

No. 12-307

In The
Supreme Court of the United States

UNITED STATES OF AMERICA, *Petitioner*,

v.

EDITH SCHLAIN WINDSOR, IN HER CAPACITY AS EXECUTOR
OF THE ESTATE OF THEA CLARA SPYER, *ET AL.*,
Respondents.

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

**BRIEF OF THE AMERICAN PSYCHOLOGICAL
ASSOCIATION, THE AMERICAN ACADEMY OF
PEDIATRICS, THE AMERICAN MEDICAL
ASSOCIATION, THE AMERICAN PSYCHIATRIC
ASSOCIATION, THE AMERICAN PSYCHOANALYTIC
ASSOCIATION, THE CALIFORNIA MEDICAL
ASSOCIATION, THE NATIONAL ASSOCIATION OF
SOCIAL WORKERS AND ITS NEW YORK CITY AND
STATE CHAPTERS, AND THE NEW YORK STATE
PSYCHOLOGICAL ASSOCIATION AS *AMICI CURIAE*
ON THE MERITS IN SUPPORT OF AFFIRMANCE**

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INTEREST OF *AMICI CURIAE*¹

The American Psychological Association, the world's largest professional association of psychologists, is a scientific and educational organization dedicated to increasing and disseminating psychological knowledge. The Association has adopted multiple research-based policy statements supporting the rights of gay and lesbian people, including a 2011 policy statement supporting full marriage equality and calling on the federal government "to extend full recognition to legally married same-sex couples, and to accord them all of the rights, benefits, and responsibilities that it provides to legally married different-sex couples." Am. Psychol. Ass'n, *Resolution on Marriage Equality For Same-Sex Couples* (2011), available at <http://www.apa.org/about/policy/same-sex.pdf>.

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

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

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

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

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

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

The California Medical Association (CMA) is a non-profit association of approximately 37,000 California physicians working to promote the science and art of

medicine, the care and well-being of patients, the protection of public health, and the betterment of the medical profession. Toward such ends, the CMA supports efforts to reduce health care disparities among members of same-sex households, including measures to afford such households equal rights and privileges to health care, health insurance, and survivor benefits.

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

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

All parties have consented to the filing of this brief.

INTRODUCTION AND SUMMARY

The floor debate on the Defense of Marriage Act (“DOMA”) evidences a generalized congressional disapproval of homosexuality. 142 Cong. Rec. H7444 (daily ed. July 11, 1996) (statement of Rep. Coburn); 142 Cong. Rec. H7486 (daily ed. July 12, 1996) (statement of Rep. Buyer); *id.* at H7494 (statement of Rep. Smith) (“‘immoral,’ ‘depraved,’ ‘unnatural,’ ‘based on perversion,’ and ‘an attack upon God’s

principles.”). Other statements in the debate reflect a belief that permitting homosexuals to marry would harm the institution of marriage and be inimical to the welfare of children of same sex couples. For example, one Representative said that it is a “fundamental, unavoidable fact of our human nature” that heterosexual marriage is “the ideal structure within which” to raise children. *Defense of Marriage Act: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 104th Cong. 1 (1996) (statement of Rep. Canady, Chairman, H. Subcomm. on the Constitution). Another said that heterosexual marriage is “uniquely capable of * * * nurturing children.” *Id.* at 1-2. Another said that the bill will deter “erosion of the family and the erosion of marriage because marriage is the bond that keeps the family together.” *Id.* at 33 (statement of Rep. Sensenbrenner, Member, H. Comm. on the Judiciary). And yet another, quoting the Declaration of Independence, said that the bill reflects “truths that are self-evident.” *Id.* at 36 (statement of Rep. Inglis, Member, H. Subcomm. on the Constitution).

These statements stand in sharp contrast to what scientific evidence shows about homosexuality, same-sex couples, and their families. Scientific evidence strongly supports the conclusion that homosexuality is a normal expression of human sexuality; that most gay, lesbian, and bisexual adults do not experience their sexual orientation as a choice; that gay and lesbian people form stable, committed relationships that are equivalent to heterosexual relationships in essential respects; and that same-sex couples are no less fit than heterosexual parents to raise children and their children are no less psychologically healthy

and well-adjusted than children of heterosexual parents. In short, the claim that legal recognition of marriage for same-sex couples undermines the institution of marriage and harms their children is inconsistent with the scientific evidence.

The body of research presented below demonstrates that discrimination by the federal government between married same-sex couples and married heterosexual couples in awarding benefits unfairly stigmatizes same-sex couples. The research also contravenes the stereotype-based rationales that were advanced to support passage of DOMA and that the Equal Protection component of the Due Process Clause was designed to prohibit.

ARGUMENT

I. The Scientific Evidence Presented in This Brief.

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

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

Scientific research is a cumulative process and no empirical study is perfect in its design and execution.

Even well-executed studies may be limited in their implications and the generalizability of their findings.² Accordingly, *Amici* base their conclusions as much as possible on general patterns rather than any single study.

All scientific studies can be constructively criticized, and scientists continually try to identify ways to improve and refine their own work and that of their colleagues. Thus, many studies cited herein discuss their limitations and provide suggestions for further research. This is consistent with the

² For example, to confidently describe the prevalence or frequency with which a phenomenon occurs in the population at large, it is necessary to collect data from a “probability” or “representative” sample. A probability sample consists of individuals selected from the study population through a process that gives each member of the population a calculable chance of being included. Nonprobability samples do not give all members of the study population a chance of being included—such as, for example, a study of voters that relies on volunteers who phone in to a telephone number advertised in a newspaper. Case studies and nonprobability samples can be used to document the existence of a phenomenon in the study population. For studies of groups that constitute a relatively small proportion of the population, obtaining a probability sample can be extremely expensive or otherwise not feasible. Consequently, researchers studying such groups may rely on nonprobability samples. If they wish to compare members of the smaller group with members of the majority group (*e.g.*, lesbian mothers with heterosexual mothers), they may recruit nonprobability samples of both groups that are matched on relevant characteristics (*e.g.*, educational level, age, income). Regardless of the sampling method used, greater confidence can be placed in findings that have been replicated by others using different samples.

scientific method and does not impeach the overall conclusions.

Most of the studies and literature reviews cited herein have been peer-reviewed and published in reputable academic journals. In addition, other academic books, book chapters, and technical reports, which typically are not subject to the same peer-review standards as journal articles, are included when they report research employing rigorous methods, are authored by well-established researchers, and accurately reflect professional consensus about the current state of knowledge. *Amici* have made a good faith effort to include all relevant studies and have not excluded any study because of its findings.

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

Sexual orientation refers to an enduring disposition to experience sexual, affectional, and/or romantic attractions to one or both sexes. It also encompasses an individual's sense of personal and social identity based on those attractions, on behaviors expressing those attractions, and on membership in a community of others who share those attractions and behaviors.³ Although sexual orientation ranges

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

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

Although homosexuality was classified as a mental disorder when the American Psychiatric Association published the first Diagnostic and Statistical Manual of Mental Disorders in 1952, only five years later a study sponsored by the National Institute of Mental Health found no evidence to support the classification.⁴ On the basis of that study and others demonstrating that the original classification reflected social stigma rather than science,⁵ the American Psychiatric Association declassified homosexuality as a mental disorder in 1973. In 1974, the American Psychological Association adopted a policy reflecting the same conclusion. For decades, then, the consensus of mental health professionals and researchers has been that homosexuality and bisexuality are normal

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

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

expressions of human sexuality and pose no inherent obstacle to leading a happy, healthy, and productive life, and that gay and lesbian people function well in the full array of social institutions and interpersonal relationships.⁶

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

Several *amici* supporting DOMA challenge the conclusion that for most people sexual orientation is not a matter of choice, but they offer no credible scientific support for their position.⁸ Moreover,

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

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

⁸ See *Amicus Br.* of Liberty Counsel, at 30-31; *Amicus Br.* of David Boyle, at 35; *Amicus Br.* of Parents and Friends of Ex-Gays and Gays, *passim*; *Amicus Br.* of Family Research Council, at 22-23; *Amicus Br.* of Dr. Paul McHugh, at 14-28.

although some groups and individuals have offered clinical interventions that purport to change sexual orientation from homosexual to heterosexual—sometimes called “conversion” therapies—these interventions have not been shown to be effective or safe. A review of the scientific literature by an American Psychological Association task force concluded that sexual orientation change efforts are unlikely to succeed and indeed can be harmful.⁹

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

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

¹⁰ See Am. Psychol. Ass’n, *Resolution*, *supra* note 9; Am. Psychiatric Ass’n, Position Statement: *Psychiatric Treatment and Sexual Orientation* (1998), available at <http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/199820.aspx>; Am. Ass’n for Marriage & Fam. Therapy, *Reparative/Conversion Therapy* (2009), available at http://www.aamft.org/iMIS15/AAMFT/MFT_Resources/Content/Resources/Position_On_Couples.aspx; Am. Med. Ass’n, Policy H-160.991, *Health Care Needs of the Homosexual Population*, available at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page>; Nat’l Ass’n of Soc. Workers, Position Statement: *“Reparative” and “Conversion” Therapies for Lesbians and Gay Men* (2000), available at <http://www.naswdc>.

III. Sexual Orientation and Relationships.

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

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

org/diversity/lgb/reparative.asp; Am. Psychoanalytic Ass’n, Position Statement: *Attempts to Change Sexual Orientation, Gender Identity, or Gender Expression* (2012), available at http://www.apsa.org/about_apsaa/position_statements/attempts_to_change_sexual_orientation.aspx; B.L. Frankowski, *Sexual Orientation and Adolescents*, 113 *Pediatrics* 1827 (2004).

¹¹ In a 2005 U.S. national probability sample of 662 self-identified lesbian, gay, and bisexual adults, of those who were currently in a relationship, 78% of the gay men and 87% of the lesbian women said they would marry their partner if it was legal, and, of those not currently in a relationship, 34% of gay

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

men and 46% of lesbian women said that they would like to marry someday. Herek et al., *Demographic*, *supra* note 7. See also Henry J. Kaiser Fam. Found., *Inside-OUT: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation* 31 (2001), available at <http://www.kff.org/kaiserpolls/upload/New-Surveys-on-Experiences-of-Lesbians-Gays-and-Bisexuals-and-the-Public-s-Views-Related-to-Sexual-Orientation-Report.pdf>; A.R. D'Augelli et al., *Lesbian and Gay Youth's Aspirations for Marriage and Raising Children*, 1 J. LGBT Issues Counseling 77 (2007).

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

¹³ Herek et al., *Demographic*, *supra* note 7; T.C. Mills et al., *Health-Related Characteristics of Men Who Have Sex with Men: A Comparison of Those Living in "Gay Ghettos" with Those Living Elsewhere*, 91 *Am. J. Pub. Health* 980, 982 (Table 1) (2001); S.D. Cochran et al., *Prevalence of Mental Disorders, Psychological Distress, and Mental Services Use Among Lesbian, Gay, and Bisexual Adults in the United States*, 71 *J. Consulting & Clinical Psychol.* 53, 56 (2003); Henry J. Kaiser Fam. Found., *supra* note 11.

Data from the 2010 US Census show that same-sex couples headed more than 600,000 US households and more than 45,000 in New York.¹⁴

Empirical research demonstrates that the psychological and social aspects of committed relationships between same-sex partners largely resemble those of heterosexual partnerships. Like heterosexual couples, same-sex couples form deep emotional attachments and commitments. Heterosexual and same-sex couples alike face similar issues concerning intimacy, love, equity, loyalty, and stability, and they go through similar processes to address those issues.¹⁵ Empirical research also shows that gay and lesbian couples have levels of relationship satisfaction similar to or higher than those of heterosexual couples.¹⁶

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

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

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

IV. The Children of Same-Sex Couples.

A. Many Same-Sex Couples Are Raising Children.

The 2010 Census reported 111,033 households headed by same-sex couples with their own children under 18 years. Among the more than 45,000 New York household heads who reported cohabiting with a same-sex partner, 8,025 had their own children under 18 living at home.¹⁷ The number of same-sex couple households reported by the Census is not an estimate of the total number of gay and lesbian parents.¹⁸

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

Hundreds of studies over the past 30 years have elucidated the factors that are associated with healthy adjustment among children and adolescents—*i.e.*, the influences that allow children

Developmental Psychol. 102 (2008); Kurdek, *Change in Relationship Quality*, *supra* note 15; L.A. Peplau & K.P. Beals, *The Family Lives of Lesbians and Gay Men*, in *Handbook of Family Communication* 233, 236 (A.L. Vangelisti ed., 2004).

¹⁷ 2010 Census and 2010 American Community Survey, *supra* note 14.

¹⁸ The Census does not directly assess participants' sexual orientation. Thus, the Census data only include gay and lesbian parents who were co-habiting with a same sex partner and who were willing to report their relationship status to the Census. 2010 Census and 2010 American Community Survey, *supra* note 14.

and adolescents to function well in their daily lives.¹⁹ The three most important are (1) the qualities of parent-child relationships, (2) the qualities of relationships among significant adults (*e.g.*, parents) in children's or adolescents' lives, and (3) available economic and other resources. As one noted authority in developmental psychology explained:

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

¹⁹ S. Golombok, Parenting: What Really Counts? (2000); M.E. Lamb & C. Lewis, *The Role of Parent-Child Relationships in Child Development*, in *Developmental Science: An Advanced Textbook* 429-68 (M.H. Bornstein & M.E. Lamb eds., 5th ed. 2005); C.J. Patterson, & P.D. Hastings, *Socialization in the Context of Family Diversity*, in *Handbook of Socialization: Theory and Research* 328-51 (J.E. Grusec & P.D. Hastings eds., 2007).

because the same factors explain child adjustment regardless of family structure.²⁰

In short, many years of research have shown that, when parent-child and parent-adolescent relationships are characterized by warmth, love and affection, emotional commitment, reliability, and consistency, as well as by appropriate guidance and limit-setting, children and adolescents are likely to show more positive adjustment than when these qualities are absent. Children whose parents provide loving guidance in the context of secure home environments are more likely to flourish, regardless of their parents' sexual orientation.²¹

Research also shows that the quality of relationships among significant adults in a child's life is associated with adjustment. When parental relationships are characterized by love, warmth, cooperation, security, and mutual support, children are more likely to show positive adjustment. In contrast, when parental relationships are conflict-ridden and acrimonious, adjustment is likely to be less favorable. Family instability, household disruption, and parental divorce are often associated with poorer adjustment and problems that can last into adulthood.²² These correlations are just as true

²⁰ M.E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children's Adjustment*, 16 *Applied Developmental Sci.* 98 (2012).

²¹ Lamb & Lewis, *supra* note 19; Patterson & Hastings, *supra* note 19.

²² 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).

for children reared by same-sex couples as for children reared by heterosexual couples.²³

Research with children reared by heterosexual parents indicates that they do better with two parenting figures than with one.²⁴ This finding, however, has not been tested directly with children reared by same-sex couples versus a single lesbian, gay, or bisexual parent.

Finally, researchers acknowledge the association between child adjustment and access to economic and other resources. Children with access to sufficient economic resources are likely to live in safer neighborhoods, breathe cleaner air, and eat more nutritious food. They are also more likely to have opportunities to participate in positive after-school activities and hence to have access to social and emotional resources from teammates, coaches, youth leaders, and others. These children are more

²³ The Family Context of Parenting in Children's Adaptation to Elementary School (P.A. Cowan et al. eds., 2005); R.W. Chan et al., *Psychosocial Adjustment Among Children Conceived Via Donor Insemination By Lesbian and Heterosexual Mothers*, 69 *Child Dev.* 443 (1998); E.M. Cummings et al., *Children's Responses to Everyday Marital Conflict Tactics in the Home*, 74 *Child Dev.* 1918 (2003); E.M. Cummings et al., *Everyday Marital Conflict and Child Aggression*, 32 *J. Abnormal Child Psychol.* 191 (2004); Golombok, *supra* note 19; D. Potter, *Same-Sex Parent Families and Children's Academic Achievement*, 74 *J. Marriage & Fam.* 556 (2012); M.J. Rosenfeld, *Nontraditional Families and Childhood Progress Through School*, 47 *Demography* 755 (2010).

²⁴ See, e.g., S. McLanahan & G. Sandefur, *Growing Up With a Single Parent: What Hurts, What Helps* 39 (1994).

likely to show positive adjustment, regardless of their parents' sexual orientation.²⁵

In short, the very same factors that are linked to positive development of children with heterosexual parents are also linked to positive development of children with lesbian and gay parents.²⁶

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

Assertions that heterosexual couples are better parents than same-sex couples, or that the children of lesbian or gay parents fare worse than children of heterosexual parents, are not supported by the cumulative scientific research in this area.²⁷ Rather,

²⁵ Neighborhood Poverty: Context and Consequences for Children (J. Brooks-Gunn et al. eds., 1997); Consequences of Growing Up Poor (G.J. Duncan & J. Brooks-Gunn eds., 1997); Patterson & Hastings, *supra* note 19; Potter, *supra* note 23; Rosenfeld, *supra* note 23.

²⁶ See Chan et al., *supra* note 23; C.J. Patterson, *Lesbian and Gay Parents and Their Children: A Social Science Perspective*, in *Contemporary Perspectives on Lesbian, Gay, and Bisexual Identities*, Nebraska Symposium on Motivation 141 (D.A. Hope ed., 2009); J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159 (2001); C.J. Telingator & C.J. Patterson, *Children and Adolescents of Lesbian and Gay Parents*, 47 *J. Am. Acad. Child & Adolescent Psychiatry* 1364 (2008); J.L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents With Same-Sex Parents*, 75 *Child Dev.* 1886 (2004).

²⁷ The research on gay, lesbian, and bisexual parents includes dozens of empirical studies. Their findings are summarized in

the vast majority of scientific studies that have directly compared gay and lesbian parents with heterosexual parents has consistently shown that the former are as fit and capable parents as the latter and that their children are as psychologically healthy and well adjusted. More research has focused on lesbian mothers than on gay fathers,²⁸ but the

reviews of empirical literature published in respected, peer-reviewed journals and academic books. Recent reviews include T.J. Biblarz & J. Stacey, *How Does the Gender of Parents Matter?*, 72 *J. Marriage & Fam.* 3 (2010); A.E. Goldberg, *Lesbian and Gay Parents and Their Children: Research on the Family Life Cycle* (2010); C.J. Patterson, *Family Lives of Lesbian and Gay Adults*, in *Handbook of Marriage and the Family* 659, 668-71 (G.W. Peterson & K.R. Bush eds., 3d ed. 2013); C.J. Patterson, *Children of Lesbian and Gay Parents: Psychology, Law, and Policy*, 64 *Am. Psychologist* 727 (2009). For earlier reviews, see, e.g., Stacey & Biblarz, *supra* note 26; E.C. Perrin & Comm. on Psychosocial Aspects of Child & Fam. Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341 (2002); C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052 (2000); N. Anderssen et al., *Outcomes for Children with Lesbian or Gay Parents: A Review of Studies from 1978 to 2000*, 43 *Scand. J. Psychol.* 335 (2002).

²⁸ See, e.g., H. Bos & T.G.M. Sandfort, *Children's Gender Identity in Lesbian and Heterosexual Two-Parent Families*, 62 *Sex Roles* 114 (2010); R.H. Farr et al., *Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?*, 14 *Applied Developmental Sci.* 164, 176 (2010); S. Golombok et al., *Children with Lesbian Parents: A Community Study*, 39 *Developmental Psychol.* 20 (2003); I. Rivers et al., *Victimization, Social Support, and Psychosocial Functioning Among Children of Same-Sex and Opposite-Sex Couples in the United Kingdom*, 44 *Developmental Psychol.* 127 (2008); J.L. Wainright & C.J. Patterson, *Delinquency*,

published studies that have included gay fathers also find that they are as fit and able parents as heterosexual fathers.²⁹

A 2001 comprehensive survey of peer-reviewed scientific studies concluded that the evidence from empirical research “shows that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships or on children’s mental health or social adjustment.”³⁰ A more recent review by the same authors noted “the ubiquitous findings of no differences” in comparisons of the families of heterosexual couples to those of lesbian or gay couples, but focused on the relatively small number of differences that have been reported, concluding that overall the differences were positive for the families of same-sex couples at least as often as they were for the families of heterosexual couples.³¹

Victimization, and Substance Use Among Adolescents With Female Same-Sex Parents, 20 *J. Fam. Psychol.* 526 (2006).

²⁹ Farr et al., *supra* note 28, at 176; *see also* S. Erich et al., *Gay and Lesbian Adoptive Families: An Exploratory Study of Family Functioning, Adoptive Child’s Behavior, and Familial Support Networks*, 9 *J. Fam. Soc. Work* 17 (2005); S. Erich et al., *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, 1 *J. GLBT Fam. Stud.* 43 (2005). For a review of earlier research, see C.J. Patterson, *Gay Fathers, in* *The Role of the Father in Child Development* 397, 413 (M.E. Lamb ed., 4th ed. 2004).

³⁰ Stacey & Biblarz, *supra* note 26, at 176.

³¹ Biblarz & Stacey, *supra* note 27, at 13; *see also* E.L. Sutfin et al., *How Lesbian and Heterosexual Parents Convey Attitudes*

These conclusions are bolstered by three recent studies using national probability (i.e., representative) samples. One used data from the National Longitudinal Study of Adolescent Health to compare adolescents parented by a female couple with adolescents parented by a heterosexual couple. The researchers found no differences between the two groups of adolescents on measures of a large number of key variables, including psychosocial adjustment, school outcomes, substance use, delinquency, victimization experiences, and relationships with peers.³²

Another study used data from the Early Childhood Longitudinal Study – Kindergarten cohort (ECLS-K) to compare the academic achievement of children growing up in various family structures. When the effects of significant family transitions (e.g., related to parental divorce, separation, or death) were taken into account, children in same-sex family structures showed slightly higher achievement levels than children living with their biological mother and

about Gender to their Children: The Role of Gendered Environments, 58 *Sex Roles* 501 (2008) (finding that the children of lesbian mothers were more tolerant of other children engaging in behaviors that violate traditional gender norms). Similarly, a recent report by the National Academy of Sciences' Institute of Medicine concluded that "[s]tudies show that [the children of lesbian and gay parents] are well adjusted and developmentally similar to the children of different-sex parents." Institute of Medicine, *supra* note 3, at 234.

³² J.L. Wainright & C.J. Patterson, *Peer Relations Among Adolescents With Female Same-Sex Parents*, 44 *Developmental Psychol.* 117 (2008); Wainright & Patterson, *supra* note 28; Wainright et al., *supra* note 26.

father (although this difference was not statistically significant).³³

In the third study, US Census data were used to compare educational outcomes among children residing in homes with various types of family structure. When differences in household income and parental educational levels (SES) were statistically controlled, the differences in school progress between children of married heterosexual couples and same-sex cohabiting couples were not statistically significant. As the study's author concluded, "[t]he analysis in this article, the first to use large-sample nationally representative data, shows that children raised by same-sex couples have no fundamental deficits in making normal progress through school."³⁴

Studies also show that children with gay or lesbian parents do not differ from the children of heterosexual parents in their *gender identity* (one's psychological sense of being male or female).³⁵

Similarly, although some studies have found that children of lesbian mothers or children raised in same-sex parent families were more accepting of

³³ Potter, *supra* note 23. Data about parents' sexual orientation were not collected in the study. Consequently, parental sexual orientation and relationship were inferred from a series of questions about the household composition and caretakers.

³⁴ Rosenfeld, *supra* note 23.

³⁵ *E.g.*, Bos & Sandfort, *supra* note 28. For literature reviews, see Goldberg, *supra* note 27; Patterson, *Family Lives*, *supra* note 27; Perrin & Comm., *supra* note 27, at 342.

gender nonconformity in others³⁶ and less gender-stereotyped or more flexible in their patterns of gender-role behaviors (*e.g.*, during play³⁷) than those of children in heterosexual parent families, most published studies have found no reliable differences between the children of lesbian and heterosexual mothers in *social gender role* conformity (adherence to cultural norms defining feminine and masculine behavior).³⁸ A recent study also found that adoptive children of gay fathers showed typical gender role development, as did those of lesbian mothers and those of heterosexual mothers and fathers.³⁹

The available evidence also suggests that parental sexual orientation has no effect on child sexual orientation⁴⁰ and that the vast majority of gay and

³⁶ Sutfin et al., *supra* note 31; M. Fulcher et al., *Individual Differences in Gender Development: Associations with Parental Sexual Orientation, Attitudes, and Division of Labor*, 58 *Sex Roles* 330 (2008).

³⁷ A.E. Goldberg et al., *Gender-Typed Play Behavior in Early Childhood: Adopted Children with Lesbian, Gay, and Heterosexual Parents*, 67 *Sex Roles* 503 (2012); R. Green et al., *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 *Archives Sexual Behav.* 167 (1986). An earlier paper (M.E. Hotvedt & J.B. Mandel, *Children of Lesbian Mothers*, in *Homosexuality: Social, Psychological, and Biological Issues* 275 (W. Paul et al. eds., 1982)) reported data from the same study.

³⁸ Farr et al., *supra* note 28. For reviews of the literature, see Goldberg, *supra* note 27; Patterson, *Family Lives*, *supra* note 27.

³⁹ See Farr et al., *supra* note 28.

⁴⁰ Golombok et al., *supra* note 28; S. Golombok & F. Tasker, *Do Parents Influence the Sexual Orientation of Their Children?*

lesbian adults were raised by heterosexual parents and the vast majority of children raised by gay and lesbian parents grow up to be heterosexual.⁴¹

Amici emphasize that the abilities of gay and lesbian persons as parents and the positive outcomes for their children are *not* areas where credible scientific researchers disagree.⁴² Thus, after careful scrutiny of decades of research, the American Psychological Association concluded in 2004 that (a) “there is no scientific evidence that parenting effectiveness is related to parental sexual orientation: Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children” and (b) that

Findings from a Longitudinal Study of Lesbian Families, 32 *Developmental Psychol.* 3 (1996).

⁴¹ Goldberg, *supra* note 27; Patterson, *Family Lives*, *supra* note 27.

⁴² One unreplicated 1996 Australian study purports to show deficits in lesbian and gay parents and their children. See S. Sarantakos, *Children in Three Contexts: Family, Education and Social Development*, 21 *Child. Australia* 23 (1996). But the anomalous Sarantakos results are likely the result of multiple methodological problems, especially confounding the effects of parental sexual orientation with the effects of parental divorce, which is known to correlate with poor adjustment and academic performance. See, e.g., Amato, *supra* note 22. Some commentators have cited publications by Paul Cameron, but his work has been repeatedly discredited for bias and inaccuracy. See G.M. Herek, *Bad Science in the Service of Stigma: A Critique of the Cameron Group's Survey Studies*, in *Stigma and Sexual Orientation: Understanding Prejudice Against Lesbians, Gay Men, and Bisexuals* 223 (G.M. Herek ed., 1998); *Baker v. Wade*, 106 F.R.D. 526, 536 (N.D. Tex. 1985) (ruling that Cameron made “misrepresentations” to the court).

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

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

NASW has similarly determined that “[t]he most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to heterosexual parents and their children that were included in the studies.” Nat’l Ass’n of Soc. Workers, Policy Statement: *Lesbian, Gay, and Bisexual Issues, in*

Social Work Speaks 193, 194 (4th ed. 1997). *See also* Nat'l Ass'n of Soc. Workers, Policy Statement: *Family Planning and Reproductive Choice*, in Social Work Speaks 129, 132 (9th ed. 2012).

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

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

Finally, the American Medical Association likewise has adopted a policy supporting legislative and other reforms to allow adoption by same sex partners.⁴³

⁴³ *See* Am. Med. Ass’n, Policy H-60.940, *Partner Co-Adoption*, available at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page>.

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

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

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

Amici who challenge all empirical findings in this area because some studies used small nonprobability samples⁴⁴ ignore the fact that many findings from those studies have been replicated in national probability samples.⁴⁵ They also fail to acknowledge that studies with nonprobability samples can answer important scientific questions, especially when they include appropriate comparison groups.⁴⁶

⁴⁴ *E.g.*, *Amicus Br.* of Social Science Professors, at 13-21.

⁴⁵ Wainright & Patterson, *Delinquency*, *supra* note 28 (finding no differences due to parent sexual orientation between 44 adolescents raised by same-sex couples and 44 by heterosexual couples, all drawn from a national representative sample); Wainright & Patterson, *Peer Relations*, *supra* note 32 (same); Potter, *supra* note 23; Rosenfeld, *supra* note 23 (using US Census data).

⁴⁶ *See supra* note 2. One *amicus* disparages “nearly all previous studies” because they failed to include “a married biological

Moreover, *amici* do not claim the studies are invalid, only that their implications are limited to “children raised by highly educated and affluent middle to upper class white women.”⁴⁷ Even in those studies that are so limited, appropriate comparison across sexual orientation groups can test the claim that sexual orientation affects parenting, and the recent research on national probability samples reinforces these studies. *Amici* herein do not claim that all same-sex couples will be equally effective in raising children,⁴⁸ but rather that sexual orientation is irrelevant to parenting outcomes.⁴⁹

family control group.” *Amicus Br. of Social Science Professors*, at 25. But many studies have appropriately included such a group, and their findings are largely consistent with the overall patterns described herein. *See, e.g.*, Potter, *supra* note 23; Rosenfeld, *supra* note 23; Wainright & Patterson, *Peer Relations*, *supra* note 32; Wainright & Patterson, *Delinquency*, *supra* note 28; Wainright et al., *supra* note 26. Moreover, the correct comparison group depends on the nature of the study. For example, comparing children of married heterosexual couples to children of single lesbian mothers would conflate parent sexual orientation with number of parents. The appropriate comparison group in such studies is the children of single heterosexual mothers.

⁴⁷ *E.g.*, *Amicus Br. of Social Science Professors*, at 20.

⁴⁸ *E.g.*, factors such as access to economic resources affect child development outcomes (note 26 above).

⁴⁹ Several *amici* criticizing studies cited here rely on L. Marks, *Same-Sex Parenting and Children’s Outcomes: A Closer Examination of the American Psychological Association’s Brief on Lesbian and Gay Parenting*, 41 Soc. Sci. Res. 735 (2012). Marks opined that studies cited in an APA 2005 pamphlet (not a brief) allow no conclusions regarding lesbian and gay parenting. This wholesale rejection of an entire body of

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

Several *amici* base their challenge on a recent study (“the Regnerus study”) that compared child development outcomes across a range of family types, including two types that were characterized as “lesbian mother” and “gay father” families.⁵⁰ But the study’s design precludes any meaningful conclusions because of its overbroad definition of children raised by gay or lesbian parents and its conflation of family instability with any potential effects of parental sexual orientation.

Regnerus conducted an Internet survey to identify adults who reported believing that at some time in their childhood their mother or father “ever ha[d] a romantic relationship with someone of the same sex.”⁵¹ These individuals were placed into the categories of “LM” (Lesbian Mother) or “GF” (Gay Father). These labels are misleading, however, because no data were collected to verify (1) whether the parent actually had a homosexual orientation or self-identified as gay or lesbian, (2) whether the perceived romantic relationship ever in fact occurred,

research fails to recognize the realities of the nature of scientific knowledge as discussed above. Moreover, *Amici’s* conclusions drawn from those earlier studies are borne out by the research subsequent to 2005.

⁵⁰ M. Regnerus, *How Different are the Adult Children of Parents Who Have Same-Sex Relationships? Findings from the New Family Structures Study*, 41 Soc. Sci. Res. 752 (2012).

⁵¹ *Id.* at 756.

(3) whether the assumed relationship was continuous, episodic, or one-time only, or (4) whether the individual reporting the relationship was actually raised by a homosexual parent, much less a parent in a long-term relationship with a same-sex partner. Indeed, most participants in these groups spent very little, if any, time being raised by a “same-sex couple.”⁵²

Other participants were placed into six categories defined by the family structure in which they grew up—*e.g.*, continuously married biological parents, stepfamily, single parent. By contrast, the “Lesbian Mother” and “Gay Father” categories were not subdivided according to whether the children had experienced the divorce of their parents or other forms of household instability. Regnerus then reported that respondents in the “Lesbian Mother” and “Gay Father” groups displayed considerably more problems, especially when compared to respondents raised by their biological parents with no disruption in their home situation.

As noted earlier, family instability and parental divorce are often associated with poor adjustment and problems that can last into adulthood.⁵³ When data from the above-cited Early Childhood

⁵² *Id.* at 757. Only 23% of those who said their mother ever had a same-sex romantic relationship reported they had lived in a household with the mother’s female partner for at least 3 years. Fewer than 2% of those who reported their father ever had a same-sex romantic relationship said they had lived in a household with the father’s male partner for at least 3 years, and more than half had never done so.

⁵³ *See supra* notes 22-24 and accompanying text.

Longitudinal Study were adjusted to account for the effects of such instability, an apparent deficit in academic achievement by children raised by parents in same-sex couples was reversed.⁵⁴ Similarly, in an analysis of US Census data, children in families headed by a same-sex couple were more likely to be progressing normally in school if their home situation had been stable over time.⁵⁵ Regnerus did not control for such events in his analysis.⁵⁶

Indeed, the study's design virtually ensured that respondents from "same-sex parent" families had

⁵⁴ See *supra* note 33 and accompanying text.

⁵⁵ M.J. Rosenfeld, *Reply to Allen et al.*, *Demography* (Nov. 18, 2012) (published online, DOI 10.1007/s13524-012-0170-4). See also D.W. Allen et al., *Nontraditional Families and Childhood Progress Through School: A Comment on Rosenfeld*, *Demography* (Nov. 18, 2012) (published online, DOI 10.1007/s13524-012-0169-x).

⁵⁶ Regnerus (joined by some *amici*) defends the compounding of sexual orientation and instability as either too difficult to avoid or justified by the possibility that same-sex relationships might be inherently less stable than heterosexual relationships. See, e.g., *Amicus Br.* of Social Science Professors, at 25-26; *Amicus Br.* of the Beverly LaHate Institute and the National Legal Foundation, at 29-30. The first rationale has no basis—not only *could* Regnerus have asked participants whether they were raised exclusively by a same-sex couple for their first 18 years, he *did*. See M. Regnerus, *The New Family Structures Study, Survey Instrument* at 11-12, *available at* <http://www.prc.utexas.edu/nfss/documents/NFSS-Survey-Instrument.pdf> (asking participants to complete “an annual calendar” listing “who exactly you lived with, when, and for approximately how long,” from “when you were born until age 18”). The second rationale, even assuming that support for it could be found, implicitly concedes that the moving force behind the effects observed is instability, not sexual orientation.

experienced less family stability than respondents from (by definition) stable heterosexual-parent families.⁵⁷ Of all participants in the “lesbian mothers” category, only two were actually raised by a lesbian couple from age 0 to 18.⁵⁸ Regnerus did not report the corresponding number with respect to the 73 participants in the “gay fathers” category. Given that only 23% lived with the father and father’s partner for even four months of their first 18 years (and fewer than 2% for at least 3 years),⁵⁹ presumably the number who spent all 18 years in such a family is extremely small, if not zero.

For these reasons, an independent auditor appointed by the journal that published the articles described it as “a non-scientific study” and concluded it should not have been published.⁶⁰ Moreover, over

⁵⁷ The intact biological family group included only participants who were raised by married biological parents who had never divorced, even after the participant’s childhood. Regnerus, *supra* note 50, at 757.

⁵⁸ M. Regnerus, *Parental Same-Sex Relationships, Family Instability, and Subsequent Life Outcomes for Adult Children: Answering Critics of the New Family Structures Study with Additional Analyses*, 41 Soc. Sci. Res. 1367 (2012).

⁵⁹ *Id.*

⁶⁰ D.E. Sherkat, *The Editorial Process and Politicized Scholarship: Monday Morning Editorial Quarterbacking and a Call for Scientific Vigilance*, 41 Soc. Sci. Res. 1346 (2012). The suggestion of *amicus curiae* the Beverly LaHate Institute (at 25-27) that Dr. Sherkat gave the Regnerus Study a clean bill of health is inaccurate, to say the least. He did not fault the journal for approving the publication based on the strength of the reviewers’ comments, but he found that the reviewers were “scholars who should have known better [but] failed to recuse themselves from the review process,” and did “not simply

200 scientists, clinicians, and academics signed a letter to the journal's editorial board commenting on the study's scientific deficiencies.⁶¹

In short, the Regnerus study sheds no light on the parenting of stable same-sex couples—as Regnerus (and some *amici* who cite him) acknowledges.⁶² Suggestions to the contrary⁶³ are simply inaccurate.

ignore[], but lauded” “serious flaws and distortions” in the study. Sherkat at 1347.

⁶¹ G.J. Gates et al., *Letter to the editors and advisory editors of Social Science Research*, 41 Soc. Sci. Res. 1350, 1351 (2012) (noting that the study “could not actually directly examine the impact of having a gay or lesbian parent” because of the “unusual method” of defining those groups, and that it “fails to distinguish family structure and family instability,” and concluding that “[t]he methodologies used in this paper and the interpretation of the findings are inappropriate”).

⁶² Regnerus, *supra* note 50, at 765 (“Child outcomes in stable, ‘planned’ GLB families and those that are the product of previous heterosexual unions are quite likely distinctive, as previous studies’ conclusions would suggest.”); *Amicus Br. of Social Science Professors*, at 24 (“[T]he suboptimal outcomes may not be due to the sexual orientation or sexual behavior of the parent.”).

⁶³ See *Amicus Br. of Liberty Counsel*, at 39 (suggesting Regnerus evaluated children “raised in same-sex households” in a study that “controlled for external variables”); *Amicus Br. of Manhattan Declaration*, at 9 n.13 (same); *Amicus Br. of Helen M. Alvaré*, at 20 (same); *Amicus Br. of National Association of Evangelicals et al.*, at 12-13 & n.5 (same).

VI. Denying Federal Recognition to Legally Married Same-Sex Couples Stigmatizes Them.

The foregoing shows that the beliefs about lesbians and gay men relied on by Congress in enacting DOMA—about their capacity for committed, long lasting relationships, and their ability to raise healthy well-adjusted children—are contradicted by the scientific evidence and instead reflect an unreasoned antipathy towards an identifiable minority. In institutionalizing greater access by heterosexuals than gay men and lesbians to the many federal resources and benefits accorded married couples and their children, the Act conveys the federal government’s judgment that committed intimate relationships between people of the same sex—even when recognized as legal marriages by the couple’s state—are inferior to heterosexual relationships.⁶⁴ This is the essence of stigma.

A stigmatized condition or status is negatively valued by society, defines a person’s social identity, and thus disadvantages that person.⁶⁵ A classic work

⁶⁴ By not recognizing same-sex marriages, DOMA makes children more vulnerable. For example, in a family where a working parent dies, the surviving parent is not considered a surviving “spouse” eligible for “mother’s” or “father’s” benefits, depriving the family and child of significant economic protection. 42 U.S.C. § 402(g). *See also supra* note 25.

⁶⁵ *See* E. Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963); B.G. Link & J.C. Phelan, *Conceptualizing Stigma*, 27 *Ann. Rev. Soc.* 363 (2001); J. Crocker et al., *Social Stigma*, in 2 *The Handbook of Social Psychology* 504 (D.T. Gilbert et al. eds., 4th ed. 1998); Am. Med. Ass’n, Policy H-65.973, *Health Care Disparities in Same-Sex Partner Households*, available at <http://www.ama-assn.org/ama/pub/>

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

DOMA is an instance of institutional stigma. It conveys the government’s judgment that, in the

about-ama/our-people/member-groups-sections/glb-t-advisory-committee/ama-policy-regarding-sexual-orientation.page (recognizing that “exclusion from civil marriage contributes to health care disparities affecting same-sex households”).

⁶⁶ Goffman, *supra* note 65, at 5.

⁶⁷ A national survey of a representative sample of gay, lesbian, and bisexual adults found that 21% of them had been the target of a physical assault or property crime since age 18 because of their sexual orientation. Thirty-eight percent of gay men had been the target of assault or property crime because of their sexual orientation. Eighteen percent of gay men and 16% of lesbians reported they had experienced discrimination in housing or employment. G.M. Herek, *Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States: Prevalence Estimates from a National Probability Sample*, 24 *J. Interpersonal Violence* 54 (2009); see also G.M. Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 *J. Consulting & Clinical Psychol.* 945, 948 (1999); M.V.L. Badgett, Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men (2001).

realm of intimate relationships, a legally married same-sex couple is inherently less deserving of society's full recognition through the provision of federal marriage-linked benefits than are heterosexual couples. By devaluing and delegitimizing the relationships that constitute the very core of a homosexual orientation, the Act compounds and perpetuates the stigma historically attached to homosexuality. Indeed, this effect of the statute condemns it quite apart from its denial of tangible financial benefits to married same-sex couples, for the Supreme Court has repeatedly recognized the unconstitutional nature of stigmatizing legislation based on stereotypic classifications. *See Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) (“[A]s we have repeatedly emphasized, discrimination itself, by perpetuating ‘archaic and stereotypic notions’ or by stigmatizing members of the disfavored group as ‘innately inferior’ and therefore as less worthy participants in the political community * * * can cause serious non-economic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group.”) (footnote and citations omitted).

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted,

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March 1, 2013