

Case No. S147999

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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**In re Marriage Cases**

Judicial Council Coordination Proceeding No. 4365

After a Decision of the Court of Appeal  
First Appellate District, Division Three  
Nos. A110449, A110450, A110451, A110463, A110651, A110652  
San Francisco Superior Court Nos. JCCP4365, 429539, 429548, 504038  
Los Angeles Superior Court No. BC088506  
Honorable Richard A. Kramer, Judge

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**APPLICATION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* IN  
SUPPORT OF THE PARTIES CHALLENGING THE MARRIAGE  
EXCLUSION, AND BRIEF *AMICI CURIAE* OF THE AMERICAN  
PSYCHOLOGICAL ASSOCIATION, CALIFORNIA  
PSYCHOLOGICAL ASSOCIATION, AMERICAN PSYCHIATRIC  
ASSOCIATION, NATIONAL ASSOCIATION OF SOCIAL  
WORKERS, AND NATIONAL ASSOCIATION OF SOCIAL  
WORKERS, CALIFORNIA CHAPTER IN SUPPORT OF THE  
PARTIES CHALLENGING THE MARRIAGE EXCLUSION**

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**APPLICATION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* IN  
SUPPORT OF PARTIES CHALLENGING THE MARRIAGE  
EXCLUSION**

The American Psychological Association, California Psychological Association, American Psychiatric Association, and National Association of Social Workers, through their attorneys and pursuant to Rule 8.520(f) of the California Rules of Court, respectfully apply for leave to file the following brief *amicus curiae* in support of the parties challenging the marriage exclusion. As explained in further detail below, *amici*, the nation's and state's leading associations of mental health professionals and behavioral scientists present this brief to provide the Court with a comprehensive and balanced review of the scientific and professional literature pertinent to the issues before the Court. To assist the Court in

resolving the complex questions presented by this matter, the applicants respectfully request that their application be granted.

### **IDENTITY AND 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 psychology to important human concerns. Human sexuality, familial relationships, and stigma and prejudice 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 Appendix 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 California Psychological Association (“CPA”), incorporated in 1948, has 4,200 members and is the largest state psychological association in the United States. The members of CPA represent licensed psychologists from all areas of psychology including clinical practice, public service, teaching and research. The mission of CPA is to strengthen, promote, and sustain the discipline and practice of psychology. It achieves that mission through legislative advocacy, education of its members, and service to the public. Additionally, through the CPA Foundation, CPA works to increase the number of psychologists who are proficient at working with diverse populations and to educate the public, graduate psychology students, and practicing psychologists regarding how psychological knowledge promotes community health and well being.

The CPA Board of Directors is comprised of representatives from 22 regional chapters and seven specialty divisions. CPA joins this brief after providing an opportunity for review and comment by all members of the CPA Board of Directors.

The American Psychiatric Association, with more than 38,000 members, is the Nation's largest organization of physicians specializing in psychiatry. The American Psychiatric Association joins this brief based on and for the reasons expressed in its 2005 position statement, *Support of Legal Recognition of Same-Sex Civil Marriage*, which is reproduced in the Appendix to this brief.

The National Association of Social Workers ("NASW") was founded in 1955 by the merger of seven predecessor social work organizations. It is the largest membership organization of professional social workers in the world, with 145,000 members and 56 chapters throughout the United States and abroad. The NASW, California Chapter has approximately 11,600 members. In furthering its purposes of developing and disseminating high standards of social work practice while strengthening and unifying the social work profession as a whole, NASW promulgates professional standards and criteria, conducts research, publishes studies of interest to the profession, provides continuing education and enforces the NASW Code of Ethics. NASW has participated in numerous cases involving mental health, social science, family and discrimination issues, and is deeply committed to providing scientific information to help inform the courts on issues of importance before them.

NASW adopted a policy statement on gay issues in 1977, which was subsequently revised and expanded in 1987, 1993 and 1996; that policy and

the NASW Code of Ethics prohibit social workers from discriminating on the basis of sexual orientation. In 2004, NASW reaffirmed its policy supporting same-sex marriage.

Respectfully Submitted,

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ASSOCIATION, CALIFORNIA PSYCHOLOGICAL  
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NATIONAL ASSOCIATION OF SOCIAL WORKERS, AND  
NATIONAL ASSOCIATION OF SOCIAL WORKERS,  
CALIFORNIA CHAPTER IN SUPPORT OF THE PARTIES  
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## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
SUMMARY OF ARGUMENT.....	1
ARGUMENT .....	2
I. The Nature of Scientific Evidence and Its Presentation in This Brief.....	2
II. Sexual Orientation and Homosexuality.....	6
A. The Nature of Sexual Orientation and Its Inherent Link to Intimate Relationships.....	6
B. Homosexuality Is a Normal Expression of Human Sexuality.....	8
III. Sexual Orientation and Relationships. ....	14
A. Gay Men and Lesbians Form Stable, Committed Relationships That Are Equivalent to Heterosexual Relationships in Essential Respects. ....	14
B. The Institution of Marriage Offers Social, Psychological, and Health Benefits That Are Denied to Same-Sex Couples.....	18
IV. The Children of Lesbians and Gay Men. ....	25
A. Many Same-Sex Couples Are Currently Raising Children.....	25
B. 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. ....	26
V. By Denying Same-Sex Couples the Right to Marry, the State Reinforces and Perpetuates the Stigma Historically Associated with Homosexuality.....	36
A. Homosexuality Remains Stigmatized, and this Stigma Has Negative Consequences. ....	36

B.	California’s Prohibition on Marriage for Same-Sex Couples Reflects and Reinforces This Stigma.....	42
VI.	The Children of Same-Sex Couples Will Benefit If Their Parents Are Allowed to Marry.....	45
	CONCLUSION .....	48

## TABLE OF AUTHORITIES

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## SUMMARY OF ARGUMENT

*Amici*, the nation's and state's leading associations of mental health professionals and behavioral scientists present this brief to provide the Court with a comprehensive 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.<sup>1</sup>

Homosexuality is neither a disorder nor a 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.

Many gay and lesbian people are in a committed same-sex relationship. In their essential psychological respects, these relationships are equivalent to heterosexual relationships.

The institution of marriage affords individuals a variety of benefits that have a favorable impact on their physical and psychological well-being.

A large number of children are currently being raised by lesbians and gay men, both in same-sex couples and as single parents. Empirical research has consistently shown that lesbian and gay parents do not differ

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<sup>1</sup> The brief was prepared primarily by the American Psychological Association. The views expressed herein, however, are shared by all *amici*.

from heterosexuals in their parenting skills, and their children do not show any deficits compared to children raised by heterosexual parents.

State policies that bar same-sex couples from marrying are based solely on sexual orientation. As such, they are both a consequence of the stigma historically attached to homosexuality, and a structural manifestation of that stigma. By allowing same-sex couples to marry, the Court would end the antigay stigma imposed by the State of California through its ban on marriage rights for same-sex couples. In addition, allowing same-sex couples to marry would give them access to the social support that already facilitates and strengthens heterosexual marriages, with all of the psychological and physical health benefits associated with that support. In addition, if their parents are allowed to marry, the children of same-sex couples will benefit not only from the legal stability and other familial benefits that marriage provides, but also from elimination of state-sponsored stigmatization of their families.

## **ARGUMENT**

### **I. The Nature of Scientific Evidence and Its Presentation in This Brief.**

This brief has been prepared and reviewed by expert members of the *amici* – the nation’s and state’s leading associations of mental health professionals and behavioral scientists – who are thoroughly familiar with current scientific theory, research methods, empirical findings, and clinical

techniques concerning sexual orientation, marriage and non-marital relationships, parenting, and stigma and prejudice.<sup>2</sup> 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.

(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. Recognizing that academic journals differ widely in their publication criteria and the rigor of their peer review, we give the greatest credence to papers published in the most authoritative journals, and we critically evaluate the findings reported

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<sup>2</sup> Counsel have assisted the psychologist *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, the psychologist *amici* and their expert members have taken responsibility for reviewing the scientific literature and summarizing the conclusions to be drawn therefrom.

in all of the papers we cite. 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.<sup>3</sup> In this brief, we note when a study's findings should be regarded as tentative because of methodological limitations.

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<sup>3</sup> 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 are often not 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

(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. Critiques are part of the process by which science is advanced. Thus, 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.

(5) Scientific research cannot prove that a particular phenomenon does not exist or never occurs, or that two variables are never related to each other. However, 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 that situation, if a researcher attempts to argue that two phenomena are correlated in the absence of supporting data from prior

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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.

studies, the burden of proof is on that researcher to demonstrate empirically that the alleged 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 of 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.<sup>4</sup> 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

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<sup>4</sup> See *Sexual Orientation*, in Am. Psychol. Ass'n, 7 *Encyclopedia of Psychology* 260 (A.E. Kazdin ed., 2000); 2 *The Corsini Encyclopedia of Psychology and Behavioral Sciences* 683 (W.E. Craighead & C.B. Nemeroff eds., 3d ed. 2001); J.C. 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. "Sexual minority" is used to refer collectively to gay, lesbian, and bisexual people.



to both men and women).<sup>5</sup> 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).

Sexual orientation is commonly discussed as a characteristic of the *individual*, like biological sex, gender identity, or age. 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 -- or desiring to act -- with another person 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

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<sup>5</sup> In this brief, we focus specifically on persons with a homosexual orientation – gay men and lesbians – and on how prohibiting marriage rights for same-sex couples affects that group and their children. Some of the research we cite (for example, the research on stigma discussed *infra* in Section V) is applicable to bisexual as well as homosexual persons. Moreover, many statements in this brief apply with equal force to bisexual persons who are involved in committed same-sex relationships.

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.<sup>6</sup> 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 produce any empirical or scientific basis for regarding homosexuality as a disorder or abnormality, rather than a normal

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<sup>6</sup> A mental disorder is currently defined as “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. rev. 2001).

and healthy sexual orientation.<sup>7</sup> As results from such research accumulated, professionals in medicine, mental health, and the behavioral and social sciences reached the conclusion that it was inaccurate to classify homosexuality as a mental disorder and that the DSM classification reflected untested assumptions based on once-prevalent social norms and 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 the DSM in 1973, stating that “homosexuality *per se* implies no impairment in judgment, stability,

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<sup>7</sup> In one of the first rigorous examinations of the mental health status of homosexuality, ratings of the psychological adjustment of homosexual and heterosexual men from the Los Angeles area were obtained from mental health experts who were unaware of each man’s sexual orientation. The ratings did not differ significantly between the heterosexuals and homosexuals. E. Hooker, *The Adjustment of the Male 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. 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. Riess, *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).

reliability, or general social or vocational capabilities.”<sup>8</sup> After thoroughly reviewing the scientific data, the American Psychological Association adopted the same position in 1975, and urged all mental health professionals “to take the lead in removing the stigma of mental illness that has long been associated with homosexual orientations.”<sup>9</sup> The National Association of Social Workers has adopted a similar policy.<sup>10</sup>

Thus, mental health professionals and researchers have long recognized that being homosexual poses no inherent 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.

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. In many studies, for

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<sup>8</sup> Am. Psychiatric Ass’n, *Position Statement on Homosexuality and Civil Rights* (1973), printed in 131 Am. J. Psychiatry 497 (1974).

<sup>9</sup> Am. Psychol. Ass’n, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975).

<sup>10</sup> 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).

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”).<sup>11</sup> 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,<sup>12</sup> and are also at risk for physical health problems.<sup>13</sup> In fact, no major mental health organization has sanctioned efforts to change sexual orientation.<sup>14</sup>

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<sup>11</sup> G.M. Herek & L.D. Garnets, *Sexual orientation and mental health*, 3 *Ann. Rev. of Clin. Psychol.* 361-62 (2007); J.E. Pachankis, *The psychological implications of concealing a stigma: A cognitive-affective-behavioral model*, 133 *Psychol. Bull.* 328-45 (2007).

<sup>12</sup> 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); 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).

<sup>13</sup> S.W. Cole, *Social threat, personal identity, and physical health in closeted gay men*, in *Sexual orientation and mental health: Examining identity and development in lesbian, gay, and bisexual people*, 245-67 (A.M. Omoto & H.S. Kurtzman eds., 2006); E.D. Strachan et al., *Disclosure of HIV status and sexual orientation independently predicts increased absolute CD4 cell counts over time for psychiatric patients*, *Psychosomatic Medicine*, 69, 74-80 (2007); P.M. Ullrich, et. al., *Concealment of homosexual identity, social support and CD4 cell count among HIV-seropositive gay men*, 54 *J. of Psychosomatic Research* 205-212 (2003).

<sup>14</sup> Sexual orientation has proved to be generally impervious to interventions intended to change it, which are sometimes referred to as “reparative

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.<sup>15</sup> 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.<sup>16</sup> Differences in stress between the heterosexual

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therapy.” No scientifically adequate research has shown that such interventions are effective or safe. 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. Therefore, all major national mental health organizations have adopted policy statements cautioning the profession and the public about treatments that purport to change sexual orientation. 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); *Action by American Counseling Association Governing Council* (1999). (These policy statements are available on the Internet at <http://www.apa.org/pi/lgb/publications/justthefacts.html>.) The statement of the American Psychiatric Association cautions that “[t]he potential risks of ‘reparative therapy’ are great, including depression, anxiety and self-destructive behavior.”

<sup>15</sup> 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).

<sup>16</sup> Consistent with this observation, several studies suggest that, compared to the heterosexual population, a somewhat larger proportion of the

population and the homosexual population can be attributed largely to the societal stigma directed at the latter.<sup>17</sup> 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.”<sup>18</sup> In experiencing such excess stress, the gay and lesbian population is comparable to other minority groups that face unique stressors due to prejudice and discrimination based on their minority status.<sup>19</sup> Given the unique social

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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 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. See also Herek & Garnets, *supra* note 11.

<sup>17</sup> The construct of *stigma* is defined and discussed at length *infra* in Section V.

<sup>18</sup> 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, Gay, and Bisexual Adults in the United States*, 91 *Am. J. Pub. Health* 1869 (2001); see generally Herek & Garnets, *supra* note 11.

<sup>19</sup> Meyer, *supra* note 187, at 675-76, 690. 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

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, many gay men and lesbians desire to form stable, long-lasting, committed relationships.<sup>20</sup> Substantial numbers 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 -

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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).

<sup>20</sup> 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/upload/National-Surveys-on-Experiences-of-Lesbians-Gays-and-Bisexuals-and-the-Public-s-Views-Related-to-Sexual-Orientation.pdf>.



80% of lesbians), and that a substantial number of those couples have been together 10 or more years.<sup>21</sup> 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.<sup>22</sup> An analysis of data from the 2000 US Census reported that same-sex couples headed more than 594,000 households in the United States including more than 92,100 California households.<sup>23</sup> More recent Census data indicate that the number

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<sup>21</sup> 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 et al. eds., 1997).

<sup>22</sup> 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 (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.

<sup>23</sup> T. Simmons & M. O'Connell, *Married-Couple and Unmarried-Partner Households: 2000*, at 4 (U.S. Census Bureau 2003) (Tables 1 and 2), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf> (last accessed Sept. 10, 2007). These findings are among the best available but they are not definitive. On the one hand, they necessarily provide a low estimate of the number of same-sex couples in the United States because

of same-sex cohabiting couples in the United States was approximately 775,000 by 2005, with approximately 107,700 same-sex couples residing in California.<sup>24</sup>

Empirical research demonstrates that the psychological and social aspects of these committed relationships between same-sex partners closely 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 intimacy, love, equity, loyalty, and stability, and they go through similar processes to address those challenges.<sup>25</sup> Empirical

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the Census form identified couples only when they included the head of the household (referred to by the Census as the “householder”); it 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. On the other hand, there is reason to believe that some individuals in a cohabiting heterosexual relationship incorrectly marked the Census form such that they were recorded as having a same-sex partner. D. Black et al., *The measurement of unmarried partner couples in the 2000 U.S. Census*, available at [http://www.ccpr.ucla.edu/ccprwps/series/ccpr\\_023\\_07.pdf](http://www.ccpr.ucla.edu/ccprwps/series/ccpr_023_07.pdf) (last accessed Sept. 7, 2007) (working paper).

<sup>24</sup> G.J. Gates, *Same-sex couples and the gay, lesbian, and bisexual population: new estimates from the American Community Survey* (2006), available at <http://www.law.ucla.edu/williamsinstitute/publications/SameSexCouplesandGLBpopACS.pdf> (last accessed Sept. 10, 2007).

<sup>25</sup> L.A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 *J. Marriage & Fam.* 880 (2004); 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*

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.<sup>26</sup> As one review of the literature on gay and lesbian couples observed, “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.”<sup>27</sup>

Based on the empirical research findings, the American Psychological Association has concluded that “[p]sychological research on

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201 (2000); *see generally* L.A. Kurdek, *What do we know about gay and lesbian couples?* 14 *Current Directions in Psychological Science* 251-254 (2005); L.A. Peplau & A.W. Fingerhut, *The close relationships of lesbians and gay men.* 58 *Ann. Review of Psych.* 405-24 (2007); L.A. Peplau & L.R. Spalding, *supra* note 21, 114.

<sup>26</sup> Peplau & Spalding, *supra* note 21, at 114 (“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, *supra* note 25; 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>27</sup> L.A. Peplau, *Lesbian and Gay Relationships, in Homosexuality: Implications for Public Policy* 195 (J.C. Gonsiorek & J.D. Weinrich eds., 1991). 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). Present day research reaches the same conclusion. L.A. Kurdek, *Gay and Lesbian Cohabiting Couples, supra* note 25 (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, supra* note 25 (same).

relationships and couples provides no evidence to justify discrimination against same-sex couples.”<sup>28</sup>

**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 disruption and the breakdowns of norms.<sup>29</sup> Expanding on this notion, twentieth-century sociologists characterized marriage as “a social arrangement that creates for the individual the sort of order in which he can experience his life as making sense”<sup>30</sup> and suggested that “in our society the role that most frequently provides a strong positive sense of identity, self-worth, and mastery is marriage.”<sup>31</sup> Although it is difficult to quantify how the meaning of life changes for individuals once they are married, empirical research demonstrates that marriage has distinct benefits that

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<sup>28</sup> Am. Psychol. Ass’n, *Resolution on Sexual Orientation and Marriage* (2004) (reproduced in Appendix to this brief).

<sup>29</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>30</sup> P. Berger & H. Kellner, *Marriage and the Construction of Reality: An Exercise In the Microsociology of Knowledge*, 46 *Diogenes* 1 (1964).

<sup>31</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).

extend beyond the material necessities of life.<sup>32</sup> 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 systematically 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 their scientific and clinical

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<sup>32</sup> 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”); Gove et al., *supra* note 31, at 5 (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 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).

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 marriage would have on that segment of the sexual minority population that would choose to marry if allowed to do so.<sup>33</sup> *Amici* believe that the potential benefits of marriage for gay men and lesbians in same-sex couples are similar to those that have been documented for heterosexuals.

Married men and women generally experience better physical and mental health than their unmarried counterparts.<sup>34</sup> These health benefits do not appear to result simply from being in an intimate relationship because

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<sup>33</sup> Researchers recognize that comparisons between married and unmarried individuals in heterosexual couples are complicated by the possibility that observed differences might be due to self-selection. People who choose to marry may differ in important ways from those who do not choose to marry (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., Gove et al., *supra* note 31 at 10; 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.

<sup>34</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).

most (although not all) studies have found that married individuals generally manifest greater well-being than comparable individuals in heterosexual unmarried cohabiting couples.<sup>35</sup> The health benefits of marriage may be due partly to married couples enjoying greater economic and financial security than unmarried individuals.<sup>36</sup> 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 effects.<sup>37</sup> Nevertheless, married couples who are satisfied with their relationships

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<sup>35</sup> See *supra* note 32; see also S.L. Brown, *The Effect of Union Type on Psychological Well-Being: Depression Among Cohabitators 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 unmarried, cohabiting heterosexual couples).

<sup>36</sup> 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); Stack & Eshleman, *supra* note 32; Brown, *supra* note 35; 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).

<sup>37</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).

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 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.<sup>38</sup> In the absence of adequate rewards, the existence of barriers alone is not sufficient to 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.<sup>39</sup> 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,

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<sup>38</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>39</sup> See, e.g., D. Previti & P.R. Amato, *Why Stay Married? Rewards, Barriers, and Marital Stability*, 65 *J. Marriage & Fam.* 561 (2003).



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.<sup>40</sup>

Same-sex relationships are held together by many of the same *attracting* forces as heterosexual couples; but marriage also provides heterosexual couples with institutionalized *barriers* to relationship dissolution that same-sex couples do not enjoy.<sup>41</sup> Even in California, where couples seeking to dissolve a domestic partnership must do so by petitioning the Superior Court, same-sex couples most likely do not experience many of the same social barriers to relationship dissolution that are faced by married heterosexual couples. For example, although data are lacking in this area, it appears that social norms do not discourage the dissolution of a domestic partnership in the same way that they discourage marital divorce. In 2004, for example, when a new law expanded the benefits and obligations accorded to California's domestic partners, the California Secretary of State sent a letter to registered domestic partners,

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<sup>40</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>41</sup> 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 Their Predictors: Longitudinal Evidence from Heterosexual Married, Gay Cohabiting, and Lesbian Cohabiting Couples*, 60 J. Marriage & Fam. 553 (1998).

warning them to consider the possible desirability of legally dissolving their partnership before the new statute took effect. It is difficult to imagine a parallel situation in which married couples would be encouraged to consider obtaining a divorce, suggesting that California domestic partnerships are not viewed as equivalent to marriage in terms of barriers to their dissolution.<sup>42</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. Given this fact, plus the legal and prejudicial obstacles that same-sex partners face, the prevalence and durability of same-sex relationships are striking.<sup>43</sup>

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<sup>42</sup> Rona Marech, *Gays Cautious About New Partners Law; Some Opt Out*, San Francisco Chron., Sept. 20, 2004, available at <http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2004/09/20/MNGSL8ROMN1.DTL> (last accessed Sept. 10, 2007).

<sup>43</sup> No scientific evidence exists suggesting any causal relationship or correlation between recognition of marriage rights for same-sex couples and the prevalence of heterosexual marriage. *Amici* are aware that certain non-scientific advocacy groups have cited articles published by Stanley Kurtz in popular magazines to argue that recognition of marriage rights for same-sex couples in Scandinavian countries has undermined *heterosexual* marriage. See, e.g., S. Kurtz, *The End of Marriage in Scandinavia*, Weekly Standard, Feb. 2, 2004. These articles fail to meet the criteria for scientific studies set forth in Part I of this brief. For a detailed refutation of Kurtz, see M.V.L. Badget, *Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage?*, 1 Sexuality Res. Soc. Pol'y 1 (2004).

#### **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.<sup>44</sup> 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. With regard to California specifically, the same Census data found that among the 92,100 California household heads who reported cohabiting with a same-sex partner, 33% of women and 20% of men had a son or daughter under 18 living in their home. These percentages correspond to approximately 9,724 gay fathers and 13,948 lesbian mothers who are head of Californian households, have at least one child under 18 living with them, and are cohabiting with a partner.<sup>45</sup> If one includes sexual minority parents not captured in the Census data, researchers estimate that considerably more --

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<sup>44</sup> Simmons & O'Connell, *supra* note 23 at Table 4. As noted *supra* note 23, these are the best estimates currently available but must be interpreted with caution.

<sup>45</sup> *Id.*

perhaps millions of American parents and several thousand Californian parents -- today identify themselves as gay, lesbian, or bisexual.<sup>46</sup>

Families comprising same-sex couples and their children have diverse origins and take a variety of forms. Whether the children were conceived in one partner's prior heterosexual relationship, through donor insemination, with the assistance of a surrogate mother, or were adopted, both members of the same-sex couple typically function as parents for the children, even if they are not legally recognized as such.<sup>47</sup>

**B. 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.**

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

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<sup>46</sup> 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).

<sup>47</sup> 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).

heterosexual parents, those assertions find no support in the scientific research literature.<sup>48</sup>

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 heterosexual parents generally indicates that – all else being equal – children do better with two parenting figures rather than just

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<sup>48</sup> 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, the psychologist *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); Perrin & Committee, *supra* note 46; C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052 (2000); N. Anderssen et al., *Outcomes for Children with Lesbian or Gay Parents*, 43 *Scand. J. Psychol.* 335 (2002); J. Pawelski et al., *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-being of Children*, 118 *Pediatrics* 349, 358-60 (2006), and recent empirical studies, e.g., J.L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, 75 *Child Dev.* 1886, 1895 (2004). As a recent article summarizes, “empirical research to date has consistently failed to find linkages between children’s well-being and the sexual orientation of their parents.” G.M. Herek, *Legal Recognition of Same-Sex Relationships in the United States: A Social Science Perspective*, 61 *Am. Psychol.* 607, 614 (2006).

one.<sup>49</sup> The specific research studies typically cited in this regard do not address parents' sexual orientation, however, and therefore do 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.<sup>50</sup>

Indeed, the scientific research that has directly compared outcomes for children with gay and lesbian parents with outcomes for children with heterosexual parents 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 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. Researchers have concluded that heterosexual and lesbian

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<sup>49</sup> See, e.g., S. McLanahan & G. Sandefur, *Growing Up With a Single Parent: What Hurts, What Helps* 39 (1994).

<sup>50</sup> 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 lesbigay-parent families have never been a comparison group in the family structure literature on which these authors rely.” Stacey & Biblarz, *supra* note 48, at 162 & n.2.

mothers do not differ in their parenting ability.<sup>51</sup> Relatively few studies have directly examined gay fathers, but those that exist find that gay men are similarly fit and able parents, as compared to heterosexual men.<sup>52</sup>

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<sup>51</sup> 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 co-mothers . . . 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.” Stacey & Biblarz, *supra* note 48 at 174. However, because such patterns have been observed in only a few studies amici note that such conclusions must be regarded as extremely tentative.

<sup>52</sup> Perrin & Committee, *supra* note 46 at 342 (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”); 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. of Family Social Work* 17-32 (2005) (examining gay and lesbian adoptive parents and their children, and finding that levels of family functioning were in the “average” or “strength” ranges on a standardized measure, and did not differ significantly between lesbian mothers and gay male fathers). In a separate study by the same research team, family functioning scores in these gay- and lesbian-parent families did not differ significantly from those of a comparison group of heterosexual adoptive

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”<sup>53</sup> 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.”<sup>54</sup> A comprehensive survey of peer-reviewed scientific studies in this area reported no differences between children raised by lesbians 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.<sup>55</sup>

Nor does empirical research support the misconception that having a homosexual parent has a deleterious effect on children’s *gender identity*

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parents, S. Erich, et al., *A comparative analysis of adoptive family functioning with gay, lesbian, and heterosexual parents and their children*, 1 J. of GLBT Family Studies 43-60 (2005).

<sup>53</sup> Patterson, *Family Relationships*, *supra* note 48 , at 1064.

<sup>54</sup> Stacey & Biblarz, *supra* note 48 at 176.

<sup>55</sup> *Id.* at 169, 171. For additional reviews of the research literature, *see* Patterson, *Family Relationships*, *supra* note 48 at 1058-63; Perrin & Committee, *supra* note 46; Perrin, *supra* note 51.



development.<sup>56</sup> 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 the other sex, or consistently engaged in cross-gender behavior.”<sup>57</sup>

Similarly, most published studies have not found reliable differences in *social gender role* conformity between the children of lesbian and heterosexual mothers.<sup>58</sup> Data have not been reported on the gender identity

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<sup>56</sup> As noted in Section II.A above, *gender identity* concerns the child’s psychological sense of *being* male or female.

<sup>57</sup> Perrin & Committee, *supra* note 46.

<sup>58</sup> As noted *supra* in Section II.A., *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*

development or gender role orientation of the sons and daughters of gay fathers.<sup>59</sup>

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*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 Patterson, *Family Relationships*, *supra* note 48.

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 may display less gender role conformity than children of heterosexual mothers. Stacey & Biblarz, *supra* note 48 at 168-70. 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 conformity to stereotypical gender roles could be shown to exist, many mental health professionals would consider them healthy in a world in which gender-based discrimination persists. Indeed, as a leading researcher and former 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).

<sup>59</sup> Empirical data on gay fathers are relatively sparse. For a review of the relevant studies, see Patterson, *Gay Fathers*, *supra* note 52. However, the available empirical data do not provide a basis for assuming that gay men are unsuited for parenthood. If gay parents (fathers or mothers) were inherently unfit, even small-scale studies with convenience samples would readily detect it. This has not been the case. Moreover, there is no theoretical reason to expect gay fathers to cause harm to their children: Being raised by a single father does not appear to be inherently more disadvantageous to children’s psychological well-being than being raised by a single mother. D.B. Downey et al., *Sex of parent and children’s well-being in single-parent households*, 60 *J. of Marriage and the Family* 878-

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. Currently, there is no scientific consensus about the specific factors that cause an individual to become heterosexual, homosexual, or bisexual — including possible biological, psychological, or social effects of the parents' sexual orientation.<sup>60</sup> 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.<sup>61</sup>

*Amici* emphasize that the abilities of gay and lesbian persons as parents and the positive outcomes for their children are *not* areas where

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893 (1998). Homosexuality – male or female – does not constitute a pathology or deficit, *see supra* note 7; and gay men do not pose a threat to children. *See Patterson, Gay Fathers, supra* note 52. Thus, although more research is needed, the available data place the burden of empirical proof on those who argue that having a gay father is harmful to children..

<sup>60</sup> 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 – heterosexuality, homosexuality, or bisexuality -- 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, supra* note 4 at 683.

<sup>61</sup> *See Patterson, Gay Fathers, supra* note 52 at 407-09; Patterson, *Family Relationships, supra* note 48 at 1059-60.

credible scientific researchers disagree.<sup>62</sup> 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

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<sup>62</sup> *Amici* are also aware that some non-scientific organizations have attempted to convince courts that there is an actual scientific dispute in this area by citing research suggesting deficits in either the children or parenting of gay and lesbian parents. These include an Australian study performed by S. Sarantakos and a research project by Paul Cameron. In *amici*'s judgment, the anomalous results reported by the Sarantakos study are unreliable and attributable to multiple methodological weaknesses, including confounding differences between the samples (e.g., most or all of the children being raised by gay and lesbian parents, but not the children being raised by heterosexual married parents, had experienced parental divorce, which is known to correlate with poor adjustment and academic performance. 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); S. Sarantakos, *Children in Three Contexts: Family, Education, and Social Development*, 21 *Children Australia* 23, 30 (1996). Similarly, Cameron's research does not satisfy the standards set out at the beginning of this brief; his key findings in this area have not been replicated, are contradicted by the reputable published research, and 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).

those of heterosexual parents to flourish.”<sup>63</sup> 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.”<sup>64</sup> Most recently, 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.”<sup>65</sup>

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.

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<sup>63</sup> Am. Psychol. Ass’n, *Resolution on Sexual Orientation, Parents, and Children* (2004) (emphasis added) (reproduced in Appendix to this brief).

<sup>64</sup> Nat’l Ass’n of Soc. Workers, *Policy Statement: Lesbian, Gay, and Bisexual Issues, in Social World Speaks* 193, 194 (1997).

<sup>65</sup> Am. Psychiatric Ass’n, *Position Statement: Support of Legal Recognition of Same-Sex Civil Marriage* (2005), available at [http://www.psych.org/edu/other\\_res/lib\\_archives/archives/200502.pdf](http://www.psych.org/edu/other_res/lib_archives/archives/200502.pdf).

**V. 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.B above, they also do not differ in the context they provide for rearing healthy and well-adjusted children. The State's concurrence with these conclusions is evidenced in its domestic partnership and second-parent adoption statutes. Thus, *amici* conclude that the reason for according same-sex relationships a different legal status than heterosexual relationships is ultimately the fact that the relationship is homosexual rather than heterosexual. This differentiation based on sexual orientation is an expression of stigma.

**A. Homosexuality Remains Stigmatized, and this Stigma Has Negative Consequences.**

“Stigma” refers to an enduring condition, status, or attribute that is negatively valued by society, that fundamentally defines a person’s social identity, and that consequently disadvantages and disempowers those who have it.<sup>66</sup> Social scientists have long recognized that stigma is not inherent in a particular trait or group membership; rather, society collectively

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<sup>66</sup> 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).

identifies particular characteristics and groups, and assigns negative meaning and value to some of them, thereby “constructing” stigma. Thus, a classic work in this area characterized stigma as “an undesired differentness.”<sup>67</sup> Exactly which differences are important, and which ones are undesired, are socially constructed and can change over time as social norms and mores change.

Social psychological research indicates that “differentness,” to the extent that it creates perceptions of ingroups and outgroups, is associated with biased perceptions and differential treatment of individuals according to whether they are considered “us” or “them.” People tend to hold positive feelings and display favoritism toward members of their own group, even in situations when group membership is based on completely arbitrary criteria, such as the flip of a coin.<sup>68</sup> To the extent that State policies differentiate majority and minority groups and accord them differing statuses, they highlight the perceived “differentness” of the minority and thereby promote

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<sup>67</sup> Goffman, *supra* note 66 at 5.

<sup>68</sup> P.G. Devine, *Prejudice and out-group perception*, in *Advanced social psychology* 467-524 (A. Tesser ed. 1995) (reviewing research on the psychological consequences of categorization of people into ingroups and outgroups); J.F. Dovidio & S.L. Gaertner, *Stereotypes and evaluative intergroup bias*, in *Affect, cognition, and stereotyping: Interactive processes in group perception* 167-93 (D.M. Mackie and D.L. Hamilton eds. 1993) (describing research showing that perceptions of others can be influenced even by subtle uses of terms such as “we” and “they.” For example, people had more positive expectations about interacting with others when the latter were referred to using ingroup terms (“we,” “us,” “ours”) than when outgroup terms (“they,” “them,” “theirs”) were used).

stigma.

Homosexuality remains stigmatized today in the United States and in California: Significant portions of the heterosexual public harbor negative feelings and hostile attitudes toward sexual minorities.<sup>69</sup>

Such stigma can be observed both in the institutions of society and among its individual members. In the former, stigma-derived differentials in status and power are legitimated and perpetuated in the form of *structural stigma*. As a product of sociopolitical forces, structural stigma “represents the policies of private and governmental institutions that restrict the opportunities of stigmatized groups.”<sup>70</sup> By legitimating and reinforcing the “undesired differentness” of sexual minorities and by according them inferior status relative to heterosexuals, structural stigma gives rise to individual acts against them, including ostracism, harassment, discrimination, and violence. Large numbers of lesbian, gay, and bisexual

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<sup>69</sup> See e.g., California Opinion Index, *Gay and lesbian rights issues*, San Francisco: Field Research Corporation, available at <http://field.com/fieldpollonline/subscribers/COI-06-Mar-Gay-Rights.pdf> (last accessed March 27, 2006); G.M. Herek, *Gender gaps in public opinion about lesbians and gay men*, 66 *Public Opinion Quarterly* 40-66 (2002); K. Sherrill & A.S. Yang, *From Outlaws to In-Laws: Anti-Gay Attitudes Thaw*, 11 *Pub. Persp.* 20 (2000) (noting that, despite growing tolerance, “gay people remain the most systematically and intensely disliked of all groups measured” in the ongoing American National Election Studies).

<sup>70</sup> P.W. Corrigan et al., *Structural stigma in state legislation*, 56 *Psychiatric Services* 557-63 (2005); see generally Link & Phelan, *supra* note 66 at 363-85.



people experience such acts of stigma because of their sexual orientation.<sup>71</sup>

Research indicates that experiencing stigma and discrimination is associated with heightened psychological distress among gay men and lesbians.<sup>72</sup> Being the target of extreme enactments of stigma, such as an antigay criminal assault, is accompanied by greater psychological distress than is experiencing a similar crime not based on one's sexual orientation.<sup>73</sup> Fear of being a target for stigma makes some gay and lesbian persons feel compelled to conceal or lie about their sexual orientation. As noted in

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<sup>71</sup> For example, a recent survey of a nationally representative sample of sexual minority adults found that 21% of the respondents reported having been the target of a physical assault or property crime because of their sexual orientation since age 18. Gay men were the most likely to report they had been the targets of such crimes; 38% had been the target of assault or property crime because of their sexual orientation. The same study found that 18% of gay men and 16% of lesbians reported they had experienced discrimination in housing or employment because of their sexual orientation. G.M. Herek, *Hate crimes and stigma-related experiences among sexual minority adults in the United States: Prevalence estimates from a national probability sample*, J. Interpersonal Violence, in press (2007) (available at [http://psychology.ucdavis.edu/rainbow/html/Herek\\_2007\\_JIV\\_preprint.pdf](http://psychology.ucdavis.edu/rainbow/html/Herek_2007_JIV_preprint.pdf)); see also 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* (2001).

<sup>72</sup> Meyer, *Prejudice*, *supra* note 18; see also Meyer, *Minority Stress*, *supra* note 18; Mays & Cochran, *supra* note 18 (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).

<sup>73</sup> Herek et al., *Psychological Sequelae*, *supra* note 71; see also L.D. Garnets et al., *Violence and Victimization of Lesbians and Gay Men: Mental Health Consequences*, 5 J. Interpersonal Violence 366 (1990).

Section II.B *supra*, 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 distress<sup>74</sup> and has negative implications for physical health.<sup>75</sup>

In addition, to the extent that the threat of being stigmatized 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,<sup>76</sup> is significantly lower among members of the majority group who knowingly have contact with minority group members.<sup>77</sup> Consistent with this general pattern, empirical research demonstrates that having personal contact with an openly gay person is one of the strongest and most consistent correlates of heterosexuals' tolerance and acceptance of gay

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<sup>74</sup> See *supra* note 12.

<sup>75</sup> See *supra* note 13.

<sup>76</sup> 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).

<sup>77</sup> A meta-analysis of more than 500 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.R. Tropp, *A meta-analytic test of intergroup contact theory*, 90 *J. of Personality and Soc. Psychol.* 751-83 (2006).

people. Anti-gay prejudice is significantly less common among members of the population who report having a close friend or family member who is gay or lesbian.<sup>78</sup> Indeed, an extensive analysis of empirical studies examining the association between prejudice and personal contact between a wide range of stigmatized and nonstigmatized groups found that the link is stronger for sexual minorities than for other types of groups, including those defined by race, ethnicity, and mental illness.<sup>79</sup> 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 the former's sexual orientation is known but has not been directly discussed.<sup>80</sup>

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<sup>78</sup> 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); C. Vonofakou et al., *Contact with out-group friends as a predictor of meta-attitudinal strength and accessibility of attitudes toward gay men*, 92 *J. of Personality and Soc. Psychol.* 804-20 (2007).

<sup>79</sup> Based on their meta-analysis, Pettigrew & Tropp reported that ". . . the magnitudes of the contact-prejudice effect sizes vary in relation to different target groups. The largest effects emerge for samples involving contact between heterosexuals and gay men and lesbians . . . . These effects are significantly larger than are those for the other samples combined . . . ." Pettigrew & Tropp, *supra* note 77, at 763 (statistics omitted).

<sup>80</sup> Herek & Capitanio, *supra* note 78 at 416.

**B. California's Prohibition on Marriage for Same-Sex Couples Reflects and Reinforces This Stigma.**

Just as sexual orientation is inherently about relationships, so is the stigma associated with homosexuality. Although sexual stigma is often enacted against individuals (e.g., through ostracism, discrimination, or violence), it is based on those individuals' relationships (actual, imagined, or desired) with others of their same sex. Sexual minority individuals are stigmatized not only because their private desires are directed at people of their same sex, but also because of the nature of their intimate relationships (i.e., because their sexual or romantic partner is of their same sex). Indeed, a person's homosexuality or bisexuality often becomes known to others only when she or he enters into a same-sex relationship, whether that relationship involves a single sexual act or a lifelong commitment to another person. Consistent with this observation, psychological research has shown that heterosexuals' reactions to same-sex couples are typically more negative than their reactions to heterosexual couples, and this bias is often outside their conscious awareness or control.<sup>81</sup>

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<sup>81</sup> N. Dasgupta & L. M. Rivera, *From automatic antigay prejudice to behavior: The moderating role of conscious beliefs about gender and behavioral control*, 91 *J. of Personality and Soc. Psychol.* 268-80 (2006); W.A. Jellison et al., *Implicit and explicit measures of sexual orientation attitudes: Ingroup preferences and related behaviors and beliefs among gay and straight men*, 30 *Personality and Soc. Psychol. Bulletin* 629-42 (2004); J.A. Tsang & W.C. Rowatt, *The relationship between religious orientation, right-wing authoritarianism, and implicit sexual prejudice*, 17 *Int. J. for the Psychol. of Religion* 99-120 (2007).

Because it restricts the opportunities of sexual minorities relative to heterosexuals, California's prohibition on marriage by same-sex couples is, by definition, an instance of structural stigma. It conveys the State's judgment that, in the realm of intimate relationships, a same-sex couple possesses an "undesired differentness" and is inherently less deserving of society's full recognition through the status of civil marriage than are heterosexual couples. This according of disadvantaged status to the members of one group relative to another is the crux of stigma.

The State's distinction between same-sex and different-sex couples is stigmatizing even when same-sex couples are granted some or all of the legal benefits and obligations conferred by marriage. Irrespective of such benefits, the "differentness" of domestic partnerships and civil unions is evident. Significant portions of the U.S. and California populations do not regard these institutions to be equivalent, as indicated by public opinion polls showing that a substantial proportion of the U.S. population supports civil unions or domestic partnerships but opposes marriage for same-sex couples.<sup>82</sup> Similar patterns have been documented in California.<sup>83</sup> In

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<sup>82</sup> See, e.g., Pew Research Center for the People and the Press, *Pragmatic Americans liberal and conservative on social issues*, (Aug. 3, 2006), available at <http://people-press.org/reports/pdf/283.pdf> (last accessed Aug. 8, 2006) (finding that, while 35% of respondents to a national survey favored allowing same-sex couples to marry, 54% favored allowing gay and lesbian couples to enter into legal agreements giving them many of the same rights as married couples).

addition, the events leading up to the case currently before the Court, as well as numerous anecdotal reports of California same-sex couples who wish to be married despite the fact that they are registered domestic partners, indicate that many Californians in same-sex relationships perceive a difference between domestic partnerships and marriage.

By denying same-sex couples the right to marry, by creating a category of relationships that highlights their “differentness” vis-à-vis heterosexual couples, and by thus devaluing and delegitimizing the relationships that constitute the very core of a homosexual orientation, the State compounds and perpetuates the stigma historically attached to homosexuality. This stigma has pervasive effects not only on the members of same-sex couples who seek to be married, but on all homosexual persons, 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.

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<sup>83</sup> California Opinion Index, *Gay and lesbian rights issues*. San Francisco: Field Research Corporation, available at <http://field.com/fieldpollonline/subscribers/COI-06-Mar-Gay-Rights.pdf> (last accessed March 27, 2006) (finding that 32% of respondents in a 2006 statewide poll favored the idea of allowing civil unions but not marriage for same-sex couples, while another third favored marriage rights).

## **VI. 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 households, but it will benefit children being raised by same-sex couples.

As the State of California has already recognized through its provisions for second-parent adoptions, children benefit from having a clearly defined legal relationship with both of their *de facto* parents. 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.<sup>84</sup> In those situations, having a clearly defined legal relationship with the surviving parent can provide the child with as much continuity as possible in her or his relationship with that parent, and can minimize the likelihood of conflicting or competing claims by non-parents for the child's custody.

Moreover, as the State has implicitly recognized through its domestic partnership statutes, children benefit from the greater stability and security that is likely to characterize their parents' relationship when it is

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<sup>84</sup> 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); see also Amato, *supra* note 62.

legally recognized through marriage. Children obviously benefit to the extent that their parents are financially secure, physically and psychologically healthy, and not subjected to high levels of stress. They also benefit to the extent that their parents' relationship is stable and likely to endure.<sup>85</sup> 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. Thus, to the extent that legal recognition of their parents' relationship enhances the stability and security of that relationship, the children of same-sex couples can be expected to benefit from that recognition. *See supra* Section III.B.

While the existing options available to same-sex couples in California have certainly been beneficial to their children, such children would receive at least two important additional benefits if their parents are

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<sup>85</sup> *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).



allowed to marry -- benefits already available to children of heterosexual parents. First, marriage will provide them with a legal relationship with both of their *de facto* parents, even in families that lack the means or wherewithal to complete a second-parent adoption.

Second, allowing their parents to marry is likely to reduce the stigma currently associated with those children's status. People who are associated with stigmatized individuals often experience a similar devaluing, a phenomenon referred to as a courtesy stigma,<sup>86</sup> or stigma by association.<sup>87</sup> The children of same-sex domestic partners may experience such stigma by association as a result of the "undesired differentness" created by the existence of separate statuses for married parents and parents who are domestic partners. Contexts in which a child's parents and their marital status are salient (e.g., the school setting) are likely to make the differentness of domestic partners especially evident. This differentness is likely to lead to differential treatment as a result of teachers, administrators, and other children according preferential treatment to their own ingroup, i.e., the children of married parents. Thus, children of unmarried parents may experience teasing at the hands of other children or may find that they

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<sup>86</sup> Goffman, *supra* note 66.

<sup>87</sup> See e.g., S.L. Neuberg et. al., *When we observe stigmatized and "normal" individuals interacting: Stigma by association*, 20 *Personality and Social Psychology Bulletin* 196-209 (1994) (finding that male research participants denigrated another man if they believed he was a heterosexual conversing with a gay male friend, than if they believed the same man was a heterosexual conversing with a heterosexual male friend).

are excluded from play groups. Teachers and other adults may exhibit biases that favor the children of married parents over those with unmarried parents. As noted above,<sup>88</sup> children of lesbians have *not* been found to differ from the children of heterosexual parents in the quality of their peer relationships.<sup>89</sup> However, lesbian and gay parents and their children are generally aware of the potential for stigma and many take specific steps to avoid it.<sup>90</sup> Thus, the threat of stigma represents a burden with which families headed by same-sex couples must cope and it is reasonable to predict that children will benefit by having even the threat of such stigma removed from their lives.

## 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.

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<sup>88</sup> See *supra* note 48.

<sup>89</sup> Stacey & Biblarz, *supra* note 48, at 168 (Table 1), 171; see also Patterson, *Family Relationships*, *supra* note 48, at 1060 (“Research has consistently found that children of lesbian mothers report normal peer relations and that adult observers agree with this judgment.”).

<sup>90</sup> 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); Patterson, *Gay Fathers*, *supra* note 52; F.L. Tasker & S. Golombok, *Growing Up in a Lesbian Family: Effects on Child Development* 78 (1997).

Respectfully Submitted,

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief was prepared in compliance with Rule 8.204 of the California Rules of Court. The brief was prepared with 13 point font. The brief, excluding the required tables, attachment, and this certificate, is 13,518 words long.

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Anjan Choudhury