

No. 12-144

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In The  
**Supreme Court of the United States**

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DENNIS HOLLINGSWORTH, ET AL., *Petitioners*,

v.

KRISTIN M. PERRY, ET AL., *Respondents*.

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On Writ of Certiorari to the United States  
Court of Appeals for the Ninth Circuit

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**BRIEF OF THE AMERICAN PSYCHOLOGICAL  
ASSOCIATION, THE AMERICAN MEDICAL  
ASSOCIATION, THE AMERICAN ACADEMY OF  
PEDIATRICS, THE CALIFORNIA MEDICAL  
ASSOCIATION, THE AMERICAN PSYCHIATRIC  
ASSOCIATION, THE AMERICAN PSYCHOANALYTIC  
ASSOCIATION, THE AMERICAN ASSOCIATION FOR  
MARRIAGE AND FAMILY THERAPY, THE NATIONAL  
ASSOCIATION OF SOCIAL WORKERS AND ITS  
CALIFORNIA CHAPTER, AND THE CALIFORNIA  
PSYCHOLOGICAL ASSOCIATION AS *AMICI CURIAE*  
ON THE MERITS IN SUPPORT OF AFFIRMANCE**

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NATHALIE F.P. GILFOYLE  
AMERICAN PSYCHOLOGICAL  
ASSOCIATION  
750 First Street, N.E.  
Washington, DC 20002

PAUL M. SMITH  
*Counsel of Record*  
JENNER & BLOCK LLP  
1099 New York Ave., N.W.  
Washington, DC 20001  
(202) 639-6000  
PSmith@jenner.com

WILLIAM F. SHEEHAN  
ANDREW HUDSON  
GOODWIN | PROCTER LLP  
901 New York Avenue, N.W.  
Washington, D.C. 20001

*Counsel for Amici Curiae*

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**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

The American Psychological Association, the world's largest professional association of psychologists, is a scientific and educational organization dedicated to increasing and disseminating psychological knowledge. The Association has adopted multiple research-based policy statements supporting the rights of gay and lesbian people, including a 2011 policy statement supporting full marriage equality and recognizing that according gay and lesbian people only a "civil union" status "perpetuates the stigma historically attached to homosexuality, and reinforces prejudice against lesbian, gay, and bisexual people." Am. Psychol. Ass'n, *Resolution on Marriage Equality For Same-Sex Couples* (2011), available at <http://www.apa.org/about/policy/same-sex.pdf>.

The American Medical Association (AMA) is the largest professional association of physicians, residents, and medical students in the United States, substantially all of whom are represented in the AMA's policy making process. The objectives of the AMA are to promote the science and art of medicine and the betterment of public health. Its policies regarding gay and lesbian issues promote those objectives.

The American Academy of Pediatrics (AAP) is the largest professional association of pediatricians in

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<sup>1</sup> No party's counsel authored this brief in whole or in part, and no party or a party's counsel nor any other person other than the *Amici* contributed money that was intended to fund preparing or submitting the brief.

the world, with over 62,000 members. Through education, research, advocacy, and the provision of expert advice, AAP seeks the optimal physical, mental, and social health and well-being for infants, children, adolescents, and young adults. The AAP supports marriage equality for all capable and consenting couples, including those who are of the same gender.

The American Psychiatric Association is the Nation's largest organization of physicians specializing in psychiatry. It joins this brief for the reasons expressed in its 2005 position statement, *Support of Legal Recognition of Same-Sex Civil Marriage*, available at <http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/200502.aspx> ("In the interest of maintaining and promoting mental health, the American Psychiatric Association supports the legal recognition of same-sex marriage with all rights, benefits, and responsibilities conferred by civil marriage, and opposes restrictions to those same rights, benefits, and responsibilities.").

The American Psychoanalytic Association is the oldest and largest national psychoanalytic membership organization, with more than 3,500 members and associates. It believes that marriage is a basic human right and that same gender couples should be able to share equally in the rights and responsibilities of civil marriage.

The California Medical Association (CMA) is a non-profit association of approximately 37,000 California physicians working to promote the science and art of medicine, the care and well-being of patients, the protection of public health, and the betterment of the

medical profession. The CMA recognizes that denying civil marriage contributes to poorer health outcomes for gay and lesbian individuals, couples and their families.

The American Association for Marriage and Family Therapy (AAMFT), founded in 1942, is a national professional association representing the field of marriage and family therapy and the professional interests of over 50,000 marriage and family therapists in the United States. AAMFT joins this brief for the reasons expressed in its 2005 Position on Couples and Families. Am Ass'n for Marriage & Fam. Therapy, *AAMFT Position on Couples and Families* (2005), available at [http://www.aamft.org/imis15/Content/About\\_AAMFT/Position\\_On\\_Couples.aspx](http://www.aamft.org/imis15/Content/About_AAMFT/Position_On_Couples.aspx).

The National Association of Social Workers (NASW) is the largest association of professional social workers in the world, with nearly 140,000 members. NASW develops policy statements on issues of importance to the social work profession and, consistent with those statements, NASW and the NASW California Chapter (also an *Amicus* herein) support full social and legal acceptance of lesbian, gay, and bisexual people.

With more than 2500 members, the California Psychological Association seeks to advance the science and practice of psychology as a means of promoting human welfare by supporting excellence in education, training, research, advocacy, and service.

All parties have consented to the filing of this brief.

## INTRODUCTION AND SUMMARY

As the Ninth Circuit noted, “Proposition 8 had one effect,” to “strip[] same-sex couples” of “the right to obtain and use the designation of ‘marriage.’” *Perry v. Brown*, 671 F.3d 1052, 1063 (9th Cir. 2012). By so doing, the initiative withholds from gay men and lesbian women an important symbol of “state legitimization and societal recognition.” *Id.* Some proponents of the initiative claim that this exclusion merely reflects meaningful differences between same-sex and heterosexual relationships, or between the parenting abilities of same-sex and heterosexual couples. The scientific research does not justify those claims.

Rather, scientific evidence strongly supports the conclusion that homosexuality is a normal expression of human sexuality; that most gay, lesbian, and bisexual adults do not experience their sexual orientation as a choice; that gay and lesbian people form stable, committed relationships that are equivalent to heterosexual relationships in essential respects; and that same-sex couples are no less fit than heterosexual parents to raise children and their children are no less psychologically healthy and well-adjusted than children of heterosexual parents. In short, the claim that official recognition of marriage for same-sex couples undermines the institution of marriage and harms their children is inconsistent with the scientific evidence.

The body of research presented below demonstrates that the discrimination effected by Proposition 8 unfairly stigmatizes same-sex couples. The research also contravenes the stereotype-based rationales that some advance to support Proposition 8 and that the

Equal Protection Clause of the Fourteenth Amendment was designed to prohibit.

## ARGUMENT

### I. The Scientific Evidence Presented in This Brief.

Representing the leading associations of psychological, psychiatric, medical, and social work professionals, *Amici* have sought in this brief to present an accurate and responsible summary of the current state of scientific and professional knowledge concerning sexual orientation and families relevant to this case.

In drawing conclusions, *Amici* rely on the best empirical research available, focusing on general patterns rather than any single study. Before citing a study herein, *Amici* have critically evaluated its methodology, including the reliability and validity of the measures and tests it employed, and the quality of its data-collection procedures and statistical analyses.

Scientific research is a cumulative process and no empirical study is perfect in its design and execution. Even well-executed studies may be limited in their implications and the generalizability of their findings.<sup>2</sup> Accordingly, *Amici* base their conclusions

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<sup>2</sup> For example, to confidently describe the prevalence or frequency with which a phenomenon occurs in the population at large, it is necessary to collect data from a “probability” or “representative” sample. A probability sample consists of individuals selected from the study population through a process that gives each member of the population a calculable chance of being included. Nonprobability samples do not give all members of the study population a chance of being

as much as possible on general patterns rather than any single study.

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. Thus, many studies cited herein discuss their limitations and provide suggestions for further research. This is consistent with the scientific method and does not impeach the overall conclusions.

Most of the studies and literature reviews cited herein have been peer-reviewed and published in reputable academic journals. In addition, other academic books, book chapters, and technical reports, which typically are not subject to the same peer-review standards as journal articles, are included when they report research employing rigorous methods, are authored by well-established

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included—such as, for example, a study of voters that relies on volunteers who phone in to a telephone number advertised in a newspaper. Case studies and nonprobability samples can be used to document the existence of a phenomenon in the study population. For studies of groups that constitute a relatively small proportion of the population, obtaining a probability sample can be extremely expensive or otherwise not feasible. Consequently, researchers studying such groups may rely on nonprobability samples. If they wish to compare members of the smaller group with members of the majority group (*e.g.*, lesbian mothers with heterosexual mothers), they may recruit nonprobability samples of both groups that are matched on relevant characteristics (*e.g.*, educational level, age, income). Regardless of the sampling method used, greater confidence can be placed in findings that have been replicated by others using different samples.

researchers, and accurately reflect professional consensus about the current state of knowledge. Amici have made a good faith effort to include all relevant studies and have not excluded any study because of its findings.

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

Sexual orientation refers to an enduring disposition to experience sexual, affectional, and/or romantic attractions to one or both sexes. It also encompasses an individual's sense of personal and social identity based on those attractions, on behaviors expressing those attractions, and on membership in a community of others who share those attractions and behaviors.<sup>3</sup> Although sexual orientation ranges along a continuum from exclusively heterosexual to exclusively homosexual, it is usually discussed in three categories: *heterosexual* (having sexual and romantic attraction primarily or exclusively to members of the other sex), *homosexual* (having sexual and romantic attraction primarily or exclusively to members of one's own sex), and *bisexual* (having a significant degree of sexual and romantic attraction to both sexes).

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<sup>3</sup> See A.R. D'Augelli, *Sexual Orientation*, in 7 Am. Psychol. Ass'n, Encyclopedia of Psychology 260 (A.E. Kazdin ed., 2000); G.M. Herek, *Homosexuality*, in 2 The Corsini Encyclopedia of Psychology 774-76 (I.B. Weiner & W.E. Craighead eds., 4th ed. 2010); Institute of Medicine, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (2011).



Although homosexuality was classified as a mental disorder when the American Psychiatric Association published the first Diagnostic and Statistical Manual of Mental Disorders in 1952, only five years later a study sponsored by the National Institute of Mental Health found no evidence to support the classification.<sup>4</sup> On the basis of that study and others demonstrating that the original classification reflected social stigma rather than science,<sup>5</sup> the American Psychiatric Association declassified homosexuality as a mental disorder in 1973. In 1974, the American Psychological Association adopted a policy reflecting the same conclusion. For decades, then, the consensus of mental health professionals and researchers has been that homosexuality and bisexuality are normal expressions of human sexuality and pose no inherent obstacle to leading a happy, healthy, and productive life, and that gay and lesbian people function well in the full array of social institutions and interpersonal relationships.<sup>6</sup>

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<sup>4</sup> E. Hooker, *The Adjustment of the Male Overt Homosexual*, 21 J. Projective Techs. 18 (1957).

<sup>5</sup> B.F. Riess, *Psychological Tests in Homosexuality*, in *Homosexual Behavior: A Modern Reappraisal* 296 (J. Marmor ed., 1980); J.C. Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality*, in *Homosexuality: Research Implications for Public Policy* 115 (J.C. Gonsiorek & J.D. Weinrich eds., 1991).

<sup>6</sup> See, e.g., Am. Psychiatric Ass'n, *Position Statement: Homosexuality and Civil Rights* (1973), in 131 Am. J. Psychiatry 497 (1974); Am. Psychol. Ass'n, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975).

Most gay men and lesbians do not experience their sexual orientation as resulting from a voluntary choice. In a U.S. national probability sample of 662 self-identified lesbian, gay, and bisexual adults, 88% of gay men and 68% of lesbians reported feeling they had no choice at all about their sexual orientation, while another 7% of gay men and 15% of lesbians reported only a small amount of choice. Only 5% of gay men and 16% of lesbians felt they had a fair amount or a great deal of choice.<sup>7</sup>

Several *amici* supporting Proposition 8 challenge the conclusion that for most people sexual orientation is not a matter of choice, but they offer no credible scientific support for their position.<sup>8</sup> Moreover, although some groups and individuals have offered clinical interventions that purport to change sexual orientation from homosexual to heterosexual—sometimes called “conversion” therapies—these interventions have not been shown to be effective or safe. A review of the scientific literature by an American Psychological Association task force concluded that sexual orientation change

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<sup>7</sup> G. Herek et al., *Demographic, Psychological, and Social Characteristics of Self-Identified Lesbian, Gay, and Bisexual Adults in a US Probability Sample*, 7 *Sexuality Res. & Soc. Pol'y* 176 (2010). See also G. Herek et al., *Internalized Stigma Among Sexual Minority Adults: Insights From a Social Psychological Perspective*, 56 *J. Counseling Psychol.* 32 (2009).

<sup>8</sup> See *Amicus Br.* of Liberty Counsel, at 35; *Amicus Br.* of Parents and Friends of Ex-Gays and Gays, *passim*; *Amicus Br.* of Family Research Council, at 27-28; *Amicus Br.* of Dr. Paul McHugh, at 14-28.

efforts are unlikely to succeed and indeed can be harmful.<sup>9</sup>

All major national mental health organizations—including *Amici*—have adopted policy statements cautioning the profession and the public about treatments that purport to change sexual orientation.<sup>10</sup>

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<sup>9</sup> Am. Psychol. Ass'n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009); see also Am. Psychol. Ass'n, *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts* (2009), both available at <http://www.apa.org/pi/lgbt/resources/sexual-orientation.aspx>.

<sup>10</sup> See Am. Psychol. Ass'n, *Resolution*, *supra* note 9; Am. Psychiatric Ass'n, Position Statement: *Psychiatric Treatment and Sexual Orientation* (1998), available at <http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/199820.aspx>; Am. Ass'n for Marriage & Fam. Therapy, *Reparative/Conversion Therapy* (2009), available at [http://www.aamft.org/iMIS15/AAMFT/MFT\\_Resources/Content/Resources/Position\\_On\\_Couples.aspx](http://www.aamft.org/iMIS15/AAMFT/MFT_Resources/Content/Resources/Position_On_Couples.aspx); Am. Med. Ass'n, Policy H-160.991, *Health Care Needs of the Homosexual Population*, available at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page>; Nat'l Ass'n of Soc. Workers, Position Statement: *"Reparative" and "Conversion" Therapies for Lesbians and Gay Men* (2000), available at <http://www.naswdc.org/diversity/lgb/reparative.asp>; Am. Psychoanalytic Ass'n, Position Statement: *Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), available at [http://www.apsa.org/about\\_apsaa/position\\_statements/attempts\\_to\\_change\\_sexual\\_orientation.aspx](http://www.apsa.org/about_apsaa/position_statements/attempts_to_change_sexual_orientation.aspx); B.L. Frankowski, *Sexual Orientation and Adolescents*, 113 *Pediatrics* 1827 (2004).

### III. Sexual Orientation and Relationships.

Sexual orientation is commonly discussed as a characteristic of the *individual*, like biological sex or age. This perspective is incomplete because sexual orientation necessarily involves relationships with other people. Sexual acts and romantic attractions are categorized as homosexual or heterosexual according to the biological sex of the individuals involved in them, relative to each other. Indeed, it is only by acting with another person—or desiring to act—that individuals express their heterosexuality, homosexuality, or bisexuality. Thus, sexual orientation is integrally linked to the intimate personal relationships that human beings form with others to meet their deeply felt needs for love, attachment, and intimacy. 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.

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

Like heterosexuals, most gay and lesbian people want to form stable, long-lasting relationships,<sup>11</sup> and

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<sup>11</sup> In a 2005 U.S. national probability sample of 662 self-identified lesbian, gay, and bisexual adults, of those who were currently in a relationship, 78% of the gay men and 87% of the lesbian women said they would marry their partner if it was legal, and, of those not currently in a relationship, 34% of gay men and 46% of lesbian women said that they would like to marry someday. Herek et al., *Demographic*, *supra* note 7. *See*

many of them do: numerous studies using nonprobability samples of gay and lesbian people have found that the vast majority of participants have been in a committed relationship at some point in their lives, that large proportions are currently in such a relationship (40-70% of gay men and 45-80% of lesbian women), and that many of those couples have been together 10 or more years.<sup>12</sup> Survey data from probability samples support these findings.<sup>13</sup> Data from the 2010 US Census show that same-sex

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also Henry J. Kaiser Fam. Found., *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/upload/New-Surveys-on-Experiences-of-Lesbians-Gays-and-Bisexuals-and-the-Public-s-Views-Related-to-Sexual-Orientation-Report.pdf>; A.R. D'Augelli et al., *Lesbian and Gay Youth's Aspirations for Marriage and Raising Children*, 1 J. LGBT Issues Counseling 77 (2007).

<sup>12</sup> See A.W. Fingerhut & L.A. Peplau, *Same-Sex Romantic Relationships*, in Handbook of Psychology and Sexual Orientation 165 (C.J. Patterson & A.R. D'Augelli eds., 2013); L.A. Peplau & A.W. Fingerhut, *The Close Relationships of Lesbians and Gay Men*, 58 Ann. Rev. Psychol. 405 (2007); L.A. Peplau & N. Ghavami, *Gay, Lesbian, and Bisexual Relationships*, in Encyclopedia of Human Relationships (H.T. Reis & S. Sprecher eds., 2009).

<sup>13</sup> Herek et al., *Demographic*, *supra* note 7; T.C. Mills et al., *Health-Related Characteristics of Men Who Have Sex with Men: A Comparison of Those Living in "Gay 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 (2003); Henry J. Kaiser Fam. Found., *supra* note 11.

couples headed more than 600,000 US households and more than 90,000 in California.<sup>14</sup>

Empirical research demonstrates that the psychological and social aspects of committed relationships between same-sex partners largely 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 issues concerning intimacy, love, equity, loyalty, and stability, and they go through similar processes to address those issues.<sup>15</sup> Empirical research also shows that gay and lesbian couples have levels of relationship satisfaction similar to or higher than those of heterosexual couples.<sup>16</sup>

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<sup>14</sup> Same-Sex Unmarried Partner or Spouse Households by Sex of Householder by Presence of Own Children: 2010 Census and 2010 American Community Survey, *available at* <http://www.census.gov/hhes/samesex/files/supp-table-AFF.xls>.

<sup>15</sup> L.A. Kurdek, *Change in Relationship Quality for Partners from Lesbian, Gay Male, and Heterosexual Couples*, 22 *J. Fam. Psychol.* 701 (2008); L.A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 *J. Marriage & Fam.* 880 (2004); G.I. Roisman et al., *Adult Romantic Relationships as Contexts for Human Development: A Multimethod Comparison of Same-Sex Couples with Opposite-Sex Dating, Engaged, and Married Dyads*, 44 *Developmental Psychol.* 91 (2008); *see generally* L.A. Kurdek, *What Do We Know About Gay and Lesbian Couples?*, 14 *Current Directions Psychol. Sci.* 251 (2005); Peplau & Fingerhut, *supra* note 12; Peplau & Ghavami, *supra* note 12.

<sup>16</sup> K.F. Balsam et al., *Three-Year Follow-Up of Same-Sex Couples Who Had Civil Unions in Vermont, Same-Sex Couples Not in Civil Unions, and Heterosexual Married Couples*, 44

*B. The Institution of Marriage Offers Social, Psychological, and Health Benefits That Are Denied to Same-Sex Couples.*

Marriage as a social institution has a profound effect on the lives of the individuals who inhabit it. The sociologist Emile Durkheim observed that marriage helps to protect the individual from “anomy,” or social disruption and breakdowns of norms.<sup>17</sup> Twentieth-century sociologists advised that marriage creates order<sup>18</sup> and “provides a strong positive sense of identity, self-worth, and mastery.”<sup>19</sup> Empirical research demonstrates that marriage has distinct benefits that extend beyond the material necessities of life.<sup>20</sup> These intangible elements of the marital relationship have important implications for

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Developmental Psychol. 102 (2008); Kurdek, *Change in Relationship Quality*, *supra* note 15; 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).

<sup>17</sup> E. Durkheim, *Suicide: A Study in Sociology* 259 (J.A. Spaulding & G. Simpson trans., Glencoe, Ill.: Free Press 1951) (original work published 1897).

<sup>18</sup> P. Berger & H. Kellner, *Marriage and the Construction of Reality: An Exercise In the Microsociology of Knowledge*, 12 *Diogenes* 1 (1964).

<sup>19</sup> 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).

<sup>20</sup> See S. Stack & J.R. Eshleman, *Marital Status and Happiness: A 17-Nation Study*, 60 *J. Marriage & Fam.* 527 (1998); R.P.D. Burton, *Global Integrative Meaning as a Mediating Factor in the Relationship Between Social Roles and Psychological Distress*, 39 *J. Health & Soc. Behav.* 201 (1998); Gove et al., *supra* note 19, at 5.

the physical and psychological health of married individuals and for the relationship itself.

Because marriage rights have been granted to same-sex couples only recently and only in a few jurisdictions, no empirical studies have yet been published that compare married same-sex couples to unmarried same-sex couples, or those in civil unions. Based on their scientific and clinical expertise, *Amici* believe it is appropriate to extrapolate from the empirical research literature for heterosexual couples—with qualifications as necessary—to anticipate the likely effects of marriage for same-sex couples.<sup>21</sup>

Married men and women generally experience better physical and mental health than their unmarried counterparts.<sup>22</sup> These health benefits do

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<sup>21</sup> Researchers recognize that comparisons between married and unmarried heterosexual couples are complicated by the possibility that observed differences might be due to self-selection. After extensive study, however, researchers have concluded that benefits associated with marriage result largely from the institution itself rather than self-selection. *See, e.g.*, Gove et al., *supra* note 19, at 10; J.E. Murray, *Marital Protection and Marital Selection: Evidence from a Historical-Pro prospective Sample of American Men*, 37 *Demography* 511 (2000). 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.

<sup>22</sup> *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).



not appear to result simply from being in an intimate relationship, for most studies have found that married heterosexual individuals generally manifest greater well-being than those of comparable cohabiting couples.<sup>23</sup> Of course, marital status alone does not guarantee greater health or happiness. People who are unhappy in marriage often manifest lower levels of well-being than the unmarried, and marital discord and dissatisfaction is often associated with negative health effects.<sup>24</sup> Nevertheless, satisfied married couples consistently manifest higher levels of happiness, psychological well-being, and physical health than the unmarried.

Being married also is a source of stability and commitment. Marital commitment is a function not only of attractive forces (*i.e.*, rewarding features of the partner or relationship) but also of external forces that serve as constraints on dissolving the relationship. Barriers to terminating a marriage

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<sup>23</sup> See *supra* note 20; 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) (failing to detect significant differences in depression between married heterosexuals and comparable cohabiting heterosexual couples).

<sup>24</sup> 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).

include feelings of obligation to one's family members; moral and religious values; legal restrictions; financial concerns; and the anticipated disapproval of others.<sup>25</sup> In the absence of adequate rewards, the existence of barriers alone is not sufficient to sustain a marriage in the long term. Perceiving one's intimate relationship primarily in terms of rewards, rather than barriers to dissolution, is likely to be associated with greater relationship satisfaction.<sup>26</sup> Nonetheless, perceived barriers are negatively correlated with divorce and thus the presence of barriers may increase partners' motivation to seek solutions for problems, rather than rushing to dissolve a salvageable relationship.<sup>27</sup>

Lacking access to legal marriage, the primary motivation for same-sex couples to remain together derives mainly from the rewards associated with the relationship rather than from formal barriers to separation.<sup>28</sup> Given this fact, and the legal and

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<sup>25</sup> 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).

<sup>26</sup> See, e.g., D. Previti & P.R. Amato, *Why Stay Married? Rewards, Barriers, and Marital Stability*, 65 *J. Marriage & Fam.* 561 (2003).

<sup>27</sup> 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).

<sup>28</sup> L.A. Kurdek, *Relationship Outcomes and Their Predictors: Longitudinal Evidence from Heterosexual Married, Gay*

prejudicial obstacles that same-sex partners face, the prevalence and durability of same-sex relationships are striking.

#### IV. The Children of Same-Sex Couples.

##### *A. Many Same-Sex Couples Are Raising Children.*

The 2010 Census reported 111,033 households headed by same-sex couples with their own children under 18 years. Among the more than 90,000 California household heads who reported cohabiting with a same-sex partner, 15,698 had their own children under 18 living at home.<sup>29</sup> The number of same-sex couple households reported by the Census is not an estimate of the total number of gay and lesbian parents.<sup>30</sup>

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

Hundreds of studies over the past 30 years have elucidated the factors that are associated with healthy adjustment among children and

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*Cohabiting, and Lesbian Cohabiting Couples*, 60 J. Marriage & Fam. 553 (1998).

<sup>29</sup> 2010 Census and 2010 American Community Survey, *supra* note 14.

<sup>30</sup> The Census does not directly assess participants' sexual orientation. Thus, the Census data only include gay and lesbian parents who were co-habiting with a same sex partner and who were willing to report their relationship status to the Census. 2010 Census and 2010 American Community Survey, *supra* note 14.

adolescents—*i.e.*, the influences that allow children and adolescents to function well in their daily lives.<sup>31</sup> The three most important are (1) the qualities of parent-child relationships, (2) the qualities of relationships among significant adults (*e.g.*, parents) in children's or adolescents' lives, and (3) available economic and other resources. As one noted authority in developmental psychology explained:

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

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<sup>31</sup> S. Golombok, Parenting: What Really Counts? (2000); M.E. Lamb & C. Lewis, *The Role of Parent-Child Relationships in Child Development*, in *Developmental Science: An Advanced Textbook* 429-68 (M.H. Bornstein & M.E. Lamb eds., 5th ed. 2005); C.J. Patterson, & P.D. Hastings, *Socialization in the Context of Family Diversity*, in *Handbook of Socialization: Theory and Research* 328-51 (J.E. Grusec & P.D. Hastings eds., 2007).

because the same factors explain child adjustment regardless of family structure.<sup>32</sup>

In short, many years of research have shown that, when parent-child and parent-adolescent relationships are characterized by warmth, love and affection, emotional commitment, reliability, and consistency, as well as by appropriate guidance and limit-setting, children and adolescents are likely to show more positive adjustment than when these qualities are absent. Children whose parents provide loving guidance in the context of secure home environments are more likely to flourish, regardless of their parents' sexual orientation.<sup>33</sup>

Research also shows that the quality of relationships among significant adults in a child's life is associated with adjustment. When parental relationships are characterized by love, warmth, cooperation, security, and mutual support, children are more likely to show positive adjustment. In contrast, when parental relationships are conflict-ridden and acrimonious, adjustment is likely to be less favorable. Family instability, household disruption, and parental divorce are often associated with poorer adjustment and problems that can last

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<sup>32</sup> M.E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children's Adjustment*, 16 *Applied Developmental Sci.* 98 (2012).

<sup>33</sup> Lamb & Lewis, *supra* note 31; Patterson & Hastings, *supra* note 31.

into adulthood.<sup>34</sup> These correlations are just as true for children reared by same-sex couples as for children reared by heterosexual couples.<sup>35</sup>

Research with children reared by heterosexual parents indicates that they do better with two parenting figures than with one.<sup>36</sup> This finding, however, has not been tested directly with children reared by same-sex couples versus a single lesbian, gay, or bisexual parent.

Finally, researchers acknowledge the association between child adjustment and access to economic and other resources. Children with access to sufficient economic resources are likely to live in safer neighborhoods, breathe cleaner air, and eat more nutritious food. They are also more likely to have opportunities to participate in positive after-

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<sup>34</sup> See, e.g., 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).

<sup>35</sup> The Family Context of Parenting in Children's Adaptation to Elementary School (P.A. Cowan et al. eds., 2005); R.W. Chan et al., *Psychosocial Adjustment Among Children Conceived Via Donor Insemination By Lesbian and Heterosexual Mothers*, 69 Child Dev. 443 (1998); E.M. Cummings et al., *Children's Responses to Everyday Marital Conflict Tactics in the Home*, 74 Child Dev. 1918 (2003); E.M. Cummings et al., *Everyday Marital Conflict and Child Aggression*, 32 J. Abnormal Child Psychol. 191 (2004); Golombok, *supra* note 31; D. Potter, *Same-Sex Parent Families and Children's Academic Achievement*, 74 J. Marriage & Fam. 556 (2012); M.J. Rosenfeld, *Nontraditional Families and Childhood Progress Through School*, 47 Demography 755 (2010).

<sup>36</sup> See, e.g., S. McLanahan & G. Sandefur, *Growing Up With a Single Parent: What Hurts, What Helps* 39 (1994).

school activities and hence to have access to social and emotional resources from teammates, coaches, youth leaders, and others. These children are more likely to show positive adjustment, regardless of their parents' sexual orientation.<sup>37</sup>

In short, the very same factors that are linked to positive development of children with heterosexual parents are also linked to positive development of children with lesbian and gay parents.<sup>38</sup>

*C. There Is No Scientific Basis for Concluding That Gay and Lesbian Parents Are Any Less Fit or Capable Than Heterosexual Parents, or That Their Children Are Any Less Psychologically Healthy and Well Adjusted.*

Assertions that heterosexual couples are better parents than same-sex couples, or that the children of lesbian or gay parents fare worse than children of heterosexual parents, are not supported by the

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<sup>37</sup> Neighborhood Poverty: Context and Consequences for Children (J. Brooks-Gunn et al. eds., 1997); Consequences of Growing Up Poor (G.J. Duncan & J. Brooks-Gunn eds., 1997); Patterson & Hastings, *supra* note 31; Potter, *supra* note 35; Rosenfeld, *supra* note 35.

<sup>38</sup> See Chan et al., *supra* note 35; C.J. Patterson, *Lesbian and Gay Parents and Their Children: A Social Science Perspective*, in Contemporary Perspectives on Lesbian, Gay, and Bisexual Identities, Nebraska Symposium on Motivation 141 (D.A. Hope ed., 2009); J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159 (2001); C.J. Telingator & C.J. Patterson, *Children and Adolescents of Lesbian and Gay Parents*, 47 J. Am. Acad. Child & Adolescent Psychiatry 1364 (2008); J.L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents With Same-Sex Parents*, 75 Child Dev. 1886 (2004).

cumulative scientific research in this area.<sup>39</sup> Rather, the vast majority of scientific studies that have directly compared gay and lesbian parents with heterosexual parents has consistently shown that the former are as fit and capable parents as the latter and that their children are as psychologically healthy and well adjusted. More research has focused on lesbian mothers than on gay fathers,<sup>40</sup> but the

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<sup>39</sup> The research on gay, lesbian, and bisexual parents includes dozens of empirical studies. Their findings are summarized in reviews of empirical literature published in respected, peer-reviewed journals and academic books. Recent reviews include T.J. Biblarz & J. Stacey, *How Does the Gender of Parents Matter?*, 72 *J. Marriage & Fam.* 3 (2010); A.E. Goldberg, *Lesbian and Gay Parents and Their Children: Research on the Family Life Cycle* (2010); C.J. Patterson, *Family Lives of Lesbian and Gay Adults*, in *Handbook of Marriage and the Family* 659, 668-71 (G.W. Peterson & K.R. Bush eds., 3d ed. 2013); C.J. Patterson, *Children of Lesbian and Gay Parents: Psychology, Law, and Policy*, 64 *Am. Psychologist* 727 (2009). For earlier reviews, see, e.g., Stacey & Biblarz, *supra* note 38; E.C. Perrin & Comm. on Psychosocial Aspects of Child & Fam. Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341 (2002); C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052 (2000); N. Anderssen et al., *Outcomes for Children with Lesbian or Gay Parents: A Review of Studies from 1978 to 2000*, 43 *Scand. J. Psychol.* 335 (2002).

<sup>40</sup> See, e.g., H. Bos & T.G.M. Sandfort, *Children's Gender Identity in Lesbian and Heterosexual Two-Parent Families*, 62 *Sex Roles* 114 (2010); R.H. Farr et al., *Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?*, 14 *Applied Developmental Sci.* 164, 176 (2010); S. Golombok et al., *Children with Lesbian Parents: A Community Study*, 39 *Developmental Psychol.* 20 (2003); I. Rivers et al., *Victimization, Social Support, and Psychosocial Functioning Among Children of Same-Sex and Opposite-Sex Couples in the United Kingdom*, 44 *Developmental Psychol.*



published studies that have included gay fathers also find that they are as fit and able parents as heterosexual fathers.<sup>41</sup>

A 2001 comprehensive survey of peer-reviewed scientific studies concluded that the evidence from empirical research “shows that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships or on children’s mental health or social adjustment.”<sup>42</sup> A more recent review by the same authors noted “the ubiquitous findings of no differences” in comparisons of the families of heterosexual couples to those of lesbian or gay couples, but focused on the relatively small number of differences that have been reported, concluding that overall the differences were positive for the families of same-sex couples at least as often

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127 (2008); J.L. Wainright & C.J. Patterson, *Delinquency, Victimization, and Substance Use Among Adolescents With Female Same-Sex Parents*, 20 J. Fam. Psychol. 526 (2006).

<sup>41</sup> Farr et al., *supra* note 40, at 176; *see also* S. Erich et al., *Gay and Lesbian Adoptive Families: An Exploratory Study of Family Functioning, Adoptive Child’s Behavior, and Familial Support Networks*, 9 J. Fam. Soc. Work 17 (2005); S. Erich et al., *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, 1 J. GLBT Fam. Stud. 43 (2005). For a review of earlier research, *see* C.J. Patterson, *Gay Fathers, in* *The Role of the Father in Child Development* 397, 413 (M.E. Lamb ed., 4th ed. 2004).

<sup>42</sup> Stacey & Biblarz, *supra* note 38, at 176.

as they were for the families of heterosexual couples.<sup>43</sup>

These conclusions are bolstered by three recent studies using national probability (i.e., representative) samples. One used data from the National Longitudinal Study of Adolescent Health to compare adolescents parented by a female couple with adolescents parented by a heterosexual couple. The researchers found no differences between the two groups of adolescents on measures of a large number of key variables, including psychosocial adjustment, school outcomes, substance use, delinquency, victimization experiences, and relationships with peers.<sup>44</sup>

Another study used data from the Early Childhood Longitudinal Study – Kindergarten cohort (ECLS-K) to compare the academic achievement of children growing up in various family structures. When the effects of significant family transitions (e.g., related

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<sup>43</sup> Biblarz & Stacey, *supra* note 39, at 13; *see also* E.L. Sutfin et al., *How Lesbian and Heterosexual Parents Convey Attitudes about Gender to their Children: The Role of Gendered Environments*, 58 *Sex Roles* 501 (2008) (finding that the children of lesbian mothers were more tolerant of other children engaging in behaviors that violate traditional gender norms). Similarly, a recent report by the National Academy of Sciences' Institute of Medicine concluded that "[s]tudies show that [the children of lesbian and gay parents] are well adjusted and developmentally similar to the children of different-sex parents." Institute of Medicine, *supra* note 3, at 234.

<sup>44</sup> J.L. Wainright & C.J. Patterson, *Peer Relations Among Adolescents With Female Same-Sex Parents*, 44 *Developmental Psychol.* 117 (2008); Wainright & Patterson, *supra* note 40; Wainright et al., *supra* note 38.

to parental divorce, separation, or death) were taken into account, children in same-sex family structures showed slightly higher achievement levels than children living with their biological mother and father (although this difference was not statistically significant).<sup>45</sup>

In the third study, US Census data were used to compare educational outcomes among children residing in homes with various types of family structure. When differences in household income and parental educational levels (SES) were statistically controlled, the differences in school progress between children of married heterosexual couples and same-sex cohabiting couples were not statistically significant. As the study's author concluded, "[t]he analysis in this article, the first to use large-sample nationally representative data, shows that children raised by same-sex couples have no fundamental deficits in making normal progress through school."<sup>46</sup>

Studies also show that children with gay or lesbian parents do not differ from the children of heterosexual parents in their *gender identity* (one's psychological sense of being male or female).<sup>47</sup>

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<sup>45</sup> Potter, *supra* note 35. Data about parents' sexual orientation were not collected in the study. Consequently, parental sexual orientation and relationship were inferred from a series of questions about the household composition and caretakers.

<sup>46</sup> Rosenfeld, *supra* note 35.

<sup>47</sup> *E.g.*, Bos & Sandfort, *supra* note 40. For literature reviews, see Goldberg, *supra* note 39; Patterson, *Family Lives*, *supra* note 39; Perrin & Comm., *supra* note 39, at 342.

Similarly, although some studies have found that children of lesbian mothers or children raised in same-sex parent families were more accepting of gender nonconformity in others<sup>48</sup> and less gender-stereotyped or more flexible in their patterns of gender-role behaviors (*e.g.*, during play<sup>49</sup>) than those of children in heterosexual parent families, most published studies have found no reliable differences between the children of lesbian and heterosexual mothers in *social gender role* conformity (adherence to cultural norms defining feminine and masculine behavior).<sup>50</sup> A recent study also found that adoptive children of gay fathers showed typical gender role development, as did those of lesbian mothers and those of heterosexual mothers and fathers.<sup>51</sup>

The available evidence also suggests that parental sexual orientation has no effect on child sexual

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<sup>48</sup> Sutfin et al., *supra* note 43; M. Fulcher et al., *Individual Differences in Gender Development: Associations with Parental Sexual Orientation, Attitudes, and Division of Labor*, 58 *Sex Roles* 330 (2008).

<sup>49</sup> A.E. Goldberg et al., *Gender-Typed Play Behavior in Early Childhood: Adopted Children with Lesbian, Gay, and Heterosexual Parents*, 67 *Sex Roles* 503 (2012); 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). An earlier paper (M.E. Hotvedt & J.B. Mandel, *Children of Lesbian Mothers*, in *Homosexuality: Social, Psychological, and Biological Issues* 275 (W. Paul et al. eds., 1982)) reported data from the same study.

<sup>50</sup> Farr et al., *supra* note 40. For reviews of the literature, see Goldberg, *supra* note 39; Patterson, *Family Lives*, *supra* note 39.

<sup>51</sup> *See* Farr et al., *supra* note 40.

orientation<sup>52</sup> and that the vast majority of gay and lesbian adults were raised by heterosexual parents and the vast majority of children raised by gay and lesbian parents grow up to be heterosexual.<sup>53</sup>

*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.<sup>54</sup> Thus, after careful scrutiny of decades of research, the American Psychological Association concluded in 2004 that (a) “there is no scientific evidence that parenting effectiveness is related to parental sexual

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<sup>52</sup> Golombok et al., *supra* note 40; S. Golombok & F. Tasker, *Do Parents Influence the Sexual Orientation of Their Children? Findings from a Longitudinal Study of Lesbian Families*, 32 *Developmental Psychol.* 3 (1996).

<sup>53</sup> Goldberg, *supra* note 39; Patterson, *Family Lives*, *supra* note 39.

<sup>54</sup> One unreplicated 1996 Australian study purports to show deficits in lesbian and gay parents and their children. *See* S. Sarantakos, *Children in Three Contexts: Family, Education and Social Development*, 21 *Child. Australia* 23 (1996). But the anomalous Sarantakos results are likely the result of multiple methodological problems, especially confounding the effects of parental sexual orientation with the effects of parental divorce, which is known to correlate with poor adjustment and academic performance. *See, e.g.*, Amato, *supra* note 34. Some commentators have cited publications by Paul Cameron, but his work has been repeatedly discredited for bias and inaccuracy. *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: Understanding Prejudice Against Lesbians, Gay Men, and Bisexuals* 223 (G.M. Herek ed., 1998); *Baker v. Wade*, 106 F.R.D. 526, 536 (N.D. Tex. 1985) (ruling that Cameron made “misrepresentations” to the court).

orientation: Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children” and (b) that “research has shown that the adjustment, development, and psychological well-being of children are unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish.” Am. Psychol. Ass’n, *Resolution on Sexual Orientation, Parents, and Children* (2004), available at <http://www.apa.org/about/governance/council/policy/parenting.pdf>.

Similarly, the American Academy of Pediatrics has recently adopted a policy statement which states: “Scientific evidence affirms that children have similar developmental and emotional needs, and receive similar parenting, whether they are raised by parents of the same or different genders. If a child has 2 living and capable parents who choose to create a permanent bond by way of civil marriage, it is in the best interests of their child(ren) that legal and social institutions allow and support them to do so, irrespective of their sexual orientation.” Am. Acad. of Pediatrics, Committee on Psychosocial Aspects of Child and Family Health, Policy Statement: *Promoting the Well-Being of Children Whose Parents are Gay or Lesbian*, 131 Pediatrics (forthcoming 2013).

NASW has similarly determined that “[t]he most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to heterosexual

parents and their children that were included in the studies.” Nat’l Ass’n of Soc. Workers, Policy Statement: *Lesbian, Gay, and Bisexual Issues, in Social Work Speaks* 193, 194 (4th ed. 1997). *See also* Nat’l Ass’n of Soc. Workers, Policy Statement: *Family Planning and Reproductive Choice, in Social Work Speaks* 129, 132 (9th ed. 2012).

The American Psychoanalytic Association has likewise determined that “[t]here is no credible evidence that shows that a parent’s sexual orientation or gender identity will adversely affect the development of the child.” Am. Psychoanalytic Ass’n, Position Statement: *Parenting* (2012), *available at* [http://www.apsa.org/about\\_apsaa/position\\_statements/parenting.aspx](http://www.apsa.org/about_apsaa/position_statements/parenting.aspx).

In adopting an official Position Statement in support of legal recognition of same-sex civil marriage, the American Psychiatric Association observed that “no research has shown that the children raised by lesbians and gay men are less well adjusted than those reared within heterosexual relationships.” Am. Psychiatric Ass’n, Position Statement: *Support of Legal Recognition of Same-Sex Civil Marriage* (2005), *available at* <http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/200502.aspx>.

Finally, the American Medical Association likewise has adopted a policy supporting legislative and other reforms to allow adoption by same sex partners.<sup>55</sup>

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<sup>55</sup> *See* Am. Med. Ass’n, Policy H-60.940, *Partner Co-Adoption*, *available at* <http://www.ama-assn.org/ama/pub/about-ama/our>

## V. Challenges to the Evidence on Same-Sex Parents by Other *Amici* Are Unfounded.

### A. *The Methodological Criticisms Fail to Recognize the Cumulative Nature of Scientific Research.*

Scientific research is a cumulative process. Empirical studies inevitably have limitations. Simply because a particular study's methodology has imperfections or its results warrant qualifications does not mean that the entire study should be dismissed. Rather, it should be evaluated within the context of the cumulative relevant research, recognizing that some studies' strengths can offset other studies' corresponding limitations.

*Amici* who challenge all empirical findings in this area because some studies used small nonprobability samples<sup>56</sup> ignore the fact that many findings from those studies have been replicated in national probability samples.<sup>57</sup> They also fail to acknowledge that studies with nonprobability samples can answer

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people/member-groups-sections/glb-adv-cc/ama-policy-regarding-sexual-orientation.page.

<sup>56</sup> *E.g.*, *Amicus Br.* of Social Science Professors, at 13-21.

<sup>57</sup> Wainright & Patterson, *Delinquency*, *supra* note 40 (finding no differences due to parent sexual orientation between 44 adolescents raised by same-sex couples and 44 by heterosexual couples, all drawn from a national representative sample); Wainright & Patterson, *Peer Relations*, *supra* note 44 (same); Potter, *supra* note 35; Rosenfeld, *supra* note 35 (using US Census data).



important scientific questions, especially when they include appropriate comparison groups.<sup>58</sup>

Moreover, *amici* do not claim the studies are invalid, only that their implications are limited to “children raised by highly educated and affluent middle to upper class white women.”<sup>59</sup> Even in those studies that are so limited, appropriate comparison across sexual orientation groups can test the claim that sexual orientation affects parenting, and the recent research on national probability samples reinforces these studies. *Amici* herein do not claim that all same-sex couples will be equally effective in raising children,<sup>60</sup> but rather that sexual orientation is irrelevant to parenting outcomes.<sup>61</sup>

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<sup>58</sup> See *supra* note 2. One *amicus* disparages “nearly all previous studies” because they failed to include “a married biological family control group.” *Amicus Br. of Social Science Professors*, at 25. But many studies have appropriately included such a group, and their findings are largely consistent with the overall patterns described herein. See, e.g., Potter, *supra* note 35; Rosenfeld, *supra* note 35; Wainright & Patterson, *Peer Relations*, *supra* note 44; Wainright & Patterson, *Delinquency*, *supra* note 40; Wainright et al., *supra* note 38. Moreover, the correct comparison group depends on the nature of the study. For example, comparing children of married heterosexual couples to children of single lesbian mothers would conflate parent sexual orientation with number of parents. The appropriate comparison group in such studies is the children of single heterosexual mothers.

<sup>59</sup> E.g., *Amicus Br. of Social Science Professors*, at 20.

<sup>60</sup> E.g., factors such as access to economic resources affect child development outcomes (note 26 above).

<sup>61</sup> Several *amici* criticizing studies cited here rely on L. Marks, *Same-Sex Parenting and Children’s Outcomes: A Closer*

*B. The Regnerus Study Does Not Provide Evidence That Parental Sexual Orientation Affects Child Development Outcomes.*

Several *amici* base their challenge on a recent study (“the Regnerus study”) that compared child development outcomes across a range of family types, including two types that were characterized as “lesbian mother” and “gay father” families.<sup>62</sup> But the study’s design precludes any meaningful conclusions because of its overbroad definition of children raised by gay or lesbian parents and its conflation of family instability with any potential effects of parental sexual orientation.

The methodological flaws in the study are examined in greater detail in the Brief of The American Psychological Association *et al.* filed on March 1, 2013 in *United States v. Windsor, et al.*, No. 12-307, at pages 29 to 34. Those flaws led an independent auditor appointed by the journal that published the study to describe it as “a non-scientific study” and conclude it should not have been

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*Examination of the American Psychological Association’s Brief on Lesbian and Gay Parenting*, 41 Soc. Sci. Res. 735 (2012). Marks opined that studies cited in an APA 2005 pamphlet (not a brief) allow no conclusions regarding lesbian and gay parenting. This wholesale rejection of an entire body of research fails to recognize the realities of the nature of scientific knowledge as discussed above. Moreover, *Amici’s* conclusions drawn from those earlier studies are borne out by the research subsequent to 2005.

<sup>62</sup> M. Regnerus, *How Different are the Adult Children of Parents Who Have Same-Sex Relationships? Findings from the New Family Structures Study*, 41 Soc. Sci. Res. 752 (2012).

published.<sup>63</sup> Moreover, over 200 scientists, clinicians, and academics signed a letter to the journal's editorial board commenting on the study's scientific deficiencies.<sup>64</sup>

### **VI. Denying the Status of Marriage to Same-Sex Couples Stigmatizes Them.**

The foregoing shows that the beliefs about gay men and lesbian women advanced to support Proposition 8—about their capacity for committed, long lasting relationships, and their ability to raise healthy well-adjusted children—are contradicted by the scientific evidence and instead reflect an unreasoned antipathy towards an identifiable minority. In depriving gay men and lesbian women of membership in an important social institution, Proposition 8 conveys the state's judgment that committed intimate relationships between people of the same sex are inferior to heterosexual relationships. This is the essence of stigma.

A stigmatized condition or status is negatively valued by society, defines a person's social identity,

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<sup>63</sup> D.E. Sherkat, *The Editorial Process and Politicized Scholarship: Monday Morning Editorial Quarterbacking and a Call for Scientific Vigilance*, 41 Soc. Sci. Res. 1346 (2012).

<sup>64</sup> G.J. Gates et al., *Letter to the editors and advisory editors of Social Science Research*, 41 Soc. Sci. Res. 1350, 1351 (2012) (noting that the study “could not actually directly examine the impact of having a gay or lesbian parent” because of the “unusual method” of defining those groups, and that it “fails to distinguish family structure and family instability,” and concluding that “[t]he methodologies used in this paper and the interpretation of the findings are inappropriate”).

and thus disadvantages that person.<sup>65</sup> A classic work in this area characterized stigma as “an undesired differentness.”<sup>66</sup> It can be manifested both in social institutions, such as the law, and in individual behaviors. Laws that accord majority and minority groups differing status highlight the perceived “differentness” of the minority and thereby tend to legitimize prejudicial attitudes and individual acts against the disfavored group, including ostracism, harassment, discrimination, and violence. Large numbers of lesbian, gay, and bisexual people experience such acts of prejudice because of their sexual orientation.<sup>67</sup>

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<sup>65</sup> See E. Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963); B.G. Link & J.C. Phelan, *Conceptualizing Stigma*, 27 *Ann. Rev. Soc.* 363 (2001); J. Crocker et al., *Social Stigma*, in 2 *The Handbook of Social Psychology* 504 (D.T. Gilbert et al. eds., 4th ed. 1998); Am. Med. Ass’n, Policy H-65.973, *Health Care Disparities in Same-Sex Partner Households*, available at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glbst-advisory-committee/ama-policy-regarding-sexual-orientation.page> (recognizing that “exclusion from civil marriage contributes to health care disparities affecting same-sex households”).

<sup>66</sup> Goffman, *supra* note 65, at 5.

<sup>67</sup> A national survey of a representative sample of gay, lesbian, and bisexual adults found that 21% of them had been the target of a physical assault or property crime since age 18 because of their sexual orientation. Thirty-eight percent of gay men had been the target of assault or property crime because of their sexual orientation. Eighteen percent of gay men and 16% of lesbians reported they had experienced discrimination in housing or employment. G.M. Herek, *Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: Prevalence Estimates from a National*

Proposition 8 is an instance of institutional stigma. It conveys the government's judgment that, in the realm of intimate relationships, a legally united same-sex couple is inherently less deserving of society's full recognition than are heterosexual couples. As the Ninth Circuit correctly recognized, Proposition 8 "lessen[s] the status and human dignity of gays and lesbians in California." *Perry*, 671 F.3d at 1063. By devaluing and delegitimizing the relationships that constitute the very core of a homosexual orientation, Proposition 8 compounds and perpetuates the stigma historically attached to homosexuality. This Court has repeatedly recognized the unconstitutional nature of stigmatizing legislation based on stereotypic classifications. *See Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) ("[A]s we have repeatedly emphasized, discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the disfavored group as 'innately inferior' and therefore as less worthy participants in the political community\* \* \* can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group.") (footnote and citations omitted).

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*Probability Sample*, 24 J. Interpersonal Violence 54 (2009); *see also* G.M. Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 J. Consulting & Clinical Psychol. 945, 948 (1999); M.V.L. Badgett, *Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men* (2001).

**CONCLUSION**

The judgment below should be affirmed.

Respectfully submitted,

NATHALIE F.P. GILFOYLE  
AMERICAN PSYCHOLOGICAL  
ASSOCIATION  
750 First Street, N.E.  
Washington, DC 20002  
(202) 336-6186

PAUL M. SMITH  
*Counsel of Record*  
JENNER & BLOCK LLP  
1099 New York Avenue,  
NW  
Washington, DC 20001  
(202) 639-6000  
PSmith@jenner.com

WILLIAM F. SHEEHAN  
ANDREW HUDSON  
GOODWIN | PROCTER LLP  
901 New York Avenue, NW  
Washington, D.C. 20001  
(202) 346-4000

*Counsel for Amici Curiae*

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