

TABLE OF CONTENTS

IDENTITY AND INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
I. The Nature of Scientific Evidence and Its Presentation in This Brief.	2
II. Sexual Orientation and Homosexuality.....	5
A. The Nature of Sexual Orientation.	5
B. Homosexuality Is a Normal Expression of Human Sexuality.	7
III. Sexual Orientation Does Not Affect a Person’s Suitability to Raise Children.	11
A. Many Same-Sex Couples Are Currently Raising Children.	11
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.	13
CONCLUSION.....	20

TABLE OF AUTHORITIES

TEXTS, TREATISES, AND OTHER AUTHORITIES

P.R. Amato, <i>Children of Divorce in the 1990s: An Update of the Amato and Keith (1991) Meta-Analysis</i> , 15 J. Fam. Psychol. 355 (2001).....	19
Am. Psychiatric Ass'n, <i>Position Statement on Homosexuality and Civil Rights</i> (1973), printed in 131 Am. J. Psychiatry 497 (1974)	8
Am. Psychol. Ass'n, <i>Minutes of the Annual Meeting of the Council of Representatives</i> , 30 Am. Psychologist 620 (1975).....	8
N. Anderssen et al., <i>Outcomes for Children with Lesbian or Gay Parents</i> , 43 Scand. J. Psychol. 335 (2002).....	13
D. Black et al., <i>The Measurement of Unmarried Partner Couples in the 2000 U.S. Census</i> , California Center for Population Research (Sept. 2007), available at http://www.ccpr.ucla.edu/ccprwpseries/ccpr_023_07.pdf (last visited June 8, 2009).....	12
S.W. Cole, <i>Social threat, personal identity, and physical health in closeted gay men</i> , in <i>Sexual orientation and mental health: Examining identity and development in lesbian, gay, and bisexual people</i> (A.M. Omoto & H.S. Kurtzman eds., 2006).....	9
2 <i>Corsini Encyclopedia of Psychology and Behavioral Science</i> 683 (W.E. Craighead & C.B. Nemeroff eds., 3d ed. 2001)	5
G. Downey & J.C. Coyne, <i>Children of Depressed Parents: An Integrative Review</i> , 108 Psychol. Bull. 50 (1990).....	18
S. Erich, et al., <i>A Comparative Analysis Of Adoptive Family Functioning With Gay, Lesbian, And Heterosexual Parents And Their Children</i> , 1 J. GLBT Family Studies 43 (2005)	15
S. Erich et al., <i>Gay And Lesbian Adoptive Families: An Exploratory Study Of Family Functioning, Adoptive Child's Behavior, And Familial Support Networks</i> , 9 J. Family Social Work 17 (2005).....	15, 16, 18

S. Folkman et al., <i>Postbereavement Depressive Mood and Its Prebereavement Predictors in HIV + and HIV - Gay Men</i> , 70 J. Personality & Soc. Psychol. 336 (1996).....	11
G. Gates et al., <i>Adoption and Foster Care by Gay and Lesbian Parents in the United States</i> . Los Angeles: The Williams Institute, University of California, Los Angeles (Mar. 2007), available at, http://www.law.ucla.edu/williamsinstitute/publications/FinalAdoptionReport.pdf (last visited Apr. 16, 2009).....	12
E. Goffman, <i>Stigma: Notes on the Management of Spoiled Identity</i> (1963).....	10
S. Golombok et al., <i>Children with Lesbian Parents: A Community Study</i> , 39 Dev. Psychol. 20 (2003)	15
J.C. Gonsiorek, <i>The Empirical Basis for the Demise of the Illness Model of Homosexuality</i> , in <i>Homosexuality: Research Implications for Public Policy</i> 115 (J.C. Gonsiorek & J.D. Weinrich eds., 1991).....	7
R. Green et al., <i>Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children</i> , 15 Archives Sexual Behav. 167 (1986).....	17
G.M. Herek, <i>Bad Science in the Service of Stigma: A Critique of the Cameron Group's Survey Studies</i> , in <i>Stigma and Sexual Orientation</i> 223 (G.M. Herek ed., 1998).....	19
G.M. Herek, <i>Hate Crimes And Stigma-Related Experiences Among Sexual Minority Adults In The United States: Prevalence Estimates From A National Probability Sample</i> , 24 J. Interpersonal Violence 54 (2009)	10
G.M. Herek, <i>Legal Recognition of Same-Sex Relationships in the United States: A Social Science Perspective</i> , 61 Am. Psychol. 607 (2006).....	13
G.M. Herek & L.D. Garnets, <i>Sexual Orientation and Mental Health</i> , 3 Ann. Rev. Clin. Psychol. 361 (2007).....	9, 10
G.M. Herek, <i>Sexual Stigma And Sexual Prejudice In The United States: A Conceptual Framework In Contemporary Perspectives On Lesbian, Gay And Bisexual Identities</i> (D.A. Hope, ed., 2009)	10

G.M. Herek, <i>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</i> (G.M. Herek et al. eds., 1996).....	9
E. Hooker, <i>The Adjustment of the Male Overt Homosexual</i> , 21 <i>J. Projective Techniques</i> 17 (1957)	7
M. Hotvedt & J.B. Mandel, <i>Children of Lesbian Mothers, in Homosexuality: Social, Psychological, and Biological Issues</i> 275 (W. Paul et al. eds., 1982)	17
J.K. Kiecolt-Glaser et al., <i>Psychoneuroimmunology: Psychological Influences on Immune Function and Health</i> , 70 <i>J. Consulting & Clinical Psychol.</i> 537 (2002)	9
M.E. Lamb, <i>Parental Behavior, Family Processes, and Child Development in Nontraditional and Traditionally Understudied Families, in Parenting and Child Development in "Nontraditional" Families</i> (M.E. Lamb ed., 1999)	18
J. Lansford et al., <i>Does Family Structure Matter? A Comparison Of Adoptive, Two-Parent Biological, Single-Mother, Stepfather, And Stepmother Households</i> , 63 <i>J. Marriage & Family</i> 840 (2001).....	15
B.G. Link & J.C. Phelan, <i>Conceptualizing Stigma</i> , 27 <i>Annual Rev. Soc.</i> 363 (2001)	10
V.M. Mays & S.D. Cochran, <i>Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States</i> , 91 <i>Am. J. Pub. Health</i> 1869 (2001).....	10
S. McLanahan & G. Sandefur, <i>Growing Up With a Single Parent: What Hurts, What Helps</i> (1994).....	14
I.H. Meyer, <i>Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence</i> , 129 <i>Psychol. Bull.</i> 674 (2003)	9, 10, 11

J.E. Pachankis, <i>The Psychological Implications Of Concealing A Stigma</i> , 133 Psychol. Bull. 328 (2007)	9
C.A. Parks, <i>Lesbian Parenthood: A Review of the Literature</i> , 68 Am. J. Orthopsychiatry 376 (1998).....	15
C.J. Patterson et al., <i>Division of Labor Among Lesbian and Heterosexual Parenting Couples: Correlates of Specialized Versus Shared Patterns</i> , 11 J. Adult Dev. 179 (2004)	13
C.J. Patterson, <i>Family Relationships of Lesbians and Gay Men</i> , 62 J. Marriage & Fam. 1052 (2000).....	13, 16, 17, 19
C.J. Patterson, <i>Gay Fathers, in The Role of the Father in Child Development</i> (M.E. Lamb ed., 4th ed. 2004).....	16, 18, 19
C.J. Patterson & L.V. Friel, <i>Sexual Orientation and Fertility, in Infertility in the Modern World: Biosocial Perspectives</i> 238 (G. Bentley et al. eds., 2000)	12
E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, <i>Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents</i> , 109 Pediatrics 341, 342 (2002).....	13, 16, 17
E.C. Perrin, <i>Sexual Orientation in Child and Adolescent Health Care</i> 105 (2002).....	15, 16
A. Romero et al., <i>Census snapshot: United States</i> , Los Angeles: UCLA Williams Institute (Dec. 2007), available at, http://www.law.ucla.edu/ williamsinstitute/publications/USCensusSnapshot.pdf (last visited Apr. 19, 2009)	11
S. Ryan, <i>Parent-Child Interaction Styles Between Gay And Lesbian Parents And Their Adopted Children</i> , 3 J. GLBT Family Studies 105 (2007).....	15, 18
<i>Sexual Orientation</i> , in Am. Psychol. Ass'n, 7 <i>Encyclopedia of Psychol.</i> 260 (A.E. Kazdin ed., 2000).....	5, 18
J. Stacey & T.J. Biblarz, <i>(How) Does the Sexual Orientation of Parents Matter?</i> , 66 Am. Soc. Rev. 159 (2001)	13, 14, 16, 17

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* (2007).....9

J.L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, *75 Child Dev.* 1886 (2004)13

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The American Psychological Association (APA) is a nonprofit scientific and professional organization founded in 1892. APA has more than 148,000 members and affiliates, including the majority of psychologists holding doctoral degrees from accredited universities in this country. Among APA'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 are professional concerns of a substantial number of APA's members.

In 2004, APA adopted a *Resolution on Sexual Orientation, Parents, and Children* (reproduced in the Appendix to this brief) in which it 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." APA further resolved to provide scientific and educational resources, such as this brief, to inform public understanding of these issues.

SUMMARY OF ARGUMENT

Amicus, the leading national association of psychological researchers and practitioners, presents 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, *amicus* has been guided solely by criteria relating to the scientific validity of studies and literature, not by whether a given study supports or undermines a particular conclusion.

Homosexuality is a normal variant of human sexual orientation, neither a disorder nor a disease. The vast majority of gay and lesbian individuals lead happy, healthy, well-adjusted, and productive lives. 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 found that lesbian and gay parents do not differ from heterosexuals in their parenting skills, and their children do not show any deficits compared to children raised by heterosexual parents.

ARGUMENT

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

This brief has been prepared and reviewed by expert members of APA, the leading national association of psychological researchers and practitioners, who are thoroughly familiar with current scientific theory, research methods, empirical findings, and clinical techniques concerning sexual orientation, parenting, and stigma and prejudice. In the informed judgment of APA, this brief presents an accurate and balanced summary of the current state of scientific and professional knowledge about these issues. The following professional standards were used to

select individual studies and literature reviews for citation and to draw conclusions from research data and theory.

(1) The research cited herein is the best empirical research available, focusing on general patterns rather than any single study. Whenever possible, original empirical studies and literature reviews that have been peer-reviewed and published in reputable academic journals are cited. Recognizing that wide ranges exist in publication criteria and the rigor of peer review, the greatest credence is given to papers published in the most authoritative journals. The findings reported in all cited papers are critically evaluated. Chapters, academic books, and technical reports -- which typically are not subjected to the same peer-review standards as journal articles -- are cited only when they report research employing rigorous methods, are authored by qualified researchers, and accurately reflect professional consensus about the current state of knowledge. In assessing the scientific literature, APA has been guided solely by criteria of scientific validity, and has neither included nor excluded studies merely because they support or contradict particular conclusions.

(2) Before citing any study, its methodology, including the psychometric quality of the measures and tests it employed, and the quality of its data-collection procedures and statistical analyses, are evaluated. In addition, the adequacy of the study's sample must always be considered in terms of the specific research

question posed by the study.¹ When a study's findings should be regarded as tentative because of methodological limitations, that is noted.

(3) No empirical study is perfect in its design and execution. Critiques are part of the process by which science is advanced. Thus, when a scientist identifies limitations or qualifications to a study's findings or notes areas in which additional research is needed, this should not necessarily be interpreted as a dismissal or discounting of the research.

(4) 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 multiple 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

¹ To confidently describe the prevalence of a phenomenon in the general population, for example, it is necessary to collect data from a probability sample (often referred to 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). When groups are so small—relative to the entire population—that locating them with probability sampling methods is extremely expensive or practically impossible, 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.

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 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.

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 encompasses an individual's sense of personal and social identity based on those attractions, behaviors expressing them, and membership in a community of others who share them.² Although sexual orientation ranges along a continuum from exclusively heterosexual to exclusively homosexual, it is usually discussed in three categories: *heterosexual* (having sexual and romantic attraction primarily or exclusively to members of the other sex), *homosexual* (having sexual and romantic attraction primarily or exclusively to members of one's own sex), and *bisexual* (having a significant degree of sexual and romantic attraction to both men

² 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). 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.

and women). 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 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 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 (DSM)*, homosexuality was included as a disorder. Almost immediately, however, that classification began to be subjected to critical scrutiny in research funded by the National Institute of Mental Health.³ That study and subsequent research⁴ consistently failed to produce any empirical or scientific basis for regarding homosexuality as a disorder or abnormality, rather than a normal and healthy sexual orientation. As results from such research accumulated, mental health professionals 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.

³ In one of the first rigorous examinations of the mental health status of homosexuality, ratings of homosexual and heterosexual men's psychological adjustment 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).

⁴ Hooker's findings were replicated and amplified over the next two decades, using a variety of research techniques, which similarly concluded that homosexuality is not inherently associated with psychopathology or social maladjustment. See, e.g., 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).

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, reliability, or general social or vocational capabilities.”⁵ After reviewing the scientific data, APA 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.”⁶

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 in this case, as explained in Section III below, such functioning includes the capacity 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 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

⁵ Am. Psychiatric Ass’n, *Position Statement on Homosexuality and Civil Rights* (1973), printed in 131 Am. J. Psychiatry 497 (1974).

⁶ Am. Psychol. Ass’n, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975).

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”).⁷ By contrast, lesbians and gay men who feel compelled to conceal their sexual orientation tend to report more frequent mental health concerns⁸ and physical health problems⁹ than their openly gay counterparts.

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.¹⁰ 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

⁷ 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*, 133 Psychol. Bull. 328-45 (2007).

⁸ I.H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations*, 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).

⁹ 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).

¹⁰ See, e.g., J.K. Kiecolt-Glaser et al., *Psychoneuroimmunology: Psychological Influences on Immune Function and Health*, 70 J. Consulting & Clinical Psychol. 537 (2002).

levels of illness or psychological distress.¹¹ Differences in stress between the heterosexual population and the homosexual population can be attributed largely to the societal stigma directed at the latter.¹² 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.”¹³ In experiencing such excess stress, the gay and lesbian

¹¹ Similarly, several studies suggest that, compared to the heterosexual population, a somewhat larger proportion of the homosexual and bisexual population may manifest certain psychological symptoms. See I.H. Meyer, *supra* note 8 (meta-analysis of nine published studies). These findings must be considered with caution because of several methodological limitations associated with the studies reviewed by Meyer, 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 7.

¹² “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. See E. Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963); B. Link & J. Phelan, *Conceptualizing Stigma*, 27 *Annual Rev. Soc.* 363 (2001). Homosexuality remains stigmatized today in the United States. See e.g., G.M. Herek, *Sexual stigma and sexual prejudice in the United States: A conceptual framework in Contemporary Perspectives on Lesbian, Gay and Bisexual Identities* 65-111 (D.A. Hope, ed., 2009). For example, in a survey of a nationally representative sample of sexual minority adults, 21% overall (and 38% of gay men) reported having been the target of a physical assault or property crime because of their sexual orientation since age 18. 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* 54-74 (2009).

¹³ Meyer, *supra* note 8, at 690; see also 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 7.

population is comparable to other minority groups that face unique stressors due to prejudice and discrimination based on their minority status.¹⁴ Given the unique social stressors to which they are subjected, it is noteworthy 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 Does Not Affect a Person's Suitability to Raise Children.

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

A large and growing number of gay men and lesbians raise children, either as single parents or in the context of a committed relationship. Although the exact numbers of lesbian and gay parents in the United States are unknown, data from the U.S. Census Bureau indicate that, among heads of household who report cohabiting with a same-sex partner, 20% have a son or daughter under 18 years living in their home.¹⁵ Approximately 270,000 children were living in households

¹⁴ Meyer, *supra* note 8, at 675-76, 690. In addition, lesbian, gay, and bisexual people face other stressors with implications for mental health, e.g., the experience of extensive losses in personal and social networks as a result of the AIDS epidemic's disproportionate impact on the gay male community has been associated with elevated depressive symptoms. See, e.g., S. Folkman et al., *Postbereavement Depressive Mood and Its Prebereavement Predictors in HIV+ and HIV- Gay Men*, 70 J. Personality & Soc. Psychol. 336 (1996).

¹⁵ A. Romero et al., *Census Snapshot: United States*, Los Angeles: UCLA Williams Institute (Dec. 2007) available at, <http://www.law.ucla.edu/williamsinstitute/publications/USCensusSnapshot.pdf> (last visited Apr. 16, 2009); *id.* at *Census snapshot: Florida*. Although the Census count provides perhaps the best available data in this regard, it includes only coupled, cohabiting gay and

headed by same-sex couples as of 2005. In Florida, Census data indicates that 17% of the households headed by a same-sex couple include children under age 18. As of 2005, approximately 17,000 Florida children were living in households headed by same-sex couples. If one includes sexual minority parents not captured in the Census data, researchers estimate that considerably more – perhaps millions of American parents and thousands of Florida parents – today identify themselves as gay, lesbian, or bisexual.¹⁶ In terms of adoption, a 2007 study using data from the Census and the National Survey of Family Growth (NSFG) estimated that approximately 65,500 adopted children were being raised by lesbian or gay parents. Similarly, in Florida approximately 1.2% of adopted children under 18 years (about 960 children) were living in a gay or lesbian household.¹⁷

Families comprising same-sex couples and their children have diverse origins and take a variety of forms. Regardless of whether the children were adopted or were conceived in one partner's prior heterosexual relationship, through

lesbian parents who reported their relationship on the Census form. Moreover, some heterosexual couples were probably misclassified as same-sex couples. See D. Black et al., *The Measurement of Unmarried Partner Couples in the 2000 U.S. Census*, California Center for Population Research (Sept. 2007), available at, http://www.ccpr.ucla.edu/ccprwpsseries/ccpr_023_07.pdf (last visited June 8, 2009). The figures reported here are corrected for such misclassification.

¹⁶ See C.J. Patterson & L.V. Friel, *Sexual Orientation and Fertility, in Infertility in the Modern World: Biosocial Perspectives* 238 (G. Bentley et al. eds., 2000).

¹⁷ G. Gates et al., *Adoption and Foster Care By Gay and Lesbian parents In the United States*, The Williams Institute, University of California, Los Angeles (Mar. 2007), available at, <http://www.law.ucla.edu/williamsinstitute/publications/FinalAdoptionReport.pdf> (last visited Apr. 16, 2009).

donor insemination, or with the assistance of a surrogate mother, both members of the same-sex couple typically function as parents for the children, even if they are not legally recognized as such.¹⁸

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 heterosexual parents, those claims find no support in the scientific research literature.¹⁹

When comparing the outcomes of different forms of parenting, it is critically

¹⁸ C.J. Patterson et al., *Division of Labor Among Lesbian and Heterosexual Parenting Couples*, 11 J. Adult Dev. 179 (2004).

¹⁹ The rapidly growing research literature on gay, lesbian, and bisexual parents now includes dozens of 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. J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159 (2001); E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 341, 342 (2002); C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J. Marriage & Fam. 1052 (2000); N. Anderssen et al., *Outcomes for Children with Lesbian or Gay Parents*, 43 Scand. J. Psychol. 335 (2002); J. L. Wainright & C.J. Patterson, *Peer Relations Among Adolescents With Female Same-Sex Parents*, 44 Dev. Psychol., 117-126 (2008). As summarized in a recent review, “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*, 61 Am. Psychol. 607, 614 (2006).

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 one.²⁰ However, the specific research studies typically cited in this regard do not address parents' sexual orientation and thus do not permit any conclusions about the consequences of having heterosexual versus nonheterosexual parents, or two parents who are of the same versus different genders.²¹

Indeed, the scientific research that has directly compared outcomes for children with gay or lesbian parents with outcomes for children with heterosexual parents has been remarkably consistent in indicating 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. While most studies in this area have not specifically studied lesbian or gay adoptive parents, the available data do not indicate that sexual minority

²⁰ See, e.g., S. McLanahan & G. Sandefur, *Growing Up With a Single Parent: What Hurts, What Helps* 39 (1994).

²¹ In their review of 21 published empirical studies in this area, Stacey and Biblarz criticized 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 19, at 162 & n.2.

adoptive parents are any less fit than heterosexual adoptive parents.²²

Empirical research over the past two decades has failed to find 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 mothers do not differ in their parenting ability.²³ Relatively few published studies

²² A study that compared adoptive families headed by gay or lesbian parents with adoptive families headed by heterosexual parents found no significant differences between family types in children's scores on a standardized measure of behavioral functioning. Nor did the families differ significantly in their scores on a standardized measure of family functioning, S. Erich, et al., *A Comparative Analysis of Adoptive Family Functioning With Gay, Lesbian, and Heterosexual Parents and Their Children*, 1 J. GLBT Family Studies 43-60 (2005); 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. Social Work 17-32 (2005). In another study, the self-reported parenting styles of lesbian and gay adoptive parents were found to be within the desirable range of scores on a standardized measure; moreover, parents' descriptions of their children on a standardized test indicated normal emotional and behavioral functioning. S. Ryan, *Parent-Child Interaction Styles Between Gay and Lesbian parents and Their Adopted Children*, 3 J. GLBT Family Studies, 105-132 (2007). There is no reason to believe that the adjustment of adoptive children is any more affected by the sexual orientation of their adoptive parents than is the case for non-adoptive children. Rather, what matters is the quality of the parents' relationship with the child and functioning of the family, e.g., J. Lansford et al., *Does Family Structure Matter? A Comparison of Adoptive, Two-Parent Biological, Single-Mother, Stepfather, and Stepmother Households*, 63 J. Marriage & Fam. 840-851 (2001).

²³ 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 directly examined gay fathers, but those that exist similarly find that gay men are as fit and able parents as heterosexual men.²⁴

Turning to the children of gay parents, 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. The authors concluded 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."²⁵

Nor does empirical research support the misconception that having a homosexual parent affects the development of children's *gender identity* (i.e., the psychological sense of being male or female). Studies of the children of lesbian

have found that a child with two lesbian parents may enjoy advantages over a child raised by a biological mother and a stepfather. Stacey & Biblarz, *supra* note 19 at 174. However, because such patterns have been observed in only a few studies, *amicus* notes that such conclusions must be regarded as extremely tentative.

²⁴ Perrin & Committee, *supra* note 19 at 342; C.J. Patterson, *Gay Fathers, in The Role of the Father in Child Development* 397, 413 (M.E. Lamb ed., 4th ed. 2004); *see also* S. Erich, *Gay and Lesbian Adoptive Families, supra* note 22.

²⁵ Stacey & Biblarz, *supra* note 19 at 169, 171; *see also id.* at 176; Patterson, *Family Relationships, supra* note 19 at 1058-64; Perrin & Committee, *supra* note 19; Perrin, *supra* note 23.

mothers have not found any difference from the children of heterosexual parents in their patterns of gender identity. As a panel of the American Academy of Pediatrics concluded after examining 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.”²⁶

Similarly, most published studies have not found reliable differences in *social gender role* conformity (i.e., adherence to cultural norms defining feminine and masculine behavior) between the children of lesbian and heterosexual mothers.²⁷ Data have not been reported on the gender identity development or

²⁶ Perrin & Committee, *supra* note 19.

²⁷ One research group found that daughters of lesbian mothers were significantly less conforming to stereotypical social gender roles in some respects, e.g., they were more likely than daughters of heterosexual mothers to aspire to non-traditional occupations for women, such as astronaut or lawyer. R. Green et al., *Lesbian Mothers and Their Children: A Comparison With Solo Parent Heterosexual Mothers and Their Children*. 15 Arch. 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., Patterson, *Family Relationships*, *supra* note 19. In their review of the literature, Stacey and Biblarz asserted 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 19 at 168-70. We have reviewed the studies they cited, 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.

To the extent such differences could be shown to exist, many mental health professionals would consider them healthy in a world where gender-based

gender role orientation of the sons and daughters of gay fathers.²⁸

As noted in Section II *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.²⁹ However, the available evidence indicates that the vast majority of lesbian and gay

discrimination persists. As a leading researcher 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 (1999).

²⁸ Relatively few empirical studies report data on gay fathers. However, the available data do not provide a basis for assuming that gay men are unsuited for parenthood. See S. Erich et al., *Gay and Lesbian Adoptive Families*, *supra* note 22; Ryan, *supra* note 22; Patterson, *Gay Fathers*, *supra* note 24. Moreover, there is no theoretical reason to expect that gay fathers would harm 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. Downey et al., *Sex Of Parent And Children’s Well-Being In Single-Parent Households*, 60 *J. Marriage & Family* 878-893 (1998). Homosexuality – male and female – does not constitute a pathology or deficit, *see* II.B *supra*. Gay men do not pose a threat to children, *see* Patterson, *Gay Fathers*, *supra* note 24. 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.

²⁹ After reviewing the research literature, *amicus* concluded that there is currently no scientific consensus about sexual orientation’s cause or causes. *See generally Encyclopedia of Psychology*, *supra* note 2.

adults were raised by heterosexual parents and the vast majority of children raised by lesbian and gay parents eventually grow up to be heterosexual.³⁰

Amicus emphasizes 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.³¹ Thus, after careful scrutiny of decades of research in this area, APA concluded in its *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 “[r]esearch has shown that adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that the children of

³⁰ See Patterson, *Gay Fathers*, *supra* note 24 at 407-09; Patterson, *Family Relationships*, *supra* note 19 at 1059-60.

³¹ Some non-scientific organizations have attempted to contrive an actual scientific dispute by citing research suggesting deficits in either the children or parenting of gay and lesbian parents. This includes an Australian study performed by S. Sarantakos and a research project by Paul Cameron. In *amicus*'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). Similarly, Cameron's research does not satisfy the standards set out at the beginning of this brief. *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).

lesbian and gay parents are as likely as those of heterosexual parents to flourish.” Thus, APA officially “opposes any discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services.” It is the quality of parenting that predicts children’s psychological and social adjustment, not the parents’ sexual orientation or gender.

CONCLUSION

There is no scientific basis for distinguishing between same-sex couples and heterosexual couples with respect to adoption.

Respectfully Submitted,

William M. Hohengarten*
JENNER & BLOCK LLP
1099 New York Avenue, N.W.
Washington, DC 20001
Tel: (202) 639-6000
Fax: (202) 661-4901

Nathalie F.P. Gilfoyle*
AMERICAN PSYCHOLOGICAL
ASSOCIATION
750 First Street, N.E.
Washington, DC 20002
Tel: (202) 336-6100
Fax: (202) 336-6069

* ADMITTED *PRO HAC VICE*

John R. Blue (No. 006999)
Sylvia H. Walbolt (No. 033604)
Nancy J. Faggianelli (No. 0347590)
Joseph Hagedorn Lang, Jr. (No. 059404)
CARLTON FIELDS, P.A.
Corporate Center Three
at International Plaza
4221 W. Boy Scout Blvd.,
Suite 100
Tampa, FL 33607-5736
Tel: (813) 223-7000
Fax: (813) 229-4133

*Counsel for Amicus Curiae
American Psychological Association*