that sexual orientation change efforts are unlikely to succeed and can be harmful.[12]

All major national mental health organizations—including *Amici*—have adopted policy statements cautioning the profession and the public about treatments that purport to change sexual orientation.[13]

III. Sexual Orientation and Relationships.

Sexual orientation is commonly discussed as a characteristic of *individuals*, like biological sex or age. This perspective is incomplete because sexual orientation necessarily involves relationships with other people. Sexual acts and romantic attractions are categorized as homosexual or heterosexual according to the biological sex of the individuals involved, relative to each other. Indeed, it is only by acting with another person—or desiring to act—that individuals express their heterosexuality, homosexuality, or bisexuality. Thus, sexual orientation is

[12] APA, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009); *see also* APA, *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts* (2009).

[13] *See* APA *Resolution on Marriage Equality*, *supra* note 2; Am. Psychiatric Ass'n, *Position Statement: Psychiatric Treatment and Sexual Orientation* (1998); AAMFT, *Reparative/Conversion Therapy* (2009); Am. Med. Ass'n, Policy H-160.991, *Health Care Needs of the Homosexual Population*; NASW, *Position Statement:"Reparative" and "Conversion" Therapies for Lesbians and Gay Men* (2000); Am. Psychoanalytic Ass'n, *Position Statement: Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012); *see also* B.L. Frankowski, *Sexual Orientation and Adolescents*, 113 Pediatrics 1827 (2004).

integrally linked to the intimate personal relationships that human beings form with others to meet their deeply felt needs for love, attachment, and intimacy. It defines the universe of persons with whom one is likely to find the satisfying and fulfilling relationships that, for many individuals, comprise an essential component of personal identity.

A. Gay Men and Lesbians Form Stable, Committed Relationships That Are Equivalent to Heterosexual Relationships in Essential Respects.

Most gay men and lesbians want to form stable, long-lasting relationships.[14] Many of them do so. According to 2010 Census data, same-sex couples headed more than 600,000 U.S. households, including over 20,000 households in Indiana and Wisconsin.[15] Data from national probability samples indicate that more than two thirds of lesbians and approximately 40% of gay men are currently in committed relationships.[16] Numerous studies using nonprobability samples of gay men and lesbians have found that the vast majority of participants have been in a

[14] For example, in a 2013 national probability sample of lesbian, gay, and bisexual adults, 60% were currently married or said they would like to get married. Pew Research Center, *Survey of LGBT Americans* (2013). In an earlier national survey, 78% of gay men and 87% of lesbians who were currently in a relationship said they would marry their partner if it were legal. Herek et al., *Demographic*, *supra* note 11.

[15] 2010 Census and 2010 American Community Survey, Same-Sex Unmarried Partner or Spouse Households by Sex of Householder by Presence of Own Children; *see also* G.J. Gates, *LGBT Parenting in the United States*, The Williams Institute, at 2 (2013).

[16] Herek et al., *Demographic*, *supra* note 11; Pew Research Center, *supra* note 14.

committed relationship at some point in their lives, and that many existing couples have been together 10 or more years.[17]

Empirical research demonstrates that the psychological and social dimensions of committed relationships between same-sex partners largely resemble those of heterosexual partnerships. Same-sex couples form deep emotional attachments and commitments, with levels of relationship satisfaction similar to or higher than those of heterosexual couples.[18] They also go through similar processes to address concerns about intimacy, love, equity, and other relationship issues.[19]

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[17] *See* L.A. Peplau & A.W. Fingerhut, *Same-Sex Romantic Relationships, in Handbook of Psychology and Sexual Orientation* 165-178 (C.J. Patterson & A.R. D'Augelli eds., 2013); L.A. Peplau & A.W. Fingerhut, *The Close Relationships of Lesbians and Gay Men*, 58 Ann. Rev. Psychol. 405 (2007); L.A. Peplau & N. Ghavami, *Gay, Lesbian, and Bisexual Relationships, in Encyclopedia of Human Relationships* (H.T. Reis & S. Sprecher eds., 2009).

[18] K.F. Balsam et al., *Three-Year Follow-Up of Same-Sex Couples Who Had Civil Unions in Vermont, Same-Sex Couples Not in Civil Unions, and Heterosexual Married Couples*, 44 Developmental Psychol. 102 (2008); L.A. Kurdek, *Change in Relationship Quality for Partners from Lesbian, Gay Male, and Heterosexual Couples*, 22 J. Fam. Psychol. 701 (2008); L.A. Peplau & K.P. Beals, *The Family Lives of Lesbians and Gay Men, in Handbook of Family Communication* 233, 236 (A.L. Vangelisti ed., 2004).

[19] Kurdek, *Change in Relationship Quality*, *supra* note 18; L.A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 J. Marriage & Fam. 880 (2004); G.I. Roisman et al., *Adult Romantic Relationships as Contexts for Human Development*, 44 Developmental Psychol. 91 (2008); *see generally* L.A. Kurdek, *What Do We Know About Gay and Lesbian Couples?*, 14 Current Directions in Psychol. Sci. 251 (2005); Peplau & Fingerhut (2007), *supra* note 17; Peplau & Ghavami, *supra* note 17.

B. The Institution of Marriage Offers Social, Psychological, and Health Benefits That Are Denied to Same-Sex Couples Who Cannot Legally Marry.

Marriage has a profound effect on the lives of married individuals. Sociologists have observed that marriage creates order in peoples' lives[20] and "provides a strong positive sense of identity, self-worth, and mastery."[21] Empirical research demonstrates that marriage has distinct benefits that extend beyond the material necessities of life.[22] These intangible benefits have important implications for the physical and psychological health of married individuals and for the relationship itself.

Because marriage rights have been granted to same-sex couples only recently, little empirical research has been published that compares married same-sex couples to unmarried same-sex couples or those in civil unions.[23] Based on

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[20] P. Berger & H. Kellner, *Marriage and the Construction of Reality*, 46 Diogenes 1 (1964).

[21] W.R. Gove et al., *The Effect of Marriage on the Well-Being of Adults*, 11 J. Fam. Issues 4, 16 (1990); *see also* E. Durkheim, *Suicide* 259 (J.A. Spaulding & G. Simpson trans., 1951) (1897).

[22] *See* S. Stack & J.R. Eshleman, *Marital Status and Happiness*, 60 J. Marriage & Fam. 527 (1998); R.P.D. Burton, *Global Integrative Meaning as a Mediating Factor In the Relationship Between Social Roles and Psychological Distress*, 39 J. Health & Soc. Behav. 201 (1998); S.L. Nock, *A Comparison of Marriages and Cohabiting Relationships*, 16 J. Fam. Issues 53, 53 (1995); Gove (1990), *supra* note 21, at 5.

[23] *See* R.G. Wight et al., *Same-Sex Legal Marriage and Psychological Well-Being*, 103 Am. J. Pub. Health 339, 343 (2013) (finding based on comparison of gay, lesbian, and bisexual Californians who were legally married to those in domestic partnerships or not in a lengthy recognized relationship that "there might be a

their scientific and clinical expertise, *Amici* believe it is appropriate to extrapolate from the empirical research literature for heterosexual couples—with qualifications as necessary—to anticipate the likely effects of marriage for same-sex couples.[24]

This research shows that married heterosexual men and women generally experience better physical and mental health than their unmarried counterparts.[25] These health benefits do not appear to result simply from being in an intimate relationship; most studies have found that married heterosexual individuals generally manifest greater well-being than members of comparable cohabiting couples.[26] Of course, marital status alone does not guarantee better health or

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unique positive mental health association specifically conferred by legal marriage, particularly compared with not being in any type of legally recognized relationship at all.").

[24] Comparisons between married and unmarried heterosexual couples are complicated by the possibility that observed differences might be due to self-selection (i.e., people who choose to marry may differ *a priori* from those who do not). Researchers have concluded, however, that benefits associated with marriage result largely from the institution itself rather than self-selection. *See, e.g.*, Gove (1990), *supra* note 21, at 10; J.E. Murray, *Marital Protection and Marital Selection*, 37 Demography 511 (2000). It is reasonable to expect that same-sex couples who choose to marry will, like their heterosexual counterparts, benefit from the institution of marriage itself.

[25] *See* N.J. Johnson et al., *Marital Status and Mortality*, 10 Annals Epidemiology 224 (2000); C.E. Ross et al., *The Impact of the Family on Health*, 52 J. Marriage & Fam. 1059 (1990); R.W. Simon, *Revisiting the Relationships Among Gender, Marital Status, and Mental Health*, 107 Am. J. Soc. 1065 (2002).

[26] *See* Gove (1990), *supra* note 21; S.L. Brown, *The Effect of Union Type on Psychological Well-Being*, 41 J. Health & Soc. Behav. 241 (2000). *But see* C.E. Ross, *Reconceptualizing Marital Status as a Continuum of Social Attachment*, 57 J. Marriage & Fam. 129 (1995) (failing to detect significant differences in depression between married and comparable cohabiting heterosexual couples).

greater happiness. Unhappily married people often have lower levels of well-being than the unmarried, and marital discord and dissatisfaction are often associated with negative health effects.[27] Nevertheless, satisfied married couples consistently manifest higher levels of happiness, psychological well-being, and physical health than the unmarried.

Being married is also a source of stability and commitment. Marital commitment is a function not only of rewarding features of the relationship, but also of constraints on dissolving the relationship (e.g., feelings of family obligation; moral and religious values; legal restrictions; financial concerns; and anticipated disapproval of others).[28] The existence of such barriers alone is not sufficient to sustain a marriage in the long term, and perceiving one's intimate relationship primarily in terms of rewards, rather than barriers to dissolution, is likely to be associated with greater relationship satisfaction.[29] Nonetheless, perceived barriers are negatively correlated with divorce; thus, their presence may

[27] *See* W.R. Gove et al., *Does Marriage Have Positive Effects on the Psychological Well-Being of the Individual?*, 24 J. Health & Soc. Behav. 122 (1983); K. Williams, *Has the Future of Marriage Arrived?*, 44 J. Health Soc. Behav. 470 (2003); J.K. Kiecolt-Glaser & T.L. Newton, *Marriage and Health*, 127 Psychol. Bull. 472 (2001).

[28] *See* G. Levinger, *Marital Cohesiveness and Dissolution*, 27 J. Marriage & Fam. 19 (1965); J.M. Adams & W.H. Jones, *The Conceptualization of Marital Commitment*, 72 J. Personality & Soc. Psychol. 1177 (1997).

[29] *See, e.g.*, D. Previti & P.R. Amato, *Why Stay Married?*, 65 J. Marriage & Fam. 561 (2003).

increase partners' motivation to seek solutions for problems rather than dissolving the relationship.[30]

For same-sex couples lacking access to legal marriage, the primary motivation to remain together derives from the rewards associated with the relationship rather than formal barriers to separation.[31] Given this fact, and the legal and prejudicial obstacles that same-sex partners face, the prevalence and durability of same-sex relationships are striking.

IV. The Children of Same-Sex Couples.

A. Many Same-Sex Couples Raise Children.

The 2010 Census recorded 111,033 households headed by same-sex partners with children under age 18; over 3,500 of these households were in Indiana and Wisconsin.[32] These figures are widely assumed to underestimate the actual number of same-sex couples who are raising children.[33]

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[30] *See* T.B. Heaton & S.L. Albrecht, *Stable Unhappy Marriages*, 53 J. Marriage & Fam. 747 (1991); L.K. White & A. Booth, *Divorce Over the Life Course*, 12 J. Fam. Issues 5 (1991).

[31] L.A. Kurdek, *Relationship Outcomes and Their Predictors*, 60 J. Marriage & Fam. 553 (1998).

[32] 2010 Census Survey, *supra* note 15.

[33] This is because the Census does not directly assess participants' sexual orientation; it reflects only households headed by cohabiting same-sex partners who voluntarily reported their relationship status.

B. The Factors That Affect the Adjustment of Children Are Not Dependent on Parental Gender or Sexual Orientation.

Hundreds of studies over the past 30 years have elucidated the factors that are associated with healthy adjustment among children and adolescents—i.e., the influences that allow children and adolescents to function well in their daily lives. As one noted authority in developmental psychology explained, based on the accumulated empirical evidence:

> Many studies have shown that adjustment is largely affected by differences in the quality of parenting and parent-child relationships, the quality of the relationships between the parents, and the richness of the economic and social resources available to the family . . . . Dimensions of family structure – including such factors as divorce, single parenthood, and the parents' sexual orientation – and biological relatedness between parents and children are of little or no predictive importance once the process variables are taken into account, because the same factors explain child adjustment regardless of family structure.[34]

(1) The qualities of parent-child relationships

Research shows that children's adjustment is affected by the quality of a parent-child relationship—including attributes like parental warmth, consistency,

[34] M.E. Lamb, *Mothers, Fathers, Families, and Circumstances*, 16 Applied Developmental Sci. 98-111 (2012); *see also* S. Golombok, *Parenting* (2002); M.E. Lamb & C. Lewis, *The Role of Parent-Child Relationships in Child Development, in Developmental Science* 429-68 (M.H. Bornstein & M.E. Lamb eds., 5th ed. 2005); C.J. Patterson, & P.D. Hastings, *Socialization in the Context of Family Diversity, in Handbook of Socialization* 328-51 (J.E. Grusec & P.D. Hastings eds., 2007).

and stability. Children whose parents provide them with loving guidance in the context of secure home environments are likely to show more positive adjustment, regardless of their parents' sexual orientation.[35]

(2) The qualities of relationships between significant adults in children's lives

Additionally, children are more likely to show positive adjustment when parental relationships are characterized by love, warmth, cooperation, security, and mutual support. In contrast, when parental relationships are conflict-ridden and acrimonious, adjustment tends to be less favorable. Family instability, household disruption, and parental divorce are often associated with poorer adjustment and problems that can last into adulthood.[36] These patterns are observed, regardless of whether children are reared by same-sex couples or heterosexual couples.[37]

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[35] Lamb & Lewis, *supra* note 34; Patterson & Hastings, *supra* note 34; J.Z. Smith et al., *Multilevel Modeling Approaches to the Study of LGBT Parent-Families, in LGBT-Parent Families* 307-323 (A.E. Goldberg & K.A. Allen eds., 2013) (qualities such as parental warmth, parents' intimate relationship quality, and parental well-being matter more to children's adjustment than sexual orientation).

[36] *See, e.g.*, P.R. Amato, *Children of Divorce in the 1990s*, 15 J. Fam. Psychol. 355 (2001).

[37] *The Family Context of Parenting in Children's Adaptation to Elementary School* (P.A. Cowan et al. eds., 2005); R.W. Chan et al., *Psychosocial Adjustment Among Children Conceived Via Donor Insemination By Lesbian and Heterosexual Mothers*, 69 Child Dev. 443 (1998); E.M. Cummings et al., *Children's Responses to Everyday Marital Conflict Tactics in the Home*, 74 Child Dev. 1918 (2003); E.M. Cummings et al., *Everyday Marital Conflict and Child Aggression*, 32 J. Abnormal Child Psychol. 191 (2004); Golombok (2002), *supra* note 34; D. Potter, *Same-Sex Parent Families and Children's Academic Achievement*, 74 J. Marriage

Consequently, researchers must take care to avoid conflating the negative consequences of experiencing divorce or household instability with the consequences of simply having a gay or lesbian parent.[38]

& Fam. 556 (2012); M.J. Rosenfeld, *Nontraditional Families & Childhood Progress Through School*, 47 Demography, 755 (2010).

Although research conducted with children reared by heterosexual parents indicates that they fare better with two parenting figures than with one, *see, e.g.*, S. McLanahan & G. Sandefur, *Growing Up With a Single Parent* 39 (1994), comparable studies of children reared by same-sex couples versus those raised by a single lesbian, gay, or bisexual parents have not appeared in the research literature.

[38] Several studies that purport to identify differences in the adjustment of children of heterosexual versus same-sex couples exhibit this flaw. *See, e.g.*, S. Sarantakos, *Children in Three Contexts*, 21 Child. Australia 23 (1996) (in a study of Australian children, conflating effects of parental divorce and social stigma with the effects of parental sexual orientation).

The study by Mark D. Regnerus—which Regnerus and four other professors cite in their *amicus* brief in support of Appellants—is also flawed in this respect. *See* Brief of Social Science Professors, at 45 (citing M. Regnerus, *How Different Are the Adult Children of Parents Who Have Same-Sex Relationships?* 41 Soc. Sci. Research 752-770 (2012)). In this study, Regenerus compared: (1) adults who reported having lived with both biological parents until age 18, and (2) adults who did not live with both biological parents until age 18 *and* who believed that one or both parents had a same-sex romantic relationship during this time period. By definition, respondents in the former group had never experienced parental divorce or household disruption, whereas many members of the latter group had. (Indeed, many respondents in the latter group experienced considerable household instability, including living in foster care for some time.)

An additional—and even more relevant—limitation of the data is that very few respondents could be accurately characterized as having been raised by a same-sex couple. According to the author, only 2 of the 163 respondents that he categorized as being raised by lesbian mothers "reported living with their mother and her [female] partner uninterrupted from age 1 to 18." M. Regnerus, *Parental Same-Sex Relationships, Family Instability, and Subsequent Life Outcomes for Adult Children*, 41 Soc. Sci. Research 1367-1377 (2012) (acknowledging that "only 19 [respondents] spent at least five consecutive years living [with their

(3) The availability of economic and other resources

Children with sufficient economic resources are likely to live in safer neighborhoods, breathe cleaner air, and eat more nutritious food. They are also more likely to have opportunities to participate in positive after-school activities, and have social and emotional resources from teammates, coaches, youth leaders, and others. To the extent that children have access to these resources, they are more likely to show positive adjustment, regardless of their parents' sexual orientation.[39]

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mother and her partner], and six cases spent 10 or more consecutive years together"). Among the 73 respondents categorized as living with a gay father, fewer than 2% had lived with their father and his male partner for even three years. *Id.*

Moreover, Regnerus did not confirm the accuracy of respondents' beliefs about their parents' same-sex relationships; parents' sexual orientation was not assessed; and the group of respondents raised by both biological parents was apparently not asked about their parents' same-sex romantic relationships. Because of these significant limitations, the foregoing studies do not permit conclusions to be drawn about the effects of parental sexual orientation on children's outcomes. *See, e.g.*, *DeBoer v. Snyder*, 973 F. Supp. 2d 755, 766 (E.D. Mich. 2014) (after a trial on the merits, finding Regnerus's assertion that children of heterosexual couples fare better than those of gay parents "entirely unbelievable and not worthy of serious consideration"); *see also Bostic v. Schaefer*, No. 14-1167, --- F.3d ---, 2014 WL 3702493, at *16-17 (4th Cir. July 28, 2014) (rejecting argument that heterosexual marriage provides an "optimal childrearing" environment).

[39] *Neighborhood Poverty* (J. Brooks-Gunn et al. eds., 1997); *Consequences of Growing Up Poor* (G.J. Duncan & J. Brooks-Gunn eds., 1997); Patterson & Hastings, *supra* note 34; Potter (2012), *supra* note 37; Rosenfeld (2010), *supra* note 37.

In short, the same factors are linked to children's positive development, whether they are raised by heterosexual, lesbian, or gay parents. Moreover, when their parents can legally marry, children benefit in terms of all three factors. Marriage facilitates positive parent-child relationships by providing children with a legal relationship to both parents. This legal relationship can provide needed security and continuity, especially during times of crisis (such as school emergencies, medical emergencies, or the incapacity or death of a parent). In addition, children benefit when their parents are financially secure, physically and psychologically healthy, and not subjected to high levels of stress. To the extent that marriage facilitates same-sex couples' well-being, strengthens their relationships with each other, and reduces the risk of household instability, it enhances their children's well-being as well.[40] Thus, *Amici* conclude that permitting same-sex couples to marry is likely to have positive effects on the children they raise.

C. There Is No Scientific Basis for Concluding That Same-Sex Couples Are Any Less Fit or Capable Parents Than Heterosexual Couples, or That Their Children Are Any Less Psychologically Healthy and Well Adjusted.

Assertions that heterosexual couples are better parents than same-sex couples, or that the children of lesbian or gay parents fare worse than children of

[40] Chan et al., *supra* note 37; C.J. Patterson, *Families of the Lesbian Baby Boom*, 4 J. Gay & Lesbian Psychotherapy 91 (2001).

heterosexual parents, are not supported by the cumulative scientific research.[41] Rather, the vast majority of scientific studies that have directly compared these groups have found that gay and lesbian parents are as fit and capable as heterosexual parents, and that their children are as psychologically healthy and well adjusted. More research has focused on lesbian mothers than on gay fathers,[42]

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[41] The research on gay, lesbian, and bisexual parents includes dozens of empirical studies. Their findings are summarized in reviews of empirical literature published in respected, peer-reviewed journals and academic books. Recent reviews include T.J. Biblarz & J. Stacey, *How Does the Gender of Parents Matter?*, 72 J. Marriage & Fam. 3-22 (2010); A.E. Goldberg, *Lesbian and Gay Parents and Their Children* (2010); C.J. Patterson, *Family Lives of Lesbian and Gay Adults*, *in The Handbook of Marriage and Family* 659, 668-71 (G.W. Peterson & K.R. Bush eds., 2013); C.J. Patterson, *Children of Lesbian and Gay Parents*, 64 Am. Psychologist 727 (2009). For earlier reviews and related research, *see, e.g.*, J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159 (2001); E.C. Perrin et al., *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 341 (2002); C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. Marriage & Fam. 1052 (2000); N. Anderssen et al., *Outcomes for Children with Lesbian or Gay Parents*, 43 Scand. J. Psychol. 335 (2002); C.J. Patterson, *Lesbian and Gay Parents and Their Children*, *in Contemporary Perspectives on Lesbian, Gay, and Bisexual Identities*, Nebraska Symposium on Motivation 141 (D.A. Hope ed., 2009); C.J. Telingator & C.J. Patterson, *Children and Adolescents of Lesbian and Gay Parents*, 47 J. Am. Acad. of Child & Adolescent Psychiatry 1364 (2008); J.L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents With Same-Sex Parents*, 75 Child Dev. 1886 (2009).

[42] *See, e.g.*, H. Bos & T.G.M. Sandfort, *Children's Gender Identity in Lesbian and Heterosexual Two-Parent Families*, 62 Sex Roles 114 (2010); H. Bos et al., *Lesbian & Heterosexual Two-Parent Families*, J. Child. & Fam. Stud. (2014); R.H. Farr et al., *Parenting and Child Development in Adoptive Families*, 14 Applied Developmental Sci. 164, 176 (2010); S. Golombok et al., *Children with Lesbian Parents*, 39 Developmental Psychol. 20 (2003); I. Rivers et al., *Victimization, Social Support, and Psychosocial Functioning Among Children of Same-Sex and Opposite-Sex Couples in the United Kingdom*, 44 Developmental Psychol. 127

but published studies of gay fathers find that they are as fit and able parents as heterosexual fathers.[43]

A 2001 comprehensive survey of peer-reviewed scientific studies concluded that the evidence from empirical research "shows that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships or on children's mental health or social adjustment."[44] The vast majority of research findings reported in the years since that review was published provide further support for this conclusion.

These include fairly recent studies using national probability samples. One such study used data from the National Longitudinal Study of Adolescent Health to

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(2008); J.L. Wainright & C.J. Patterson, *Delinquency, Victimization, and Substance Use Among Adolescents with Female Same-Sex Parents*, 20 J. Fam. Psychol. 526 (2006).

[43] Farr, *supra* note 42, at 176; *see also* J.A. Lavner et al., *Can Gay and Lesbian Parents Promote Healthy Development in High-Risk Children Adopted From Foster Care?*, 82 Am. J. Orthopsychiatry 465-472 (2012); S. Erich et al., *Gay and Lesbian Adoptive Families*, 9 J. Fam. Soc. Work 17 (2005); S. Erich et al., *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, 1 J. GLBT Fam. Stud. 43 (2005). For a review of earlier research, *see* C.J. Patterson, *Gay Fathers, in The Role of the Father in Child Development* 397, 413 (M.E. Lamb ed., 2004).

[44] Stacey & Biblarz, *supra* note 41, at 176; *see also* Nat'l Academy of Sciences' Institute of Medicine, *supra* note 7 (concluding that "studies show that [the children of lesbian and gay parents] are well adjusted and developmentally similar to the children of different-sex parents").

Several studies that have focused on small reported differences have identified positive effects on children of same-sex couples. Biblarz & Stacey, *supra* note 41 (noting the "ubiquitous findings of no differences" in the research literature but concluding that when small differences have been found, they favor families of same-sex couples at least as often as families of heterosexual couples).

compare adolescents parented by female couples with adolescents parented by heterosexual couples. The researchers found no differences between the two groups on measures of a large number of key variables, including psychosocial adjustment, school outcomes, substance use, delinquency, victimization experiences, and relationships with peers.[45]

Another study used data from the Early Childhood Longitudinal Study – Kindergarten Cohort (ECLS-K) to compare the academic achievement of children growing up in various family structures. When the effects of significant family transitions (e.g., parental divorce, separation, or death) were taken into account, children in same-sex family structures showed slightly higher achievement levels than children living with their biological mother and father, although this difference was not statistically significant.[46]

Two other studies, each using the same data source, demonstrate the pitfalls of conflating parent sexual orientation with other variables relevant to children's development. Both used U.S. Census data to compare educational outcomes

[45] J.L. Wainright & C.J. Patterson, *Peer Relations Among Adolescents with Female Same-Sex Parents*, 44 Developmental Psychol. 117 (2008); Wainright & Patterson (2006), *supra* note 42; Wainright et al., *supra* note 41.

[46] Potter, *supra* note 37; *see also* A.L. Fedewa & T.P. Clark, *Parent Practices and Home-School Partnerships*, 5 J. GLBT Fam. Stud. 312-339 (2009) (using an ECLS-K subsample and finding children of same-sex couples did not differ significantly from children of heterosexual couples in academic achievement or social adjustment). In the ECLS-K, parental sexual orientation and relationship status were inferred from a series of questions about the household composition and caretakers.

among children residing in homes with various family structures. One reported that children in households with same-sex cohabiting couples had significantly lower levels of school progress than children of married heterosexual couples.[47] The other study, however, concluded that the observed differences were due to parents' socioeconomic status and differences across family types in children's experiences with household disruptions and instability. When these factors were taken into consideration, school progress did not significantly differ between children of married heterosexual couples and children of same-sex cohabiting couples.[48]

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[47] D.W. Allen et al., *Nontraditional Families and Childhood Progress Through School*, 50 Demography 955-961 (2013). Another recent paper by the same author compared across family structures high school graduation rates among young adults (age 17-22) in Canada still residing with their parents. D.W. Allen, *High School Graduation Rates Among Children of Same-Sex Households*, 11 Rev. Econ. of the Household 635-658 (2013). This study is irrelevant to questions about parenting because, as the author acknowledged: "**[T]his paper does not study the effect of growing up in a same-sex household**, but rather examines the association of school performance for those children who lived with same-sex parents in 2006." *Id.* (emphasis added). This narrow focus is necessitated by the lack of data concerning parents' prior marital history and the earlier family history of the 17-22 year-olds. In addition, the sample excluded any 17-22 year-olds who no longer resided with their parents, thus precluding a meaningful estimate of actual graduation rates in this population. Moreover, the paper's own analyses show that differences between the 17-22 year-olds currently residing with gay or lesbian parents versus those residing with married heterosexual parents were no longer statistically significant when the analyses included additional information (i.e., parents' current marital status and household instability during the previous 5 years). *Id.* (Model 3, Table 8 of the Appendix).

[48] Rosenfeld, *supra* note 37.

Amici emphasize that the parenting abilities of gay men and lesbians—and the positive outcomes for their children—are *not* areas where most credible scientific researchers disagree.[49] Thus, after careful scrutiny of decades of research, the APA concluded in 2004 that (a) "there is no scientific evidence that parenting effectiveness is related to parental sexual orientation: Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children" and (b) "research has shown that the adjustment, development, and psychological well-being of children are unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish."[50] Similarly, the AAP has concluded that "[t]here is extensive research documenting that there is no causal relationship between parents' sexual orientation and children's emotional, psychosocial, and behavioral development. Many studies attest to the normal development of

[49] The sources referenced in the *amicus* briefs in support of Appellants do not reflect the current state of scientific knowledge. They include many nonscientific sources; and, of the scientific studies cited, many do not even report data on same-sex couples or lesbian, gay, or bisexual parents. The cover page of one study cited by multiple *amici* includes the explicit disclaimer that "no conclusions can be drawn from this research about the well-being of children raised by same-sex parents or adoptive parents." K.A. Moore et al., *Marriage From a Child's Perspective*, Child Trends Research Brief (June 2002) (explaining that it "summarizes research conducted in 2002, when neither same-sex parents nor adoptive parents were identified in large national surveys"); *see* Brief of Social Science Professors, at 5 (citing Moore); Brief of Alliance Defending Freedom, at 14-16 (same). Other studies on which these parties rely suffer from methodological flaws. *See, e.g.*, notes 38, 47 *supra*.

[50] APA, *Resolution on Sexual Orientation, Parents, and Children* (2004).

children of same-gender couples when the child is wanted, the parents have a commitment to shared parenting, and the parents have strong social and economic supports."[51]

The NASW has similarly determined that "[t]he most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to heterosexual parents and their children that were included in the studies."[52] In adopting an official Position Statement in support of legal recognition of civil marriage for same-sex couples, the American Psychiatric Association observed that "no research has shown that the children raised by lesbians and gay men are less well adjusted than those reared within heterosexual relationships."[53]

V. Denying the Status of Marriage to Same-Sex Couples Stigmatizes Them.

The foregoing shows that the arguments about gay men and lesbians advanced in support of the Indiana and Wisconsin laws against same-sex marriage are contradicted by the scientific evidence and reflect an unreasoned antipathy towards an identifiable minority. In depriving gay men and lesbians of

[51] AAP, *Policy Statement*, *supra* note 4.
[52] NASW, *Policy Statement*, *supra* note 6.
[53] Am. Psychiatric Ass'n, *Position Statement* (2005), *supra* note 3; *see also* Am. Psychoanalytic Ass'n., *Position Statement: Parenting* (2012); Am. Med. Ass'n, Policy H-60.940, *Partner Co-Adoption*.

membership in an important social institution, these laws convey the States' judgments that committed intimate relationships between people of the same sex are inferior to heterosexual relationships. This is the essence of stigma.

A stigmatized condition or status is one that is negatively valued by society, fundamentally defines a person's social identity, and disadvantages those who have it.[54] Stigma has been characterized as "an undesired differentness."[55] It is manifested in social institutions, including the law, and in individual behaviors. Laws that accord majority and minority groups differing status highlight the perceived "differentness" of the minority and thereby tend to legitimize prejudicial attitudes and individual acts against the disfavored group, including ostracism, harassment, discrimination, and violence. Large numbers of lesbian, gay, and bisexual people experience such acts of prejudice.[56]

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[54] *See* E. Goffman, *Stigma* (1963); B.G. Link & J.C. Phelan, *Conceptualizing Stigma*, 27 Ann. Rev. Soc. 363 (2001); J. Crocker et al., *Social Stigma*, *in* 2 *The Handbook of Social Psychology* 504 (D.T. Gilbert et al. eds., 4th ed. 1998); Am. Med. Ass'n, Policy H-65.973, *Health Care Disparities in Same-Sex Partner Households* (recognizing that "exclusion from civil marriage contributes to health care disparities affecting same-sex households").

[55] Goffman, *supra* note 54, at 5.

[56] A survey using a nationally representative sample of gay, lesbian, and bisexual adults found that 21% had been the target of a physical assault or property crime since age 18 because of their sexual orientation; 18% of gay men and 16% of lesbians reported they had experienced discrimination in housing or employment. G.M. Herek, *Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States*, 24 J. Interpersonal Violence 54 (2009). In another survey with a nationally representative sample, 30% of lesbian, gay, bisexual, and transgender respondents said they had been threatened or physically

The Indiana and Wisconsin laws banning same-sex marriage are instances of institutional stigma. The "avowed purpose and practical effect" of these laws "are to impose a disadvantage, a separate status, and so a stigma" on same-sex couples. *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013). They convey the States' judgments that, in the realm of intimate relationships, legally united same-sex couples are inherently less deserving of society's full recognition than heterosexual couples. By devaluing and delegitimizing the relationships that constitute the very core of homosexual orientation, these laws compound and perpetuate the stigma historically attached to homosexuality.

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attacked because of their sexual orientation or gender identity; 26% of gay men and 23% of lesbians said they had been treated unfairly by an employer because of their sexual orientation. Pew Research Center, *supra* note 14; *see also* G.M. Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 J. Consulting & Clinical Psychol. 945, 948 (1999).

CONCLUSION

The judgments below, finding the Indiana and Wisconsin laws banning same-sex marriage unconstitutional, should be affirmed.

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Respectfully submitted,

/s/ Paul M. Smith

Paul M. Smith
JENNER & BLOCK LLP
1099 New York Ave. NW, Ste. 900
Washington, DC 20001
Telephone: (202) 639-6000
Fax: (202) 639-6066
PSmith@jenner.com

Counsel of Record for Amici Curiae

Nathalie F.P. Gilfoyle
AMERICAN PSYCHOLOGICAL ASSOCIATION
750 First Street NE
Washington, DC 20002
Telephone: (202) 336-6186
Fax: (202) 336-6069
Ngilfoyle@apa.org

Counsel for American Psychological Association

Aaron M. Panner
KELLOGG HUBER HANSEN TODD EVANS & FIGEL, PLLC
1615 M Street NW, Ste. 400
Washington, DC 20036
Telephone: (202) 326-7921
Fax: (202) 326-7999
apanner@khhte.com

Counsel for American Psychiatric Association

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the brief contains 6,996 words, excluding parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6), respectively, because this brief has been prepared in a proportionately spaced typeface using Microsoft Word 2007 in Times New Roman 14-point font.

Date: August 5, 2014

/s/ Paul M. Smith

Paul M. Smith
JENNER & BLOCK LLP
1099 New York Ave. NW, Ste. 900
Washington, DC 20001
Telephone: (202) 639-6000
Fax: (202) 639-6066
PSmith@jenner.com

CERTIFICATE OF SERVICE

I certify that on August 5, 2014, I caused the foregoing **Brief of the American Psychological Association, Wisconsin Psychological Association, American Psychiatric Association, American Academy of Pediatrics, Wisconsin Chapter of the American Academy of Pediatrics, American Association for Marriage and Family Therapy, National Association of Social Workers, National Association of Social Workers Indiana Chapter, and National Association of Social Workers Wisconsin Chapter as *Amici Curiae* in Support of Plaintiffs-Appellees** to be electronically filed via the Court's CM/ECF System. Counsel for all parties will be served via the Court's CM/ECF system at the email addresses on file.

Date: August 5, 2014

/s/ Paul M. Smith
Paul M. Smith
JENNER & BLOCK LLP
1099 New York Ave. NW, Ste. 900
Washington, DC 20001
Telephone: (202) 639-6000
Fax: (202) 639-6066
PSmith@jenner.com