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SAUNDRA HEATH and CLARITA ALICIA
TOBY; CRAIG HUTCHISON and CHRIS
LODEWYKS; MAUREEN KILIAN and CINDY
MENEHIN; SARAH and SUYIN LAEL;
MARILYN MANEELY and DIANE MARINI;
and KAREN and MARCYE NICHOLSON-
MCFADDEN,

Plaintiffs-Appellants,

v.

GWENDOLYN L. HARRIS, in her
official capacity as Commissioner
of the New Jersey Department of
Human Services; CLIFTON R. LACY,
in his official capacity as the
Commissioner of the New Jersey
Department of Health and Senior
Services; and JOSEPH KOMOSINSKI,
in his official capacity as Acting
State Registrar of Vital
Statistics of the New Jersey State
Department of Health and Senior
Services,

Defendants-Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

Docket No. A-2244-03T5

ON APPEAL FROM:

MERCER COUNTY,
LAW DIVISION
Docket No. MER-L-15-03

Sat Below:
Hon. Linda R. Feinberg,
A.J.S.C.

**BRIEF OF AMERICAN PSYCHOLOGICAL ASSOCIATION AND
NEW JERSEY PSYCHOLOGICAL ASSOCIATION AS
AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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INTEREST OF *AMICI CURIAE*

The American Psychological Association is a nonprofit scientific and professional organization founded in 1892. The Association has more than 155,000 members and affiliates, including the majority of psychologists holding doctoral degrees from accredited universities in this country. Among the Association's major purposes is to increase and disseminate knowledge regarding human behavior and to foster the application of psychological learning to important human concerns. Human sexuality and familial relationships are professional concerns of a substantial number of the Association's members, either as researchers or as clinicians.

In July 2004, the Association's Council of Representatives adopted two Resolutions relevant to this case, which are reproduced in the Addendum to this brief. In its Resolution on Sexual Orientation and Marriage, the Association resolved, based on empirical research concerning sexual orientation and marriage, "That the APA believes that it is unfair and discriminatory to deny same-sex couples legal access to civil marriage and to all its attendant benefits, rights, and privileges." And in its Resolution on Sexual Orientation, Parents, and Children, the Association recognized that "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.” In both Resolutions the Association resolved to provide scientific and educational resources, such as this *amicus* brief, to inform public discussion and understanding of these issues.

The New Jersey Psychological Association was founded in 1931 and was incorporated as a non-profit corporation in the State of New Jersey in 1950. The Association has more than 2,000 members and affiliates, including a majority of psychologists holding a New Jersey license to practice psychology in the State of New Jersey. A majority of the members hold doctoral degrees from accredited universities in this country. Among the Association’s major purposes is to advance psychology as a science, as a profession and as a means of promoting human welfare. Human sexuality and familial relationships are professional concerns of many of the Association’s members.

SUMMARY OF ARGUMENT

Amici, the nation’s and state’s leading associations of psychology professionals and behavioral scientists, have prepared this brief to provide the Court with a comprehensive, fair, and balanced review of the scientific and professional literature pertinent to the issues before the Court. In preparing this brief, *amici* have been guided solely by criteria

relating to the scientific rigor and reliability of studies and literature, not by whether a given study supports or undermines a particular conclusion.

Scientific research has firmly established that homosexuality is not a disorder or disease, but rather a normal variant of human sexual orientation. The vast majority of gay and lesbian individuals lead happy, healthy, well-adjusted, and productive lives.

In particular, many gay and lesbian people are already in same-sex relationships that are equivalent to heterosexual relationships in essential respects. Allowing same-sex couples to marry would give them access to the legal, social, and economic support that already facilitate and strengthen heterosexual marriages, with all of the psychological and health benefits associated with that support. It would also end the antigay stigma imposed by the State through its same-sex marriage ban.

In addition, a large number of children are currently being raised by lesbians and gay men, both in same-sex couples and as single parents. Ending the prohibition on marriage for same-sex partners is in the best interest of the children being raised by these parents. Empirical research has consistently shown that lesbian and gay parents do not differ from heterosexuals in their parenting skills, and their children do not show any

deficits compared to children raised by heterosexual parents. It is the quality of parenting that predicts children's psychological and social adjustment, not the parents' sexual orientation or gender. If their parents are allowed to marry, the children of same-sex couples will benefit from the legal stability and other familial benefits that marriage provides, as well as from elimination of state-sponsored stigmatization of their families. By contrast, the argument that banning same-sex marriage will encourage gay men and lesbians who wish to conceive and raise children to do so in heterosexual marriage relationships, and that promoting such arrangements is in the best interest of children, is not supported by research or clinical experience.

ARGUMENT

I. The Nature of Scientific Evidence and Its Presentation in this Brief.

This brief has been prepared and reviewed by expert members of *amici* - the nation's and state's leading associations of psychological professionals and researchers - who are thoroughly familiar with current scientific theory, research methods, empirical findings, and clinical techniques concerning sexual orientation, marriage and non-marital relationships, and parenting.¹ In the informed judgment of *amici*, this brief presents an accurate and balanced summary of the current state of scientific and professional knowledge about these issues. To further assist the Court, we briefly explain the professional standards we have followed for selecting individual studies and literature reviews for citation and for drawing conclusions from research data and theory.

(1) We are ethically bound to be accurate and truthful in describing research findings and in characterizing the current state of scientific knowledge.

¹ Counsel has assisted *amici* in identifying issues potentially relevant to this case, presenting scientific information herein in a manner that will assist the Court, and preparing the brief for filing with the Court in compliance with applicable rules. In preparing this brief, however, *amici* and their expert members, not counsel, have taken sole responsibility for reviewing the scientific literature and summarizing the conclusions to be drawn therefrom.

(2) We rely on the best empirical research available, focusing on general patterns rather than any single study. Whenever possible, we cite original empirical studies and literature reviews that have been peer-reviewed and published in reputable academic journals. Not every published paper meets this standard because academic journals differ widely in their publication criteria and the rigor of their peer review. We cite chapters, academic books, and technical reports, which typically are not subject to the same peer-review standards as journal articles, when they report research employing rigorous methods, are authored by well-established researchers, and accurately reflect professional consensus about the current state of knowledge. In assessing the scientific literature, we have been guided solely by criteria of scientific validity, and have neither included studies merely because they support, nor excluded credible studies merely because they contradict, particular conclusions.

(3) Before citing any study, we critically evaluate 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. We also evaluate the adequacy of the study's sample, which must always be considered in terms of the specific research question posed

by the study.² In this brief, we note when a study's findings should be regarded as tentative because of a particularly small or selective sample, or because of possible limitations to the procedures used for measuring a key variable.

(4) No empirical study is perfect in its design and execution. All scientific studies can be constructively criticized, and scientists continually try to identify ways to improve and refine their own work and that of their colleagues. When a scientist identifies limitations or qualifications to a study's findings (whether the scientist's own research or that of a colleague), or when she or he notes areas in which additional research is needed, this should not necessarily be interpreted as a dismissal or discounting of the research.

² To confidently describe the prevalence or frequency with which a phenomenon occurs in the population at large, for example, it is necessary to collect data from a probability sample (often referred to in common parlance as a "representative sample"). By contrast, simply to document that a phenomenon occurs, case studies and nonprobability samples are often adequate. For comparisons of different populations, probability samples drawn from each group are desirable but not necessary and rarely feasible. Hence, researchers often rely on nonprobability samples that have been matched on relevant characteristics (e.g., educational level, age, income). Some groups are sufficiently few in number — relative to the entire population — that locating them with probability sampling methods is extremely expensive or practically impossible. In the latter cases, the use of nonprobability samples is often appropriate; when numerous studies with different samples reach similar conclusions, we place greater confidence in those conclusions than when they are derived from a single study. We therefore rely as much as possible on empirical findings that have been replicated in multiple studies by different researchers.

Rather, critiques are part of the process by which science is advanced.

(5) Scientific research cannot prove that a particular phenomenon never occurs or that two variables are never related to each other. When repeated studies with different samples consistently fail to establish the existence of a phenomenon or a relationship between two variables, researchers become increasingly convinced that, in fact, the phenomenon does not exist or the variables are unrelated. In the absence of supporting data from prior studies, if a researcher wants to argue that two phenomena are correlated, the burden of proof is on that researcher to show that the relationship exists.

II. Sexual Orientation and Homosexuality.

A. The Nature of Sexual Orientation and Its Inherent Link to Intimate Relationships.

Sexual orientation refers to an enduring pattern or disposition to experience sexual, affectional, or romantic attractions primarily to men, to women, or to both sexes. It also refers to 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.³

³ See *Sexual Orientation*, in Am. Psychol. Ass'n, 4 *Encyclopedia of Psychology* 260 (A.E. Kazdin ed., 2000); *Homosexuality*, in 2 *The Corsini Encyclopedia of Psychology and Behavioral Sciences* 683 (W.E. Craighead & C.B. Nemeroff eds., 3d ed. 2001); J.C.

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 men and women).⁴ Sexual orientation is distinct from other components of sex and sexuality, including *biological sex* (the anatomical, physiological, and genetic characteristics associated with being male or female), *gender identity* (the psychological sense of being male or female), and *social gender role* (adherence to cultural norms defining feminine and masculine behavior).

Gonsiorek & J.D. Weinrich, *The Definition and Scope of Sexual Orientation*, in *Homosexuality: Research Implications for Public Policy* 1 (J.C. Gonsiorek & J.D. Weinrich eds., 1991). As used in this brief, "gay" refers to men and women whose social identity or sexual orientation is based on their primary erotic, affectional, and romantic attraction to members of their own sex, and "lesbian" refers to women who are gay.

⁴ In this brief, we focus specifically on persons with a homosexual orientation - gay men and lesbians - and on how prohibiting same-sex marriage affects that group and their children. It should be noted that some of the research we cite (for example, the research on stigma discussed below in Section II.B) concerns bisexual as well as homosexual persons. Moreover, many bisexual persons are involved in committed same-sex relationships and, to the extent they are, many of the statements in this brief apply with equal force to them.

Sexual orientation is commonly discussed as a characteristic of the *individual*, like biological sex, gender identity, or age. Although accurate insofar as it goes, this perspective is incomplete because sexual orientation is always defined in relational terms and necessarily involves relationships with other individuals. Sexual acts and romantic attractions are categorized as homosexual or heterosexual according to the biological sex of the individuals involved in them, relative to each other. Indeed, it is by acting with another person – or desiring to act – that individuals express their heterosexuality, homosexuality, or bisexuality. This includes actions as simple as holding hands with or kissing another person.

Thus, sexual orientation is integrally linked to the intimate personal relationships that human beings form with others to meet their deeply felt needs for love, attachment, and intimacy. In addition to sexual behavior, these bonds encompass nonsexual physical affection between partners, shared goals and values, mutual support, and ongoing commitment. Consequently, sexual orientation is not merely a personal characteristic that can be defined in isolation. Rather, one's sexual orientation 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.

B. Homosexuality Is a Normal Expression of Human Sexuality.

In 1952, when the American Psychiatric Association published its first *Diagnostic and Statistical Manual of Mental Disorders*, homosexuality was included as a disorder.⁵ Almost immediately, however, that classification began to be subjected to critical scrutiny in research funded by the National Institute of Mental Health. That study and subsequent research consistently failed to provide any empirical or scientific basis for regarding homosexuality as a disorder or abnormality, rather than a normal and healthy sexual orientation.⁶ As results from

⁵ A mental disorder is "a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress (e.g., a painful symptom) or disability (i.e., impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom." Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* xxxi (4th ed. text rev. 2001).

⁶ In one of the first rigorous examinations of the mental health status of homosexuality, Dr. Evelyn Hooker administered widely-used psychological tests to matched groups of homosexual and heterosexual males who were not incarcerated and not receiving psychiatric care. Ratings of the men's psychological adjustment, obtained from independent experts who were unaware of each man's sexual orientation, did not differ significantly between the heterosexuals and homosexuals. Hooker concluded from her data that homosexuality is not inherently associated with psychopathology and that "homosexuality as a clinical entity does not exist." E. Hooker, *The Adjustment of the Male*

such research accumulated, professionals in medicine, mental health, and the behavioral and social sciences reached the conclusion that the classification of homosexuality as a mental disorder was incorrect and that it reflected untested assumptions based on once-prevalent social norms as well as on clinical impressions from unrepresentative samples comprising patients seeking therapy and individuals whose conduct brought them into the criminal justice system.

In recognition of the scientific evidence, the American Psychiatric Association removed homosexuality from its *Diagnostic and Statistical Manual of Mental Disorders* in 1973. The Psychiatric Association's resolution stated that "homosexuality *per se* implies no impairment in judgment, stability, reliability, or general social or vocational

Overt Homosexual, 21 J. Projective Techniques 17 (1957). Hooker's findings were replicated and amplified over the next two decades by numerous studies, using a variety of research techniques, which similarly concluded that homosexuality is not inherently associated with psychopathology or social maladjustment. For reviews, see J.C. Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality*, in *Homosexuality: Research Implications for Public Policy* 115, 115 (J.C. Gonsiorek & J.D. Weinrich eds., 1991); J.C. Gonsiorek, *Results of Psychological Testing On Homosexual Populations*, 25 Am. Behav. Sci. 385 (1982); B.F. Reiss, *Psychological Tests in Homosexuality*, in *Homosexual Behavior: A Modern Reappraisal* 296 (J. Marmor ed., 1980); M. Hart et al., *Psychological Adjustment of Nonpatient Homosexuals: Critical Review of the Research Literature*, 39 J. Clinical Psychiatry 604 (1978).

capabilities.”⁷ After a thorough review of the scientific data, the American Psychological Association adopted the same position in 1975, and urged all mental health professionals to help dispel the stigma of mental illness that had long been associated with homosexual orientation.⁸ The National Association of Social Workers, with nearly 150,000 members, has adopted a similar policy.⁹

Thus, mental health professionals and researchers have long recognized that being homosexual inherently poses no obstacle to leading a happy, healthy, and productive life, and that the vast majority of gay and lesbian people function well in the full array of social institutions and interpersonal relationships. With particular relevance to the issues before the Court in this case, as explained at greater length in Sections III and IV below, such functioning includes the capacity to form healthy and mutually satisfying intimate relationships with another person of the same sex and to raise healthy and well-adjusted children.

⁷ Am. Psychiatric Ass’n, *Position Statement on Homosexuality and Civil Rights* (1973), printed in 131 Am. J. Psychiatry 497 (1974).

⁸ Am. Psychol. Ass’n, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975).

⁹ Nat’l Ass’n of Soc. Workers, *Policy Statement on Lesbian, Gay and Bisexual Issues* (1993) (approved by NASW Delegate Assembly), reprinted in *Social Work Speaks: NASW Policy Statements* 224 (6th ed. 2003).

Like heterosexuals, lesbians and gay men benefit to the extent that they are able to share their lives with and receive support from their family, friends, and other people who are important to them. For example, lesbians and gay men have been found to manifest better mental health to the extent that they hold positive feelings about their own sexual orientation, have developed a positive sense of personal identity based on it, and have integrated it into their lives by disclosing it to others (commonly referred to as "coming out of the closet" or simply "coming out").¹⁰ By contrast, lesbians and gay men who feel compelled to conceal their sexual orientation tend to report more frequent mental health concerns than their openly gay counterparts,¹¹ and may even be at risk for physical health problems.¹²

¹⁰ S.K. Hammersmith & M.S. Weinberg, *Homosexual Identity: Commitment, Adjustment and Significant Others*, 36 *Sociometry* 56 (1973); G.M. Herek & E.K. Glunt, *Identity and Community Among Gay and Bisexual Men in the AIDS Era: Preliminary Findings from the Sacramento Men's Health Study*, in *AIDS, Identity, and Community: The HIV Epidemic and Lesbians and Gay Men* 55 (G.M. Herek & B. Greene eds., 1995); J. Leserman et al., *Gay Identification and Psychological Health in HIV-Positive and HIV-Negative Gay Men*, 24 *J. Applied Soc. Psychol.* 2193 (1994).

¹¹ I.H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 *Psychol. Bull.* 674 (2003).

¹² See generally G.M. Herek, *Why Tell If You're Not Asked? Self-Disclosure, Inter-group Contact, and Heterosexuals' Attitudes Toward Lesbians and Gay Men*, in *Out in Force: Sexual Orientation and the Military* 197, 211-12 (G.M. Herek et al. eds., 1996).

Moreover, like heterosexuals, gay people can be adversely affected by high levels of stress. The link between experiencing stress and manifesting symptoms of psychological or physical illness is well established in human beings and other species.¹³ To the extent that the portion of the population with a homosexual orientation is subjected to additional stress beyond what is normally experienced by the heterosexual population, it may, as a group, manifest somewhat higher levels of illness or psychological distress.¹⁴ Differences in stress

Research indicates that hiding or actively concealing significant aspects of the self can have negative effects on physical health, whereas disclosure of such information to others can have positive health outcomes. See J.M. Smyth & J.W. Pennebaker, *What Are the Health Effects of Disclosure?*, in *Handbook Of Health Psychology* (A. Baum et al. eds., 2001); S.W. Cole et al., *Elevated Physical Health Risk Among Gay Men Who Conceal Their Homosexual Identity*, 15 *Health Psychol.* 243 (1996).

¹³ See, e.g., S. Cohen et al., *Psychological Stress, Cytokine Production, and Severity of Upper Respiratory Illness*, 61 *Psychosomatic Med.* 175 (1999); J.K. Kiecolt-Glaser et al., *Psychoneuroimmunology: Psychological Influences on Immune Function and Health*, 70 *J. Consulting & Clinical Psychol.* 537 (2002); B.P. Dohrenwend, *The Role of Adversity and Stress in Psychopathology: Some Evidence and its Implications for Theory and Research*, 41 *J. Health & Soc. Behav.* 1 (2000).

¹⁴ Consistent with this observation, several studies suggest that, compared to the heterosexual population, a somewhat larger proportion of the homosexual and bisexual population may manifest certain psychological symptoms. For a meta-analysis of nine published studies in this area, see I.H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 *Psychol. Bull.* 674 (2003). As Meyer notes, these findings must be considered with caution because of several methodological

between the heterosexual population and the homosexual population can be attributed largely to the societal stigma directed at the latter.¹⁵ As one researcher noted after reviewing the relevant scientific literature, lesbian, gay, and bisexual individuals "are exposed to excess stress due to their minority position and . . . this stress causes an excess in mental disorders."¹⁶ In experiencing such excess stress, the gay

limitations associated with the studies, including the failure of nearly half of the studies to directly assess respondents' sexual orientation, the reliance on nonprobability samples in most of the remaining studies, and small sample sizes.

¹⁵ "Stigma" refers to an enduring condition, status, or attribute that is negatively valued by society, fundamentally defines a person's social identity, and consequently disadvantages and disempowers those who have it. See E. Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963); B.G. Link & J.C. Phelan, *Conceptualizing Stigma*, 27 *Annual 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). Examples of stigma experienced by large numbers of lesbian, gay, and bisexual people include ostracism and personal rejection, harassment, discrimination, and violence because of their sexual orientation. See K.T. Berrill, *Antigay Violence and Victimization in the United States: An Overview*, in *Hate Crimes: Confronting Violence Against Lesbians and Gay Men* 19 (G.M. Herek & K.T. Berrill eds., 1992); 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); M.V.L. Badgett, *Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men* chapter 2 (2001).

¹⁶ I.H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 *Psychol. Bull.* 674, 690 (2003); see also I.H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 *J. Health & Soc. Behav.* 38 (1995); V.M. Mays & S.D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian,*

and lesbian population is comparable to other minority groups that face unique stressors due to prejudice and discrimination based on their minority status.¹⁷ Given the unique social stressors to which they are subjected, the noteworthy fact is that the vast majority of gay men and lesbians effectively cope with these challenges and lead happy, healthy and well-adjusted lives.

III. Sexual Orientation and Relationships.

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

Like their heterosexual counterparts, substantial numbers of gay men and lesbians desire to form stable, long-lasting,

Gay, and Bisexual Adults in the United States, 91 Am. J. Pub. Health 1869 (2001).

¹⁷ I.H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 Psychol. Bull. 674, 675-76, 690 (2003). In addition, lesbian, gay, and bisexual people face other stressors. For example, because the AIDS epidemic has had a disproportionate impact on the gay male community in the United States, many gay and bisexual men have experienced the loss of a life partner, and gay, lesbian, and bisexual people alike have experienced extensive losses in their personal and social networks resulting from the death of close friends and acquaintances; bereavement related to multiple losses is linked to higher levels of depressive symptoms. See S. Folkman et al., *Postbereavement Depressive Mood and Its Prebereavement Predictors in HIV+ and HIV- Gay Men*, 70 J. Personality & Soc. Psychol. 336 (1996); J.L. Martin, *Psychological Consequences of AIDS-Related Bereavement Among Gay Men*, 56 J. Consulting & Clinical Psychol. 856 (1988).

committed relationships.¹⁸ Many are successful in doing so. Empirical studies using nonrepresentative samples of gay men and lesbians show that the vast majority of participants have been involved in a committed relationship at some point in their lives, that large proportions are currently involved in such a relationship (across studies, roughly 40 - 70% of gay men and 45 - 80% of lesbians), and that a substantial number of those couples have been together 10 or more years.¹⁹ Recent surveys based on more representative samples of gay men, lesbians, and bisexuals support these findings and indicate that many same-sex couples are cohabiting.²⁰ A preliminary analysis of data from

¹⁸ In a 2000 poll with a probability sample of 405 lesbians, gay men, and bisexuals from 15 major U.S. metropolitan areas, 74% responded affirmatively to the question, "If you could get legally married to someone of the same sex, would you like to do that someday or not?" Henry J. Kaiser Family Foundation, *Inside-Out: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation* 31 (2001), available at <http://www.kff.org/kaiserpolls/loader.cfm?url=/commonspot/security/getfile.cfm&PageD=13875>.

¹⁹ See L.A. Peplau & L.R. Spalding, *The Close Relationships of Lesbians, Gay Men and Bisexuals*, in *Close Relationships: A Sourcebook* 114 (Hendrick & Hendrick eds., 2000); L.A. Kurdek, *Lesbian and Gay Couples*, in *Lesbian, Gay, and Bisexual Identities over the Lifespan* 243 (A.R. D'Augelli & C.J. Patterson eds., 1995); P.M. Nardi, *Friends, Lovers, and Families: The Impact of AIDS on Gay and Lesbian Relationship*, in *In Changing Times: Gay Men and Lesbians Encounter HIV/AIDS* 55, 71-72 (Tables 3.1 and 3.2) (Martin P. Levine, Peter M. Nardi & John H. Gagnon eds., 1997).

²⁰ See T.C. Mills et al., *Health-Related Characteristics of Men Who Have Sex with Men: A Comparison of Those Living in "Gay*

the 2000 US Census reported that same-sex couples headed more than 594,000 households in the United States, with at least one cohabiting same-sex couple in 99% of the nation's counties.²¹

Empirical research demonstrates that the psychological and social aspects of these committed relationships between same-sex partners strongly resemble those of heterosexual partnerships. Like heterosexual couples, same-sex couples form deep emotional attachments and commitments. Heterosexual and same-sex couples alike face similar challenges concerning issues such as

Ghettos" with Those Living Elsewhere, 91 Am. J. Pub. Health, 980, 982 (Table 1) (2001); S.D. Cochran et al., *Prevalence of Mental Disorders, Psychological Distress, and Mental Services Use Among Lesbian, Gay, and Bisexual Adults in the United States*, 71 J. Consulting & Clinical Psychol. 53, 56 (Note to Table 1) (2003); Henry J. Kaiser Family Foundation, *Inside-OUT: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation*, at 33 (Questions D4, D5) (2001). The latter two surveys probably underrepresent the actual number of respondents in a committed same-sex relationship because the question wording focused on marital status and cohabitation, which probably led many respondents who were currently in a same-sex couple but not cohabiting to describe themselves as single.

²¹ T. Simmons & M. O'Connell, *Married-Couple and Unmarried-Partner Households: 2000* (U.S. Census Bureau 2003), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf> (accessed Oct. 6, 2004); see also *Households Headed By Gays Rose in the 90's, Data Shows*, N.Y. Times, Aug. 22, 2001, at A17. These findings necessarily represent a low estimate of the number of same-sex couples in the United States because the Census form identified couples only when they included the head of the household (referred to by the Census as the "householder") and excluded couples who were not living together. In addition, because of concerns about stigma, as well as lack of widespread information about this portion of the Census form, it is likely that not all cohabiting same-sex couples identified themselves as such.

intimacy, love, equity, loyalty, and stability, and they go through similar processes to address those challenges.²² Empirical research examining the quality of intimate relationships also shows that gay and lesbian couples do not differ from heterosexual couples in their satisfaction with the relationship.²³ A review of the literature on gay and lesbian couples in 1991 concluded that "most lesbians and gay men want intimate relationships and are successful in creating them. Homosexual partnerships appear no more vulnerable to problems and dissatisfactions than their heterosexual counterparts."²⁴

²² L.A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 J. Marriage & Fam. 880 (2004); see also L.A. Kurdek, *Differences Between Heterosexual-Nonparent Couples and Gay, Lesbian and Heterosexual-Parent Couples*, 22 J. Fam. Issues 727 (2001); R.A. Mackey et al., *Psychological Intimacy in the Lasting Relationships of Heterosexual and Same-Gender Couples*, 43 Sex Roles 201 (2000); see generally L.A. Peplau & L.R. Spalding, *The Close Relationships of Lesbians, Gay Men and Bisexuals, in Close Relationships: A Sourcebook* 111, 114 (Hendrick & Hendrick eds., 2000).

²³ L.A. Peplau & L.R. Spalding, *The Close Relationships of Lesbians, Gay Men and Bisexuals, in Close Relationships: A Sourcebook* 114 (Hendrick & Hendrick eds., 2000) ("Empirical research has found striking similarities in the reports of love and satisfaction among contemporary lesbian, gay and heterosexual couples"); see also R.A. Mackey et al., *Psychological Intimacy in the Lasting Relationships of Heterosexual and Same-Gender Couples*, 43 Sex Roles 201 (2000); 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).

²⁴ L.A. Peplau, *Lesbian and Gay Relationships, in Homosexuality: Implications for Public Policy* 195 (J.C. Gonsiorek & J.D.

Based on the empirical research findings, the American Psychological Association has concluded that "[p]sychological research on relationships and couples provides no evidence to justify discrimination against same-sex couples."²⁵

B. The Institution Of Marriage Offers Social, Psychological, and Health Benefits That Are Denied To Same-Sex Couples.

Social scientists have long understood that marriage as a social institution has a profound effect on the lives of the individuals who inhabit it. In the nineteenth century, for example, the sociologist Emile Durkheim observed that marriage helps to protect the individual from "anomie" or social disconnectedness.²⁶ Expanding on this notion, twentieth-century sociologists have characterized marriage as "a social

Weinrich eds., 1991); see also L.A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 J. Marriage & Fam. 880 (2004) (finding no differences between gay and lesbian couples and heterosexual couples without children on individual personality differences, views on relationships, conflict resolution, and satisfaction); L.A. Kurdek, *Differences Between Heterosexual-Nonparent Couples and Gay, Lesbian and Heterosexual-Parent Couples*, 22 J. Fam. Issues 727 (2001) (same). The authors of a major study of heterosexual and gay couples in the United States undertaken in the early 1980s similarly observed that "[c]ouplehood, either as a reality or an aspiration, is as strong among gay people as it is among heterosexuals." P. Blumstein & P. Schwartz, *American Couples: Money, Work, Sex* 45 (1983).

²⁵ Am. Psychol. Ass'n, *Resolution on Sexual Orientation and Marriage* (2004) (reproduced in Addendum to this brief).

²⁶ E. Durkheim, *Suicide: A Study in Sociology* 259 (J.A. Spaulding & G. Simpson trans., Glencoe, Ill.: Free Press 1951) (original work published 1897).

arrangement that creates for the individual the sort of order in which he can experience his life as making sense"²⁷ and have suggested that "in our society the role that most frequently provides a strong positive sense of identity, self-worth, and mastery is marriage."²⁸ Although it is difficult to quantify how the meaning of life changes for individuals once they are married, empirical research clearly demonstrates that marriage has distinct benefits that extend beyond the material necessities of life.²⁹

²⁷ P. Berger & H. Kellner, *Marriage and the Construction of Reality: An Exercise In the Microsociology of Knowledge*, 46 *Diogenes* 1 (1964).

²⁸ W.R. Gove et al., *The Effect of Marriage on the Well-Being of Adults: A Theoretical Analysis*, 11 *J. Fam. Issues* 4, 16 (1990).

²⁹ See S. Stack & J.R. Eshleman, *Marital Status and Happiness: A 17-Nation Study*, 60 *J. Marriage & Fam.* 527 (1998) (finding that married individuals manifested significantly more happiness than the unmarried in the United States, Canada, and 14 other nations in which survey data were collected); S.L. Nock, *A Comparison of Marriages and Cohabiting Relationships*, 16 *J. Fam. Issues* 53, 53 (1995) (finding that married couples were happier with their relationship than unmarried cohabiting couples, displayed greater commitment to the relationship, and had better relationships with their parents, indicating greater integration "into the networks of others who are in more traditional relationships"); W.R. Gove et al., *The Effect of Marriage on the Well-Being of Adults: A Theoretical Analysis*, 11 *J. Fam. Issues* 4, 5 (1990) (reviewing literature and concluding that "virtually all data bearing on the well-being of individuals that is representative of the general population indicate that the married have higher levels of well-being than have the unmarried"). One study drew on data from a representative national sample to show that the beneficial effects of marriage on psychological well-being can be attributed, in part, to the fact that married individuals report that their lives have

As a legal institution, marriage also gives legally wed spouses access to a host of economic and social benefits and obligations that currently are not extended to same-sex relationships. A review of the legal aspects of marriage is beyond the scope of *amici's* expertise. Relevant to the expertise of *amici*, however, is research establishing that both tangible and intangible elements of the marital relationship have important implications for the psychological and physical health of married individuals and for the relationship itself. Because they are denied the opportunity to marry, partners in same-sex couples are denied these benefits.

Because marriage rights have been granted to same-sex couples only recently and only in one state (Massachusetts) and a few countries, no empirical studies have yet been published that compare married same-sex couples to unmarried same-sex couples. However, a large body of scientific research has compared married and unmarried heterosexual couples and individuals. Based on its scientific and clinical expertise, *amici* believe it is appropriate to extrapolate from the empirical research literature for heterosexual couples – with qualifications as appropriate – to anticipate the likely effects

purpose and meaning to a greater extent than their unmarried counterparts. See 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).

marriage would have on that segment of population that would choose to marry if allowed to do so.³⁰ *Amici* believe that the potential benefits of marriage for gay men and lesbians in same-sex couples are similar to those previously observed for heterosexuals.

Married men and women generally experience better physical and mental health than their unmarried counterparts.³¹ These health benefits do not appear to result simply from being in an

³⁰ Researchers recognize that comparisons between married and unmarried individuals are complicated by the possibility that observed differences might be due to self-selection. People who choose to marry may differ from those who do not choose to marry in important ways (e.g., in terms of mental health or happiness). After extensive study, however, researchers have concluded that the benefits associated with marriage result largely from the institution itself rather than from self-selection. See, e.g., W.R. Gove et al., *The Effect of Marriage on the Well-Being of Adults: A Theoretical Analysis*, 11 J. Fam. Issues 4, 10 (1990); J.E. Murray, *Marital Protection and Marital Selection: Evidence from a Historical-Pro prospective Sample of American Men*, 37 Demography 511 (2000). Similarly, in anticipating that being able to marry will have beneficial effects for same-sex couples, *amici* recognize that self-selection will play a role in marriage between same-sex partners as it currently does with different-sex partners. Given the opportunity to marry, not all same-sex couples will choose to do so, any more than is now the case for heterosexuals. It is reasonable to expect that same-sex couples who choose to marry, like their heterosexual counterparts, will benefit from the institution of marriage itself.

³¹ See N.J. Johnson et al., *Marital Status and Mortality: The National Longitudinal Mortality Study*, 10 Annals Epidemiology 224 (2000); C.E. Ross et al., *The Impact of the Family on Health: The Decade in Review*, 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).

intimate relationship because most (although not all) studies have found that married individuals generally manifest greater well-being than comparable individuals in heterosexual unmarried cohabiting couples.³² The health benefits of marriage may be due partly to married couples enjoying greater economic and financial security than unmarried individuals.³³ Of course, marital status alone does not guarantee greater health or happiness. People who are unhappy with their marriage often manifest lower levels of well-being than their unmarried counterparts, and experiencing marital discord and dissatisfaction is often associated with negative health

³² See *supra* note 29; see also S.L. Brown, *The Effect of Union Type on Psychological Well-Being: Depression Among Cohabitors Versus Marrieds*, 41 J. Health & Soc. Behav. 241 (2000). But see, e.g., C.E. Ross, *Reconceptualizing Marital Status as a Continuum of Social Attachment*, 57 J. Marriage & Fam. 129 (1995) (reporting data from a national survey and finding that people in an unmarried, cohabiting heterosexual couple did not differ significantly from comparable married individuals in their levels of depression; people in both groups manifested significantly less depression than people with no partner).

³³ See, e.g., C.E. Ross et al., *The Impact of the Family on Health: The Decade in Review*, 52 J. Marriage Fam. 1059 (1990); S. Stack & J.R. Eshleman, *Marital Status and Happiness: A 17-Nation Study*, 60 J. Marriage & Fam. 527 (1998); S.L. Brown, *The Effect of Union Type on Psychological Well-Being: Depression Among Cohabitors Versus Marrieds*, 41 J. Health & Soc. Behav. 241 (2000); see also L.I. Pearlin et al., *The Stress Process*, 22 J. Health & Soc. Behav. 337 (1981) (finding that economic strains increase an individual's experienced stress and thereby place her or him at greater risk for psychological problems).

effects.³⁴ Nevertheless, married couples who are satisfied with their relationships consistently manifest higher levels of happiness, psychological well-being, and physical health than the unmarried.

The health benefits of legal marriage are dramatically evident on the occasion of traumatic events, such as the serious illness, physical incapacitation, or death of a partner. Experiencing such events is highly stressful.³⁵ The death of a partner, in particular, often has negative consequences for the surviving partner's psychological and physical health.³⁶ The stress encountered in such situations can be somewhat mitigated

³⁴ 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? A Contemporary Examination of Gender, Marriage, and Psychological Well-Being*, 44 J. Health Soc. Behav. 470 (2003); J.K. Kiecolt-Glaser & T.L. Newton, *Marriage and Health: His and Hers*, 127 Psychol. Bull. 472 (2001).

³⁵ As one group of researchers observed, based on their review of the literature, "respondents consistently indicate that death of spouse, divorce, and marital separation are the three most serious and difficult events to cope with." W.R. Gove et al., *The Effect of Marriage on the Well-Being of Adults: A Theoretical Analysis*, 11 J. Fam. Issues 4, 12 (1990). One widely cited study of the stresses associated with 43 life different events found that the death of a spouse was the most stressful. T.H. Holmes & R.H. Rahe, *The Social Readjustment Rating Scale*, 11 J. Psychosomatic Res. 213 (1967).

³⁶ See W. Stroebe & S.M. Stroebe, *Bereavement and Health: The Psychological and Physical Consequences of Partner Loss* 167 (1987); C.E. Ross, *Reconceptualizing Marital Status as a Continuum of Social Attachment*, 57 J. Marriage & Fam. 129 (1995).

by the legal benefits associated with marriage. In times of illness, a legal spouse is afforded access to her or his incapacitated partner and can make health decisions for her or him, including decisions involving the continuance or cessation of heroic measures to prolong the partner's life. Such capabilities are likely to increase the extent to which the spouse experiences a sense of personal control in the situation, which is associated with better health among spousal caregivers.³⁷ When a partner dies, the stress of bereavement is likely to be compounded if the death creates financial strain for the surviving partner.³⁸ Some of this stress is alleviated for married partners by the legal recognition of the couple's relationship insofar as it accords the surviving spouse automatic rights of inheritance, death benefits, and bereavement leave.

By contrast, an unmarried member of a couple may be denied a right as basic as access to her or his partner in a hospital

³⁷ L.C. Burton et al., *Preventive Health Behaviors Among Spousal Caregivers*, 26 *Preventive Med.* 162 (1997); B. Miller et al., *Race, Control, Mastery, and Caregiver Distress*, 50B *J. Gerontology: Series B: Psychol. Sci. & Soc. Sci.* S374 (1995). See generally L.I. Pearlin et al., *The Stress Process*, 22 *J. Health & Soc. Behav.* 337 (1981) (regarding relationship between sense of personal control and mental health).

³⁸ See, e.g., F.H. Norris & S.A. Murrell, *Social Support, Life Events, and Stress as Modifiers of Adjustment to Bereavement by Older Adults*, 5 *Psychol. & Aging* 429 (1990).

emergency room or intensive care unit, where only "immediate family" members are allowed. Encountering such barriers to assisting and supporting one's partner, or even having contact with her or him, substantially compounds the stress inevitably associated with a health crisis for both partners. Such an experience is likely to add a layer of psychological trauma to what is already a highly stressful event and, by compounding the experience of stress, may adversely affect the physical health of both partners.

Similarly, the unmarried partner of a decedent can have the experience of "disenfranchised grief," i.e., "the grief that persons experience when they incur a loss that is not or cannot be openly acknowledged, publicly mourned, or socially supported."³⁹ She or he may not be legally recognized as having any relationship to a deceased partner and may not even be allowed to make funeral arrangements for her or him.⁴⁰ Such an experience can create considerable psychological distress for

³⁹ K.J. Doka, *Disenfranchised Grief, in Disenfranchised Grief: Recognizing Hidden Sorrow* 3, 4 (K.J. Doka ed., 1989).

⁴⁰ See T.A. Richards et al., *Death Rites in the San Francisco Gay Community: Cultural Developments of the AIDS Epidemic*, 40 *Omega: J. Death & Dying* 335 (1999-2000). For anecdotal accounts, see K.J. Doka, *Silent Sorrow: Grief and the Loss of Significant Others*, 11 *Death Studies* 455, 462-463 (1987); R.L. Fuller et al., *Lovers and Significant Others, in Disenfranchised Grief: Recognizing Hidden Sorrow* 33, 36-38 (K.J. Doka ed., 1989); P. Murphy & K. Perry, *Hidden Griefers*, 12 *Death Studies* 451, 460 (1988).

the surviving partner, with potentially long-term mental health consequences.⁴¹

Open communication with one's partner during stressful life events represents a critically important coping mechanism for the individual and the couple.⁴² More generally, self-disclosure within a relationship is recognized by researchers and clinicians as a cornerstone of intimacy, and factors that prevent open communication between partners are likely to have a negative effect on the quality and survival of the relationship.⁴³ The law recognizes the central importance of

⁴¹ One longitudinal study of 30 HIV-negative men whose partners died from AIDS found that the quality of a surviving partner's long-term psychological functioning (one year after the partner's death) was predicted by his sense that "ceremonies of leave taking" (e.g., funerals and similar rituals) were appropriate and satisfactory. R.S. Weiss & T.A. Richards, *A Scale for Predicting Quality of Recovery Following the Death of a Partner*, 72 J. Personality & Soc. Psychol. 885, 889-890 (1997). The experience of being partly or completely excluded from such ceremonies thus appears to contribute to poorer psychological functioning.

⁴² For example, in one study using a national probability sample, the researchers found that stressors such as economic strains had a less negative impact on the mental health of married individuals, compared to the unmarried, and the most important coping resource available to the married was having a confiding, intimate relationship with the spouse. R.C. Kessler & M. Essex, *Marital Status and Depression: The Importance of Coping Resources*, 61 Soc. Forces 484, 501 (1982).

⁴³ See S.S. Hendrick, *Self-Disclosure and Marital Satisfaction*, 40 J. Personality & Soc. Psychol. 1150 (1981); L.B. Rosenfeld & G.L. Bowen, *Marital Disclosure and Marital Satisfaction: Direct-Effect Versus Interaction-Effect Models*, 55 Western J. Speech Comm. 69 (1991).

open communication for married couples through, for example, marital privileges against being compelled to testify. Unmarried couples, however, do not enjoy this same protection. Thus, at the very times when it is most critical for their relationship and individual well-being to freely communicate with each other, that is, when serious problems arise that could have legal consequences, unmarried partners may be unable to do so.

Marriage also is a source of stability and commitment for the relationship between spouses. Social scientists have long recognized that marital commitment is a function not only of attractive forces (i.e., features of the partner or the relationship that are rewarding) but also of external forces that serve as barriers or constraints on dissolving the relationship. Barriers to terminating a marriage include feelings of obligation to one's spouse, children, and other family members; moral and religious values about divorce; legal restrictions; financial concerns; and the expected disapproval of friends and the community.⁴⁴ In the absence of adequate rewards, the existence of barriers alone is not sufficient to

⁴⁴ See G. Levinger, *Marital Cohesiveness and Dissolution: An Integrative Review*, 27 J. Marriage & Fam. 19 (1965); J.M. Adams & W.H. Jones, *The Conceptualization of Marital Commitment: An Integrative Analysis*, 72 J. Personality & Soc. Psychol. 1177 (1997).

sustain a marriage in the long term. Not surprisingly, perceiving one's intimate relationship primarily in terms of rewards, rather than barriers to dissolution, is likely to be associated with greater relationship satisfaction.⁴⁵ Nonetheless, the presence of barriers may increase partners' motivation to seek solutions for problems when possible, rather than rushing to dissolve a relationship that might have been salvaged. Indeed, the perceived presence of barriers is negatively correlated with divorce, suggesting that barriers contribute to staying together for at least some couples in some circumstances.⁴⁶

Thus, although same-sex and heterosexual relationships are held together by many of the same *attracting* forces, marriage provides heterosexual couples with institutionalized barriers to relationship dissolution that do not exist for same-sex couples.⁴⁷ Lacking access to legal marriage, the primary

⁴⁵ See, e.g., D. Previti & P.R. Amato, *Why Stay Married? Rewards, Barriers, and Marital Stability*, 65 J. Marriage & Fam. 561 (2003).

⁴⁶ 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: The Role of Marital Happiness*, 12 J. Fam. Issues 5 (1991).

⁴⁷ One study that directly compared same-sex cohabiting couples with heterosexual married couples on this factor found that the gay male and lesbian couples experienced significantly fewer institutional barriers to ending their relationship compared to the heterosexual couples. L.A. Kurdek, *Relationship Outcomes and*

motivation for same-sex couples to remain together derives mainly from the rewards associated with the relationship rather than from formal barriers to separation. Given this fact, plus the legal and prejudicial obstacles that same-sex partners face, the prevalence and durability of same-sex relationships are striking.

C. By Denying Same-Sex Couples the Right to Marry, the State Reinforces and Perpetuates the Stigma Historically Associated With Homosexuality.

As explained in Section III.A above, same-sex committed relationships do not differ from heterosexual committed relationships in their essential emotional qualities and their capacity for long-term commitment. As explained in Section IV, below, they also do not differ in the context they provide for rearing healthy and well-adjusted children. Thus, *amici* conclude that the reason for according same-sex relationships a different legal status than heterosexual relationships is ultimately the sexual orientation of the individuals in the relationship.

This differentiation is, by definition, an expression of stigma. A status or characteristic is stigmatized when it is negatively valued by society and, as a consequence, is a basis

Their Predictors: Longitudinal Evidence from Heterosexual Married, Gay Cohabiting, and Lesbian Cohabiting Couples, 60 J. Marriage & Fam. 553 (1998).

for disadvantaging and disempowering those who have it.⁴⁸ Legal prohibitions against same-sex marriage convey society's judgment that committed intimate relationships with people of the same sex are inherently inferior to heterosexual relationships, and the participants in a same-sex relationship are inherently less deserving than heterosexual couples of society's recognition. Through that judgment, the State perpetuates power differentials that afford heterosexuals greater access than nonheterosexuals to the variety of resources and benefits discussed in Section III.B above. This process of according disadvantaged status to the members of one group relative to another is the crux of stigma.

Moreover, as noted above, the essence of sexual orientation is its definition of the universe of persons with whom an individual might potentially form a romantic or sexual relationship. Thus, by denying same-sex couples the right to marry and thereby devaluing and delegitimizing the relationships that are the very core of a homosexual orientation, the State compounds and perpetuates the stigma historically attached to homosexuality. This stigma affects not only the members of same-sex couples who seek to be married, but all homosexual

⁴⁸ See *supra* note 15.

persons, regardless of their relationship status or desire to marry.

Stigma gives rise to prejudice, discrimination, and violence against people based on their sexual orientation.⁴⁹ Research indicates that the experience of stigma and discrimination is associated with heightened psychological distress among gay men and lesbians.⁵⁰ Being the target of extreme enactments of stigma, such as an antigay criminal assault, is associated with greater psychological distress than experiencing a similar crime not based on one's sexual

⁴⁹ See, e.g., K. Sherrill & A.S. Yang, *From Outlaws to In-Laws: Anti-Gay Attitudes Thaw*, 11 Pub. Persp. 20 (2000) (nothing that, despite growing tolerance, "gay people remain the most systematically and intensely disliked of all groups measured" in the ongoing American National Election Studies); M.V.L. Badgett, *Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men* chapter 2 (2001) (describing employment and economic discrimination); G.M. Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 J. Consulting & Clinical Psychol. 945 (1999) (describing harassment and violence).

⁵⁰ I.H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 Psychol. Bull. 674, 690 (2003); see also I.H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. Health & Soc. Behav. 38 (1995) (finding that gay men who experienced high levels stress related to their minority status were also two to three times more likely than other gay men to suffer from high levels of psychological distress); V.M. Mays & S.D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 Am. J. Pub. Health 1869 (2001) (finding disparities in psychological symptomatology between heterosexuals and gay/bisexual people but also finding that disparities were explained to significant degree by respondents' experiences with discrimination and prejudice).

orientation.⁵¹ Fear of stigma makes some gay and lesbian persons feel compelled to conceal or lie about their sexual orientation. As already noted, experiencing barriers to integrating one's sexual orientation into one's life (e.g., by being able to disclose it to others) is often associated with heightened psychological distress⁵² and has negative implications for physical health.⁵³

In addition, to the extent that stigma motivates some lesbians and gay men to remain in the closet, it further reinforces anti-gay prejudices among heterosexuals. Research has consistently shown that prejudice against minorities, including gay people,⁵⁴ decreases significantly when members of the majority group knowingly have contact with minority group

⁵¹ G.M. Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 J. Consulting & Clinical Psychol. 945, 948-49 (1999); see also L.D. Garnets et al., *Violence and Victimization of Lesbians and Gay Men: Mental Health Consequences*, 5 J. Interpersonal Violence 366 (1990).

⁵² See *supra* note 11.

⁵³ See *supra* note 12.

⁵⁴ As noted in social psychological textbooks, although the specific content of prejudice varies across different minority groups, the psychological dynamics of prejudice are similar regardless of the group toward which that prejudice is directed. See, e.g., S. L. Franzoi, *Social Psychology* 232 (3d ed. 2003); K.J. Gergen & M.M. Gergen, *Social Psychology* 140 (1981).

members.⁵⁵ Consistent with this general pattern, empirical research demonstrates that having personal contact with an openly gay person is one of the most powerful influences on heterosexuals' tolerance and acceptance of gay people. Anti-gay attitudes are significantly less common among members of the population who report having a close friend or family member who is gay or lesbian.⁵⁶ Prejudice tends to be lower when a lesbian or gay friend or family member has directly disclosed her or his sexual orientation to a heterosexual person, compared to when

⁵⁵ A meta-analysis of hundreds of studies of contact and prejudice based on sexual orientation, nationality, race, age, and disability found a highly robust inverse relationship between contact and prejudice. That analysis also found that more rigorous studies (based on observed contact rather than reported contact) yielded greater effects, that contact changed attitudes towards the entire "outgroup" (not just towards those individuals with whom subjects had contact), and that majority group participants experienced greater changes in attitude than minority group members. T.F. Pettigrew & L. Tropp, *Does Intergroup Contact Reduce Prejudice?*, in *Reducing Prejudice and Discrimination: Social Psychological Perspectives* 93 (S. Oskamp ed., 2000).

⁵⁶ See G.M. Herek & J.P. Capitanio, "Some of My Best Friends": *Intergroup Contact, Concealable Stigma, and Heterosexuals' Attitudes Toward Gay Men and Lesbians*, 22 *Personality & Soc. Psychol. Bull.* 412 (1996); G.M. Herek & E.K. Glunt, *Interpersonal Contact and Heterosexuals' Attitudes Toward Gay Men: Results from a National Survey*, 30 *J. Sex Res.* 239 (1993); *Familiarity Encourages Acceptance*, 11 *Pub. Perspective* 31 (2000); W. Schneider & I.A. Lewis, *The Straight Story on Homosexuality and Gay Rights*, 7 *Pub. Opinion* 16, 16-20, 59-60 (Feb.-Mar. 1984).

the former's sexual orientation has not been directly discussed.⁵⁷

Thus, by denying same-sex couples the right to marry legally, the State compounds and perpetuates the stigma historically attached to homosexuality. This stigma has negative consequences for all gay and lesbian people, regardless of their relationship status or desire to marry. To the extent that stigma prevents heterosexuals from interacting with openly gay people, it also reinforces and perpetuates antigay prejudice.

IV. The Children of Lesbians and Gay Men.

A. Many Same-Sex Couples Are Currently Raising Children.

A large and ever increasing number of gay and lesbian couples, like their heterosexual counterparts, raise children together. Although data are not available to indicate the exact number of lesbian and gay parents in the United States, the 2000 Census found that, among heads of household who reported cohabiting with a same-sex partner, 33% of women and 22% of men had a son or daughter under 18 years living in their home.⁵⁸

⁵⁷ G.M. Herek & J.P. Capitanio, "Some of My Best Friends": Intergroup Contact, Concealable Stigma, and Heterosexuals' Attitudes Toward Gay Men and Lesbians, 22 *Personality & Soc. Psychol. Bull.* 412, 416 (1996).

⁵⁸ T. Simmons & M. O'Connell, *Married-Couple and Unmarried-Partner Households: 2000*, at 9 (U.S. Census Bureau 2003) (Table

These percentages correspond to approximately 65,600 gay fathers and 96,000 lesbian mothers who are heads of household, have at least one child under 18 living with them, and are cohabiting with a partner. If one includes noncohabitating and single parents, parents of offspring 18 years or older, and parents who chose not to disclose to the Census Bureau that they live with a same-sex partner, researchers estimate that considerably more, perhaps millions, of American parents today identify themselves as gay, lesbian, or bisexual. They further suggest that the sons and daughters of gay, lesbian, and bisexual parents in the United States today are likely to number more than one million.⁵⁹

Families comprising same-sex couples and their children have diverse origins and take a variety of forms. Some couples have children conceived in one partner's prior heterosexual marriage (or nonmarital heterosexual relationship) predating that individual's present same-sex relationship. In these cases, the biological parent's same-sex partner often assumes the role of *de facto* step-parent, albeit without the legal framework provided by marriage. In addition, a growing number

4), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf> (accessed Oct. 6, 2004).

⁵⁹ See C.J. Patterson & L.V. Friel, *Sexual Orientation and Fertility*, in *Infertility in the Modern World: Biosocial Perspectives* 238 (G. Bentley & N. Mascie-Taylor eds., 2000); E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341 (2002).

of same-sex couples are becoming parents through methods including donor insemination (with either an anonymous or known donor), assistance of a surrogate mother, and adoption.⁶⁰ The children in many, if not most families headed by same-sex couples have a legal relationship with only one of the parents, either through birth or adoption. However, both members of the couple typically function as parents for the children, even if they are not legally recognized as such.⁶¹ In addition, the legal trend toward allowing second-parent adoption by same-sex couples is resulting in an increasing number of families wherein both members of the same-sex couple are legally recognized as the parents of their children - even though the parents themselves are not allowed to form a legally recognized relationship with each other through marriage.

⁶⁰ See, e.g., R.W. Chan et al., *Psychosocial Adjustment Among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 *Child Dev.* 443 (1998); F.W. Bozett, *Gay Fathers*, in *Gay and Lesbian Parents* 3 (F.W. Bozett ed., 1987); C.J. Patterson, *Lesbian and Gay Parents and Their Children*, in *The Lives of Lesbians, Gays, and Bisexuals: Children to Adults* 274 (R.C. Savin-Williams & K.M. Cohen eds., 1996).

⁶¹ C.J. Patterson, *Families of the Lesbian Baby Boom: Parents' Division of Labor and Children's Adjustment*, 31 *Developmental Psychol.* 115 (1995); R.W. Chan et al., *Division of Labor Among Lesbian and Heterosexual Parents: Associations with Children's Adjustment*, 12 *J. Fam. Psychol.* 402 (1998); C.J. Patterson et al., *Division of Labor Among Lesbian and Heterosexual Parenting Couples: Correlates of Specialized Versus Shared Patterns*, 11 *J. Adult Dev.* 179 (2004).

B. Gay and Lesbian Parents Are as Fit and Capable as Heterosexual Parents, and Their Children Are as Psychologically Healthy and Well Adjusted.

Although it is sometimes asserted in policy debates that heterosexual couples are inherently better parents than same-sex couples, or that the children of lesbian or gay parents fare worse than children raised by heterosexual parents, those assertions find no support in the scientific research literature.⁶²

When comparing the outcomes of different forms of parenting, it is critically important to make appropriate comparisons. For example, differences resulting from the *number* of parents in a household cannot be attributed to the parents' *gender* or *sexual orientation*. Research in households with

⁶² The research literature on gay, lesbian, and bisexual parents includes more than two dozen empirical studies. These studies vary in the quality of their samples, research design, measurement methods, and data analysis techniques. However, they are impressively consistent in their failure to identify deficits in the development of children raised in a lesbian or gay household. In summarizing the findings from these studies, *amici* refer to several reviews of the empirical literature published in respected, peer-reviewed journals and academic books. These include J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159 (2001); E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 342 (2002); E.C. Perrin, *Sexual Orientation in Child and Adolescent Health Care* (2002); C.J. Patterson, *Gay Fathers*, in *The Role of the Father in Child Development* 397 (M.E. Lamb ed., 4th ed. 2004); C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052 (2000).

heterosexual parents generally indicates that - all else being equal - children do better with more, rather than fewer, parenting figures.⁶³ This body of research has not compared parenting by heterosexual couples with parenting by same-sex couples in a committed relationship, however, and therefore does not permit any conclusions to be drawn about the consequences of having heterosexual versus nonheterosexual parents, or two parents who are of the same versus different genders.⁶⁴

Scientific research has been remarkably consistent in showing that lesbian and gay parents are every bit as fit and capable as heterosexual parents, and their children are as psychologically healthy and well-adjusted as children reared by heterosexual parents. Empirical research over the past two decades has failed to find any meaningful differences in the parenting ability of lesbian and gay parents compared to

⁶³ See, e.g., S. McLanahan & G. Sandefur, *Growing Up With a Single Parent: What Hurts, What Helps* 39 (1994).

⁶⁴ In their review of 21 published empirical studies in this area, Stacey and Biblarz criticize the practice of "extrapolat[ing] (inappropriately) from research on single mother families to portray children of lesbians as more vulnerable to everything from delinquency, substance abuse, violence, and crime, to teen pregnancy, school dropout, suicide, and even poverty," and note that "the extrapolation is 'inappropriate' because lesbian-gay-parent families have never been a comparison group in the family structure literature on which these authors rely." J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159, 162 & n.2 (2001).

heterosexual parents. Most research on this topic has focused on lesbian mothers and refutes the stereotype that lesbian parents are not as child-oriented or maternal as non-lesbian mothers.⁶⁵ Researchers have concluded that heterosexual and lesbian mothers do not differ in their parenting ability.⁶⁶ Studies examining gay fathers are fewer in number, but those

⁶⁵ See E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 342 (2002); P.J. Falk, *Lesbian Mothers: Psychosocial Assumptions in Family Law*, 44 *Am. Psychologist* 941, 944 (1989) (reviewing empirical studies and concluding that "research on maternal attitudes and caregiving of lesbian mothers indicates either that there are no substantial differences between this group and their heterosexual counterparts or that lesbian mothers may actually be more child-oriented than heterosexual mothers").

⁶⁶ See, e.g., E.C. Perrin, *Sexual Orientation in Child and Adolescent Health Care* 105, 115-16 (2002); C.A. Parks, *Lesbian Parenthood: A Review of the Literature*, 68 *Am. J. Orthopsychiatry* 376 (1998); S. Golombok et al., *Children with Lesbian Parents: A Community Study*, 39 *Developmental Psychol.* 20 (2003). Some studies have found that a child with two lesbian parents may enjoy some advantages over a child raised by a biological mother and a stepfather. Based on their review of the research literature, Stacey and Biblarz noted two possible advantages for children with two lesbian mothers: "First, studies find the nonbiological lesbian comothers . . . to be more skilled at parenting and more involved with the children than are stepfathers. Second, lesbian partners in the two-parent families studied enjoy a greater level of synchronicity in parenting than do heterosexual partners." J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159, 174 (2001).

that exist find that gay men are similarly fit and able parents, as compared to heterosexual men.⁶⁷

Turning to the children of gay parents, researchers reviewing the scientific literature conclude that studies "provide no evidence that psychological adjustment among lesbians, gay men, their children, or other family members is impaired in any significant way"⁶⁸ and that "every relevant study to date 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."⁶⁹ A comprehensive survey of peer-reviewed scientific studies in this area reported no differences between children raised by lesbians

⁶⁷ E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 342 (2002) (finding "no differences" between gay and heterosexual fathers in providing appropriate recreation, encouraging autonomy, or "dealing with general problems of parenting," and finding that "[g]ay fathers have substantial evidence of nurturance and investment in their parental role"); C.J. Patterson, *Gay Fathers*, in *The Role of the Father in Child Development* 397, 413 (M.E. Lamb ed., 4th ed. 2004) (reviewing published empirical studies and concluding that, although additional research is needed, "[o]n the basis of existing research, we can conclude that there is no reason for concern about the development of children living in the custody of gay fathers; on the contrary, there is every reason to believe that gay fathers are as likely as heterosexual fathers to provide home environments in which children grow and flourish").

⁶⁸ C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052, 1064 (2000).

⁶⁹ J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159, 176 (2001).

and those raised by heterosexuals with respect to the factors that matter: self-esteem, anxiety, depression, behavioral problems, performance in social arenas (sports, school and friendships), use of psychological counseling, mothers' and teachers' reports of children's hyperactivity, unsociability, emotional difficulty, or conduct difficulty.⁷⁰

Nor does empirical research support the misconception that having a homosexual parent has a deleterious effect on children's *gender identity* development.⁷¹ Studies concerning the children of lesbian mothers have not found any difference from those of heterosexual parents in their patterns of gender identity. As a panel of the American Academy of Pediatrics concluded on the basis of their examination of peer-reviewed studies, "[n]one of the more than 300 children studied to date have shown evidence of gender identity confusion, wished to be

⁷⁰ J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159, 169, 171 (2001). For additional reviews of the research literature, see C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. Marriage & Fam. 1052, 1058-1063 (2000); E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 342 (2002); Perrin, *Sexual Orientation in Child and Adolescent Health Care* (2002).

⁷¹ As noted in Section II.A above, *gender identity* concerns the child's psychological sense of *being* male or female.

the other sex, or consistently engaged in cross-gender behavior."⁷²

Similarly, most published studies have not found reliable differences in social gender role conformity between the children of lesbian and heterosexual mothers.⁷³ Data have not

⁷² E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 342 (2002)

⁷³ As noted in Section II.A. above, social gender role refers to adherence to cultural norms defining feminine and masculine behavior. One group of researchers found that daughters of lesbian mothers were significantly less conforming to stereotypical social gender roles in some respects, e.g., daughters of lesbian mothers were more likely than daughters of heterosexual mothers to aspire to non-traditional occupations for women, such as doctor, astronaut, lawyer, or engineer. R. Green et al., *Lesbian Mothers and Their Children: A Comparison With Solo Parent Heterosexual Mothers and Their Children*, 15 *Archives Sexual Behav.* 167 (1986); see also M. Hotvedt & J.B. Mandel, *Children of Lesbian Mothers*, in *Homosexuality: Social, Psychological, and Biological Issues* 275 (W. Paul et al. eds., 1982).

However, the majority of published studies have not found meaningful differences in this regard. See, e.g., M. Kirkpatrick et al., *Lesbian Mothers and Their Children: A Comparative Survey*, 51 *Am. J. Orthopsychiatry* 545(1981); R. Green, *Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents*, 135 *Am. J. Psychiatry* 692 (1978); C.J. Patterson, *Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex Role Identity*, in *Lesbian and Gay Psychology: Theory, Research, and Clinical Applications* 156 (B. Greene & G.M. Herek eds., 1994); A. Brewaeys et al., *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*, 12 *Human Reproduction* 1349 (1997). For reviews of these findings, see C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052 (2000).

We note that Stacey and Biblarz, based on their review of the literature, assert that six empirical studies have indicated that children of lesbian mothers display significantly less

been reported on the gender identity development or gender role orientation of the sons and daughters of gay fathers.⁷⁴

As noted in Section II.B *supra*, homosexuality is neither an illness nor a disability, and the mental health professions do not regard a homosexual orientation as harmful, undesirable, or requiring intervention or prevention. The factors that cause an individual to become heterosexual, homosexual, or bisexual – including possible biological, psychological, or social effects

gender role conformity than children of heterosexual mothers. J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159, 168-70 (2001). We have reviewed the studies cited by Stacey and Biblarz, however, and only the two cited in the first paragraph of this footnote (which appear to have been derived from the same ongoing study) actually reveal significant differences in this regard.

In any event, the important point is that to the extent such differences concerning conformance to stereotypical gender roles could be shown to exist, many psychologists would consider them healthy in a world in which gender-based discrimination persists. Indeed, as a leading researcher and head of the Section on Social and Emotional Development at the National Institute of Child Health and Human Development has explained, conformity to a traditional gender role should not be equated with psychological adjustment: "There is no justification for this assumed congruence; in fact, less traditionally gender-typed children are arguably better prepared should the future involve more egalitarian societies." M.E. Lamb, *Parental Behavior, Family Processes, and Child Development in Nontraditional and Traditionally Understudied Families, in Parenting and Child Development in "Nontraditional" Families* 6 (M.E. Lamb ed., 1999).

⁷⁴ Empirical data on gay fathers is relatively sparse. For a review of the relevant studies, see C.J. Patterson, *Gay Fathers, in The Role of the Father in Child Development* 397 (M.E. Lamb ed., 4th ed. 2004).

of the parents' sexual orientation – are not well understood.⁷⁵ However, the available evidence indicates that the vast majority of lesbian and gay adults were raised by heterosexual parents and the vast majority of children raised by lesbian and gay parents eventually grow up to be heterosexual.⁷⁶

Amici emphasize that the abilities of gay and lesbian persons as parents and the positive outcomes for their children are not areas where credible scientific researchers disagree.⁷⁷

⁷⁵ Although much research has examined the possible genetic, hormonal, developmental, social, and cultural influences on sexual orientation, no findings have emerged that permit scientists to conclude that sexual orientation is determined by any particular factor or factors. The evaluation of *amici* is that, although some of this research may be promising in facilitating greater understanding of the development of sexual orientation, it does not permit a conclusion based in sound science at the present time as to the cause or causes of sexual orientation, whether homosexual, bisexual, or heterosexual. See generally Am. Psychol. Ass'n, 7 *Encyclopedia of Psychol.* 260 (A.E. Kazdin ed., 2000); 2 *Corsini Encyclopedia of Psychology and Behavioral Science* 683 (W.E. Craighead & C.B. Nemeroff eds., 3d ed. 2001).

⁷⁶ See C.J. Patterson, *Gay Fathers, in The role of the Father in Child Development* 397, 407-09 (M.E. Lamb ed., 4th ed. 2004); J. Stacey & T.J. Biblarz, (How) Does the Sexual Orientation of Parents Matter?, 66 Am. Soc. Rev. 159, 170-71 (2001); C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. Marriage & Fam. 1052, 1059-60 (2000).

⁷⁷ *Amici* are aware that some organizations lacking scientific credentials have attempted to convince lay courts that there is an actual scientific dispute in this area by citing research performed by Paul Cameron as supporting the existence of deficits in gay and lesbian parents or their children compared to heterosexual parents or their children. In fact, as stated above, there is no scientific evidence of such deficits. Cameron's research does not satisfy the standards set out at the

Thus, after careful scrutiny of decades of research in this area, the American Psychological Association concluded in its recent Resolution on Sexual Orientation, Parents, and Children: "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 that "Research has shown that adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish."⁷⁸ Similarly, the American Academy of Pediatrics, the nation's preeminent pediatric authority with 57,000 pediatrician members, has adopted a formal policy declaring that "Children who grow up with one or two gay and/or lesbian parents fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are

beginning of this brief; his key findings in this area have not been replicated and are contradicted by the reputable published research; and unlike research that makes a contribution to science, his key findings and conclusions have rarely been cited by subsequent scientific studies published in peer-reviewed journals as informing their scientific inquiry. For a detailed critique of the research project on which Cameron has based many of his published papers, see G.M. Herek, *Bad Science in the Service of Stigma: A Critique of the Cameron Group's Survey Studies*, in *Stigma and Sexual Orientation* 223 (G.M. Herek, ed. 1998).

⁷⁸ Am. Psychol. Ass'n, *Resolution on Sexual Orientation, Parents, and Children* (2004) (emphasis added) (reproduced in Addendum to this brief).

heterosexual No data have pointed to any risk to children as a result of growing up in a family with one or more gay parents.”⁷⁹ And the National Association of Social Workers has determined that “The 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.”⁸⁰

These statements by the leading associations of experts in this area reflect professional consensus that children raised by lesbian or gay parents do not differ in any important respects from those raised by heterosexual parents. No credible empirical research suggests otherwise. It is the quality of parenting that predicts children’s psychological and social adjustment, not the parents’ sexual orientation or gender.

C. The Children of Same-Sex Couples Will Benefit If Their Parents Are Allowed to Marry.

Allowing same-sex couples to legally marry will not have any detrimental effect on children raised in heterosexual

⁷⁹ E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341-42 (2002).

⁸⁰ Nat’l Ass’n of Soc. Workers, *Policy Statement: Lesbian, Gay, and Bisexual Issues*, in *Social World Speaks* 193, 194 (1997).

households, but it will benefit children being raised by same-sex couples in at least three ways. First, those children will benefit from having a clearly defined legal relationship with both of their *de facto* parents, particularly for those families that lack the means or wherewithal to complete a second-parent adoption. Such legal clarity is especially important during times of crisis, ranging from school and medical emergencies involving the child to the incapacity or death of a parent. The death of a parent is a highly stressful occasion for a child and is likely to have important effects on the child's well-being.⁸¹ In those situations, the stable legal bonds afforded by marriage can provide the child with as much continuity as possible in her or his relationship with the surviving parent, and can minimize the likelihood of conflicting or competing claims by non-parents for the child's custody.

Second, children will benefit from the greater stability and security that is likely to characterize their parents' relationship when it is legally recognized through marriage. Children obviously benefit to the extent that their parents are financially secure, physically and psychologically healthy, and

⁸¹ See, e.g., P.R. Amato & B. Keith, *Parental Divorce and the Well-Being of Children: A Meta-Analysis*, 110 Psychol. Bull. 26 (1991) (reporting that, across studies, children who experienced the death of a parent subsequently manifested significantly lower academic achievement, psychological adjustment, and self-esteem, compared to children in intact two-parent families).

not subjected to high levels of stress. They also benefit to the extent that their parents' relationship is stable and likely to endure.⁸² Thus, the children of same-sex couples can be expected to benefit when their parents have the legal right to marry. See *supra* Section III.B.

Finally, marriage can be expected to benefit the children of gay and lesbian couples by reducing the stigma currently associated with those children's status. Such stigma can derive from various sources. When same-sex partners cannot marry, their biological children are born "out of wedlock," conferring a status that historically has been stigmatized as

⁸² Research on parent-child relations in heterosexual parent families has consistently revealed that children's adjustment is often related to indices of parental mental health. See, e.g., G. Downey & J.C. Coyne, *Children of Depressed Parents: An Integrative Review*, 108 Psychol. Bull. 50 (1990); M. Smith, *Parental Mental Health: Disruptions To Parenting and Outcomes for Children*, 9 Child & Fam. Soc. Work 3 (2004); M. Rutter & D. Quinton, *Parental Psychiatric Disorder: Effects on Children*, 14 Psychol. Med. 853 (1984). Some research suggests that a similar pattern holds when the parents are lesbian or gay. See, e.g., C.J. Patterson, *Families of the Lesbian Baby Boom: Maternal Mental Health and Child Adjustment*, 4 J. Gay & Lesbian Psychotherapy 91 (2001) (finding that mentally healthy lesbian mothers also described their children as better adjusted); R.W. Chan et al., *Psychological Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 Child Dev. 443 (1998) (reporting that children of both heterosexual and lesbian mothers had fewer behavior problems when parents were experiencing less stress, having fewer interparental conflicts, and feeling greater love for one another).

"illegitimacy" and "bastardy."⁸³ Although the social stigma attached to illegitimacy has declined in many parts of society, being born to unmarried parents is still widely considered undesirable.⁸⁴ As a result, children of parents who are not married may be stigmatized by others, such as peers or school staff members. This stigma of illegitimacy will not be visited upon the children of same-sex couples when those couples can legally marry.

In addition, children of same-sex couples may be secondary targets of stigma directed at their parents because of the parents' sexual orientation. The effects of such stigma may be indirect, as when lesbian or gay parents experience greater strain on their relationship as a result of not receiving social

⁸³ See, e.g., J. Witte, Jr., *Ishmael's Bane: The Sin and Crime of Illegitimacy Reconsidered*, 5 *Punishment & Soc.* 327 (2003) (describing history of notion of illegitimacy and legal and religious stigma attached to it); H.H. Kay, *The Family and Kinship System of Illegitimate Children in California Law*, 67 *Am. Anthropologist* 57 (1965). Reflecting the lack of alternatives to childbirth through heterosexual marriage, illegitimacy has been understood historically to involve both the mother's unwed status and the lack of a recognized father. Obviously, the development of families headed by same-sex couples implicates the latter definition. However, allowing same-sex couples to marry would remove the stigma of illegitimacy that results from a child's parents being unmarried.

⁸⁴ This is exemplified by the existence of federally funded programs designed specifically to prevent pregnancies from occurring outside of marriage. See, e.g., 42 U.S.C. § 603 (defining bonus program that rewards states that successfully reduce the percentage of illegitimate births).

support to the same extent as heterosexual couples,⁸⁵ which has consequences for the child. The effects may also be direct if the children of lesbian and gay parents, like children from other minority groups, experience teasing at the hands of other children. As noted above,⁸⁶ children of lesbians have not been found to differ from the children of heterosexual parents in the quality of their peer relationships.⁸⁷ However, lesbian and gay parents and their children are generally aware of the potential for stigma and may take specific steps to avoid it.⁸⁸ Thus, the threat of stigma represents a burden with which families headed by same-sex couples must cope and it is reasonable to predict

⁸⁵ See, e.g., L.A. Kurdek, *Differences Between Heterosexual-Nonparent Couples and Gay, Lesbian, and Heterosexual-Parent Couples*, 22 J. Fam. Issues 727 (2001) (finding that, among couples with no children in the home, lesbian and gay male couples perceived less support from biological family members compared to heterosexual couples).

⁸⁶ See *supra* note 70.

⁸⁷ J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159, 169 (Table 1), 171 (2001); see also C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. Marriage & Fam. 1052, 1060 (2000) ("Research has consistently found that children of lesbian mothers report normal peer relations and that adult observers agree with this judgment").

⁸⁸ See, e.g., F.W. Bozett, *Gay Fathers: How and Why They Disclose Their Homosexuality to Their Children*, 29 Fam. Relations 173, 177-178 (1980); C.J. Patterson, *Gay Fathers, in The Role of the Father in Child Development* 397, 409-410 (M.E. Lamb ed., 4th ed. 2004); F.L. Tasker & S. Golombok, *Growing Up in a Lesbian Family: Effects on Child Development* 78 (1997).

that children will benefit by having even the threat of such stigma removed from their lives.

D. The State Should Not Prohibit Marriage Between Same-Sex Partners to "Encourage" Gay and Lesbian Adults to Marry Heterosexually and Have Children in Such Marriages.

Amici are aware that some opponents of marriage for same-sex couples have argued that prohibiting it can somehow benefit children by "promoting" different-sex marriage as the "optimal" setting for raising children. This argument presumes that denying marriage rights to same-sex couples will somehow encourage those who wish to raise children to marry a partner of the other sex in order to do so and – based on an assumption that children fare better when parented by a male-female couple rather than two women or two men – that the homes created by such marriages will be more conducive to childrearing than same-sex couple households. There is no scientific basis for any of these claims.

First, as set forth above, it is the quality of parenting, not the parents' gender or sexual orientation, that determines children's psychological and social adjustment. Second, the consequences of pressuring gay men and lesbians to marry a person of the other sex are already known. In the fairly recent past, before the emergence of visible gay communities in the United States, many gay women and men married a person of the

other sex because of social and family pressures, a desire to avoid stigma, and a perception that such marriages were the only available route to having children. Clinical case studies and the research literature provide ample documentation that many lesbians and gay men were once married, and many of those marriages produced children.⁸⁹ Not all such marriages have ended in divorce or separation, but many have.⁹⁰ Given the many risks

⁸⁹ See, e.g., F.W. Bozett, *Heterogenous Couples in Heterosexual Marriages: Gay Men and Straight Women*, 8 J. Marital & Fam. Therapy 81 (1982); A.P. Buxton, *Writing Our Own Script: How Bisexual Men and Their Heterosexual Wives Maintain Their Marriages After Disclosure*, 1 J. Bisexuality 155 (2001).

⁹⁰ Entering into a heterosexual marriage is not likely to change a person's sexual orientation from homosexual to heterosexual. Sexual orientation has proved to be generally impervious to interventions intended to change it, which are sometimes referred to as "reparative therapy." No scientifically adequate research has shown that such interventions are effective or safe. Therefore, all major national mental health organizations – including the American Psychological Association, the American Psychiatric Association, the National Association of Social Workers, the American Academy of Pediatrics, and the American Counseling Association – have adopted policy statements cautioning the profession and the public about treatments that purport to change sexual orientation. Moreover, because homosexuality is a normal variant of human sexuality, national mental health organizations do not encourage individuals to try to change their sexual orientation from homosexual to heterosexual. See Am. Psychol. Ass'n, *Resolution on Appropriate Therapeutic Responses to Sexual Orientation* (1998); Am. Psychiatric Ass'n, *Position Statement: Psychiatric Treatment and Sexual Orientation* (1998); Nat'l Ass'n of Social Workers, *Policy Statement: Lesbian, Gay, and Bisexual Issues* (1996); Am. Acad. Pediatrics, *Homosexuality and Adolescence* (1993); *Action by American Counseling Association Governing Council* (1999). (These policy statements are available on the Internet at <http://www.apa.org/pi/lgbc/publications/justthefacts.html>.) The statement of the American Psychiatric Association cautions

to which children are subjected when their parents divorce,⁹¹ it cannot be in their best interests for the State to pressure gay and lesbian people into heterosexual unions that are likely to lack key elements common to successful marriages (e.g., mutual romantic and sexual attraction) and have a high likelihood of dissolving. In summary, neither scientific evidence nor logic supports the notion that the best interest of the child could be furthered by pressuring gay people to marry partners of the other sex.⁹²

that "[t]he potential risks of 'reparative therapy' are great, including depression, anxiety and self-destructive behavior." The Psychiatric Association also observes that "[m]any patients who have undergone 'reparative therapy' relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction." The policy statement of the American Academy of Pediatrics advises that "[t]herapy directed specifically at changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation."

⁹¹ P.R. Amato & B. Keith, *Parental Divorce and the Well-Being of Children: A Meta-Analysis*, 110 Psychol. Bull. 26 (1991); P.R. Amato & B. Keith, *Parental Divorce and Adult Well-Being: A Meta-Analysis*, 53 J. Marriage & Fam. 43 (1991); P.R. Amato, *Children of Divorce in the 1990s: An Update of the Amato and Keith (1991) Meta-analysis*, 15 J. Fam. Psychol. 355 (2001).

⁹² Conceivably, the purpose of the policy might be to deter gay men or lesbians from becoming parents under any circumstances. We will not attempt to comment on federal or state constitutional objections to penalizing any class of persons in order to prevent them from exercising any right to bear or beget children, as a question outside *amici's* area of scientific expertise.

CONCLUSION

There is no scientific basis for distinguishing between same-sex couples and heterosexual couples with respect to the legal rights, obligations, benefits, and burdens conferred by civil marriage.

Respectfully submitted,

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