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17 WORKERS, CALIFORNIA CHAPTER, AND
18 THE AMERICAN ACADEMY OF PEDIATRICS,
19 CALIFORNIA.

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 KRISTIN M. PERRY, *et al.*,

16 Plaintiffs,

17 and

18 CITY AND COUNTY OF SAN FRANCISCO,

19 Plaintiff-Intervenor,

20 v.

21 ARNOLD SCHWARZENEGGER, *et al.*,

22 Defendants,

23 and

24 PROPOSITION 8 OFFICIAL PROPONENTS

25 DENNIS HOLLINGSWORTH, *et al.*,

26 Defendant-Intervenors.

Civil Case No.: 09-2292-VRW

**AMICUS CURIAE BRIEF OF THE
AMERICAN ANTHROPOLOGICAL
ASSOCIATION, THE AMERICAN
PSYCHOANALYTIC
ASSOCIATION, THE NATIONAL
ASSOCIATION OF SOCIAL
WORKERS, THE NATIONAL
ASSOCIATION OF SOCIAL
WORKERS, CALIFORNIA
CHAPTER, AND THE AMERICAN
ACADEMY OF PEDIATRICS,
CALIFORNIA, IN SUPPORT OF
PLAINTIFFS**

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1 **INTEREST OF AMICI CURIAE**

2 This brief is submitted by several organizations dedicated to the advancement of
3 the social sciences and the promotion of mental health, including the American Anthropological
4 Association, the American Psychoanalytic Association, the National Association of Social
5 Workers, the National Association of Social Workers, California Chapter, and the American
6 Academy of Pediatrics, California. They submit this brief to present to the Court the
7 perspective of these sciences on certain issues raised in this case. More detail concerning each
8 of the *amici* is set out in the accompanying Motion for Leave to File *Amicus Curiae* Brief of the
9 American Anthropological Association, the American Psychoanalytic Association, the National
10 Association of Social Workers, the National Association of Social Workers, California Chapter,
11 and the American Academy of Pediatrics, California, in Support of Plaintiffs.

12 **INTRODUCTION**

13 In this case, the Court must determine whether the State of California, having
14 amended its Constitution to strip the right of same-sex couples to marry, is in violation of the
15 Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States
16 Constitution. This amendment, passed via Proposition 8 in November 2008, places the State’s
17 imprimatur on the relegation of gay men and women to an inferior legal status.¹ Such
18 institutionalized discrimination stigmatizes these individuals and their relationships as
19 inherently inferior.

20 The evidence in the trial record concerning the stigmatization effects of
21 institutionalized discrimination – and the resulting impacts of that stigma on the mental health
22 and social standing of gay men and women and their families – finds plentiful support in a wide
23 array of social sciences research and analysis. *Amici* file this brief to assist the Court in placing
24 the record evidence in its appropriate scientific context.

25
26
27 ¹ Proposition 8 added Article I, § 7.5 to the California Constitution, which provides that
28 “[o]nly marriage between a man and a woman is valid or recognized in California.”

DISCUSSION

1
2 In *Brown v. Board of Education*, 347 U.S. 483, 493 (1954), the Supreme Court
3 found that separating individuals from others solely because of their minority status “generates a
4 feeling of inferiority as to their status in the community that may affect their hearts and minds in
5 a way unlikely ever to be undone.” On the basis of this finding, the Court held that “[s]eparate
6 educational facilities” for racial minorities “are inherently unequal.” 347 U.S. at 495.

7 Through its enactment of Proposition 8, the State of California has singled out
8 gay men and women and has prevented them alone from participating in the institution of
9 marriage. By separating this group, solely on the basis of their minority status, the State has
10 done precisely what the Supreme Court condemned in *Brown*. The resultant stigmatizing
11 impact on gay men and women is so profound because “it has the sanction of law” and because
12 the State’s policy is “interpreted as denoting the inferiority” of members of the gay community.
13 *Id.* at 494; *see also Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) (stigmatization “can cause
14 serious non-economic injuries to those persons who are personally denied equal treatment solely
15 because of their membership in a disfavored group” because it denotes them as “inherently
16 inferior” and as “less worthy participants in the political process”).

17 Throughout history, state interference with the ability to marry has been a means
18 of oppression and stigmatization of disfavored groups, serving to degrade whole classes of
19 people by depriving them of the full ability to exercise their fundamental right to marry. *See,*
20 *e.g., Loving v. Virginia*, 388 U.S. 1 (1967). Just as the anti-miscegenation laws of the past
21 century propounded state-sponsored stigmatization on the basis of race, Proposition 8 does the
22 same on the basis of sexual orientation.

23 Research demonstrates that the impact on same-sex couples of the degraded
24 status to which the law relegates their relationships has exactly such adverse stigmatizing
25 effects. Moreover, the substantial social and psychological effects of this stigmatization are
26 borne not only by same-sex couples and individuals, but by their children as well.

1 **I. The Stigma Created by the State’s Differential Treatment of Gay Men and Women**
 2 **Has Severe Psychological and Social Impacts.**

3 The concept of “stigma” refers to the phenomenon through which an individual
 4 with an attribute that is discredited by his or her society is devalued in society as a result of that
 5 attribute.² The concept has been the subject of numerous empirical studies and has achieved
 6 nearly universal acceptance by social scientists.³ In modern usage, “stigmatization” refers to an
 7 invisible sign of disapproval that permits “insiders” to draw lines around “outsiders.” This
 8 demarcation permits “insiders” to know who is “in” and who is “out” and allows the group to
 9 maintain its solidarity by punishing those who deviate from accepted norms of conduct.⁴

10 Stigma is not inherent in any particular attribute, but is the product of a collective
 11 social decision directed at individuals possessing an attribute; it has therefore been characterized
 12 as an “undesired differentness.”⁵ Because stigma is a social construct, attributes subject to
 13 stigmatization will change over time, and will evolve along with social norms and mores.
 14 Homosexuality in particular represents a type of stigma that remains deeply embedded in
 15 American society today. Indeed, studies have shown that significant percentages of the
 16 American public continue to harbor negative feelings and hostility toward gay men and
 17 lesbians.⁶ As Professor Segura testified, “[t]here is simply no other person in society who
 18 endures the likelihood of being harmed as a consequence of their identity than a gay man or
 19 lesbian.” Trial Tr. at 1571. The current reality of the prejudice directed toward gay men and

20 ² Trial Tr. at 818-19; *see also* Erving Goffman, *Stigma: Notes on the Management of*
 21 *Spoiled Identity* 2-3 (1963).

22 ³ *See, e.g.,* John F. Dovidio et al., *Stigma: Introduction and Overview, in The Social*
 23 *Psychology of Stigma* 1-28 (Heatherton et al. eds., 2000); Brenda Major & Laurie T. O’Brien,
 24 *The Social Psychology of Stigma*, 56 *Ann. Review Psychology* 393, 394-412 (2005).

25 ⁴ Gerhard Falk, *Stigma: How We Treat Outsiders* 17-33, 339-40 (2001); *see also* Janet A.
 26 Funderburk et al., *Does Attitude Toward Epilepsy Mediate the Relationship Between Perceived*
 27 *Stigma and Mental Health Outcomes in Children with Epilepsy?*, 11 *Epilepsy and Behavior* 71,
 28 71-72 (2007) (“‘stigma exists when elements of labeling, stereotyping, separation, status loss,
 and discrimination occur together in a power situation that allows them to unfold’ [citation]”).

⁵ Trial Tr. at 2058; Goffman, *supra*, at 5.

⁶ Trial Tr. at 1563-64; *see also* Field Research Corporation, *California Opinion Index, A*
 Digest on How the Public Views Gay and Lesbian Rights Issues, available at
<http://field.com/fieldpollonline/subscribers/COI-06-Mar-Gay-Rights.pdf>.

1 women was captured in the trial testimony of Defendant-Intervenor Hak-Shing William Tam,
 2 who affirmed his belief that “homosexuals are twelve times more likely to molest children” than
 3 heterosexuals (Trial Tr. at 1921) – a proposition that is entirely without scientific or other
 4 empirical support.⁷

5 Stigma can be created and reinforced when the law imposes structural barriers on
 6 the ability of disfavored groups to gain access to society’s resources.⁸ As Professor Herek
 7 testified, “stigma is manifested in the institutions of society,” such as when “the law . . .
 8 designate[s] certain groups as lacking certain resources relative to others.” Trial Tr. at 2051.⁹
 9 The State-sanctioned demarcation between gay and straight relationships embodied by
 10 Proposition 8 creates precisely this kind of stigmatization. In the particular context of
 11 Proposition 8, the law restricts the ability of one group of individuals to participate in marriage,
 12 which is an institution loaded with social meaning and one in which many members of society
 13 aspire to participate. *See id.* at 827 (Meyer).

14 As Professor Herek has previously stated in summarizing his independent
 15 research on this issue:

16 Denying same-sex couples the label of marriage – even if they
 17 receive all other rights and privileges conferred by marriage –
 18 arguably devalues and delegitimizes these relationships. It
 19 conveys a societal judgment that committed intimate relationships
 20 with people of the same sex are inferior to heterosexual
 21 relationships and that the participants in a same-sex relationship
 22 are less deserving of society’s recognition than are heterosexual
 23 couples. It perpetuates power differentials whereby heterosexuals
 24 have greater access than nonheterosexuals to the many resources
 25 and benefits bestowed by the institution of marriage. These
 26 elements are the crux of stigma. Such stigma affects all

23 ⁷ Similarly, Defendants’ expert Professor Miller conceded on cross-examination that in
 24 society “there’s a view that homosexuals may certainly undermine traditional families.” Trial
 25 Tr. at 2606. This proposition also lacks any empirical basis.

26 ⁸ *Id.* at 819.

27 ⁹ Professor Meyer also testified about “structural stigmas,” which “determine the access
 28 that people have to [society’s] institutions.” Trial Tr. at 820. Proposition 8 is an example of a
 “structural stigma,” because it operates as “a block or a gate toward [the institution of
 marriage].” *Id.* at 826. Accordingly, “Proposition 8, in fact, says that if you are gay or lesbian,
 you cannot achieve this particular goal.” *Id.*

1 homosexual and bisexual persons, not only the members of same-
2 sex couples who seek to be married.¹⁰

3 An extensive amount of psychiatric, psychological, psychoanalytic, and
4 sociological research literature has demonstrated the severe adverse psychological and social
5 effects of stigma.¹¹ Stigma can significantly lower the self-esteem of stigmatized individuals,
6 leading to social withdrawal, decreased expectation for oneself, avoidance of attempts at high
7 achievement, and angry resentment.¹² For example, experiences that highlight the otherness of
8 a stigmatized individual impart an added and adverse social meaning to that individual relative
9 to non-stigmatized individuals.¹³ That is, if they call to the fore the attribute that is the source of
10 the stigmatization, even minor events – such as filling out a form that requests marital status
11 information – can be evocative of past and present feelings of social disapproval, rejection, and
12 disrespect.¹⁴ Stigmatized individuals are known to suffer from expectations of rejection and
13 discrimination, through which such individuals harbor a stressful sense of anticipation that their
14 disapproved of attribute will trigger an adverse reaction in others.¹⁵

15
16
17 ¹⁰ Gregory M. Herek, *Legal Recognition of Same-Sex Relationships in the United States - A Social Science Perspective*, 61 *Am. Psychologist* 607, 617 (2006).

18 ¹¹ See, e.g., *Stigma and Group Inequality: Social Psychological Perspectives* (Shana Levin & Collette van Laar eds., 2006) (exploring many different effects of stigma); John Dollard, *Caste and Class in a Southern Town* 61-96 & generally (3d ed. 1957) (African Americans); B.J. Limandri, *Disclosure of Stigmatizing Conditions: The Discloser's Perspective*, 3 *Archives of Psychiatric Nursing* 69, 69-74 (1989) (survivors of domestic violence and individuals with HIV or AIDS).

21 ¹² See Anna Scheyett, *The Mark of Madness: Stigma, Serious Mental Illnesses, and Social Work*, 3 *Social Work in Mental Health* 79, 80, 84, 88 (2005) (society's "negative valuation" of the stigmatized individual "is integrated into the individual's sense of self-worth and identity, and result[s] in an inability to exert power or believe in one's ability to participate in society"); Limandri, *supra*, at 69-74 (stigmatized individuals experience shame). The negative impacts of stigma are extended, not just to the individuals who have the stigmatized characteristic, but also to those who are associated with them. C.K. Sigelman et al., *Courtesy Stigma: The Social Implications of Associating with a Gay Person*, 131 *J. Social Psychology* 45, 45-55 (1991); R.M. Puhl & J.D. Latner, *Sigma, Obesity, and the Health of the Nation's Children*, 133 *Psychological Bull.* 557, 567 (2007) (citing study).

26 ¹³ Trial Tr. at 838-42.

27 ¹⁴ *Id.* at 842-43 (Meyer); 175 (Stier).

28 ¹⁵ *Id.* at 409-10 (Chauncey); 851-53 (Meyer); 1218-19 (Zia).

1 In the context of same-gender sexual orientation, the deep and pervasive impacts
2 of stigma are well documented.¹⁶ The best data available demonstrate substantially increased
3 psychological distress among gay men and women.¹⁷ In addition to the stigmatization-related
4 stressors described above, gay men and women experience elevated psychological distress
5 because they are often forced to actively conceal their sexual identity.¹⁸ This is stressful both
6 because it takes active effort to engage in concealing behavior and because the very process of
7 concealment may prevent such individuals from obtaining the positive benefits of, for example,
8 social support services targeted toward gay populations.

9 Such heightened levels of psychological distress are especially evident during
10 adolescence. This concept was evidenced in trial by Plaintiff Jeffrey Zarrillo, who testified
11 about “how he felt growing up in society with the stereotypes and hate that existed.” Trial Tr. at
12 78-79. Mr. Zarrillo testified that he felt such heightened stress as a teenager, resulting from a
13 set of experiences ranging from feeling distanced from his heterosexual friends in matters such
14 as dating and sports participation to observing representations of the rejection of gay youth in
15 popular culture. *Id.* One of the consequences of such experiences is that gay adolescents have,
16 among other things, a materially greater suicide attempt rate than their peers. This results from
17 the pain of being stigmatized and, ironically, the self-hatred associated with internalization of
18 the social values that led to their stigmatization in the first place.¹⁹ By perpetuating the stigma
19 through its segregation of gay couples into a separate form of legal relationship, the State
20 contributes materially to these harmful, and sometimes tragic, outcomes.

21
22 ¹⁶ See, e.g., Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay,*
23 *and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 *Psychological Bull.*
24 674, 674-85 (2003); Linda D. Garnets et al., *Violence and Victimization of Lesbians and Gay*
25 *Men: Mental Health Consequences*, 5 *J. Interpersonal Violence* 366, 369-70 (1990).

26 ¹⁷ Meyer, *Prejudice, supra*, at 683-85.

27 ¹⁸ Trial Tr. at 854-60.

28 ¹⁹ *Id.* at 865, 872, 877; see also Meyer, *supra*, at 684-85; Richard A. Isay, *On the Analytic*
Therapy of Homosexual Men, 40 *Psychoanalytic Study of the Child* 235, 250-52 (1985);
Richard A. Isay, *The Development of Sexual Identity in Homosexual Men*, 41 *Psychoanalytic*
Study of the Child 467, 474, 487 (1986); Jack Drescher, *Psychoanalytic Therapy & the Gay*
Man 257-91 (1998); Garnets, *supra*, at 369-70.

1 In addition to affirmatively stigmatizing them, the State's refusal to permit gay
 2 men and women to marry persons of their choice deprives them of a critical source of
 3 affirmation of their lives. Beginning in earliest infancy and continuing throughout one's entire
 4 life, the experience of being affirmed by external sources of power and respect promotes
 5 psychological well being.²⁰ The absence of such affirmation is associated with emotional pain
 6 and may lead to significant psychological difficulties.²¹ At trial, numerous witnesses testified to
 7 their personal experiences with the absence of affirmation of themselves and their relationships.
 8 Plaintiff Kristin Perry stated that the State's disapproval of same-sex marriage confirmed her
 9 sense that "when you're gay, you think you don't really deserve things." Trial Tr. at 146.
 10 Similarly, Plaintiff Jeffrey Zarrillo testified that California's actions have "relegate[d him] to a
 11 level of second class citizenship." *Id.* at 82. The de facto consequence of the State's failure to
 12 give gay men and women the same positive affirmation it affords to heterosexuals is that such
 13 individuals are left with a harmful sense of unworthiness vis-à-vis other members of society. In
 14 effect, the withholding of affirmation itself reinforces the overall stigmatization imposed upon
 15 and felt by members of the gay population.

16 The impact of this deprivation is, again, particularly acute for younger people.
 17 Like all children, youngsters who have a gay or lesbian predisposition spend considerable time
 18 imagining what their lives will be like when they "grow up." These psychologically important
 19 ideas include images of the stable romantic relationships and families they will create as adults.
 20 Such ideas are important to the mental health of children, because they help establish a positive

21 ²⁰ Daniel N. Stern, *The Interpersonal World of the Infant: A View from Psychoanalysis*
 22 *and Developmental Psychology* 72-76, 101-11, 138-61 (1985); Robert M. Galatzer-Levy &
 23 Bertram J. Cohler, *The Essential Other: A Developmental Psychology of the Self* 61-63, 136-
 24 37, 189-95 (1993); Thomas J. Cottle, *A Sense of Self: The Work of Affirmation* 166 & generally
 (2003); Anna Ornstein, *A Developmental Perspective on the Sense of Power, Self-Esteem, and*
Destructive Aggression, 25 *Ann. Psychoanalysis* 145, 150 (1997).

25 ²¹ Heinz Kohut, *Forms and Transformations of Narcissism*, 14 *J. Am. Psychoanalytic*
 26 *Assn.* 243, 245-48 (1966); Heinz Kohut, *The Psychoanalytic Treatment of Narcissistic*
 27 *Personality Disorders: Outline of a Systematic Approach*, 23 *Psychoanalytic Study of the Child*
 28 86, 88-89 (1968); Ornstein, *supra*, at 150. Affirmation has been shown to buffer the effects of
 negative attitudes toward oneself that may stem from a homosexual orientation. Vincent F.
 Bonfitto, *The Formation of Gay and Lesbian Identity and Community in the Connecticut River*
Valley of Western Massachusetts, 1900-1970, 33 *J. Homosex.* 69, 88-93 (1997).

1 personal identity and serve to motivate socially adaptive behaviors (such as doing well at
2 school) and to facilitate turning these dreams into realities.²² As Professor Meyer testified at
3 trial, “[g]ay and lesbian youth ha[ve] a harder time projecting to the future because they have
4 learned [the] kind of negative attitudes” associated with internalized homophobia. Trial Tr. at
5 868.

6 These children, like their heterosexually oriented peers, dream of marriage (and
7 are encouraged by society to do so) but under the current legal regime they cannot see concrete
8 models of how this dream can be actualized. The unavailability of marriage consistent with
9 their sexual orientation thus enhances the psychological burden borne by gay youth. During the
10 trial, this general proposition was given personal meaning by Plaintiff Kristin Perry. When
11 asked why the institution of marriage was important to her, Ms. Perry replied, “I have never
12 really let myself want it until now. Growing up as a lesbian, you don’t let yourself want it,
13 because everyone tells you you are never going to have it.” Trial Tr. at 142.

14 Overall, the severe social and psychological consequences of the stigma placed
15 upon gay men and women by society were emphasized time and again throughout the trial by
16 the testimony of individuals who experienced those effects. These witnesses used words and
17 phrases such as: “ashamed;” “relegated to a corner;” “demoniz[ed];” “fear;” “community . . .
18 threat;” “second class citizen;” “not good enough;” “mocked and made fun of and disparaged;”
19 “outraged and hurt . . . and humiliated;” object of “pity;” lack “of inclusion;” and “invalidated . .
20 . as human beings.” Trial Tr. at 82, 94, 100, 114, 147, 150, 168, 175, 1232. These are verbal
21 embodiments of the stigma placed on gay men and women in our society – a stigma that is
22 reinforced and enhanced when the government itself discriminates against them.

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25 ²² Janet W. Astington, *Narrative and the Child’s Theory of Mind*, in *Narrative Thought*
26 *and Narrative Language* 151-71 (Bruce Britton & Anthony Pellegrini eds., 1990); Bertram
27 Cohler & M. Freeman, *Psychoanalysis and the Developmental Narrative*, in *The Course of Life*
28 126-27, 146, 153-56 (George Pollock & Stanley Greenspan eds., vol. 5 1993); Peggy J. Miller et
al., *Narrative Practices and the Social Construction of Self in Childhood*, 17 *Am. Ethnologist*
292, 304-06 (1990); Paul Ricoeur, *Hermeneutics & the Human Sciences* 274-96 (John
Thompson ed., 2006).

1 Through the constitutional embodiment of discrimination established by
 2 Proposition 8, the State of California has sent a message to members of the gay community that
 3 they must continue to wear a State-sponsored badge of dishonor. As a result, members of this
 4 population will remain stigmatized and will continue to endure the psychological and social
 5 burdens of that stigmatization.

6 **II. Singling Out Gay Men and Women as Ineligible for the Institution of Marriage**
 7 **Invites the Public to Discriminate Against Them.**

8 Decades of research have confirmed that stigmatized people are ostracized,
 9 devalued, rejected, scorned, and shunned, experiencing discrimination, insults, attacks, and even
 10 murder.²³ This is particularly true for gay men and women, a stigmatized group that has
 11 suffered a well-documented history of ostracization, discrimination, and violence.²⁴

12 By establishing and perpetuating a regime in which separate treatment of same-
 13 sex couples is not only condoned, but enshrined as a matter of California constitutional law, the
 14 government encourages disparate treatment of gay men and women by the broader society and
 15 fosters a climate in which such treatment thrives.²⁵

18 ²³ See, e.g., Dovidio, *supra*, at 1-24; Falk, *supra*, at 17-35; Dollard, *supra*, at 61-96; see also
 19 Scheyett, *supra*, at 87 (citing studies demonstrating links between stigma and discrimination in
 20 housing, the workplace, and the criminal justice system); M.V. Lee Badgett, *Money, Myths, and*
 21 *Change: The Economic Lives of Lesbians and Gay Men* 9 (2001) (describing economic impact
 of being seen as member of disfavored group); Gregory Herek et al., *Psychological Sequelae of*
Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults, 67 *J. Consulting and*
Clinical Psychology 945, 947-48 (1999).

22 ²⁴ Trial Tr. at 361; see also Meyer, *Prejudice, supra*, at 680; Herek, *Legal Recognition,*
 23 *supra*, at 617; Kevin T. Berrill & Gregory M. Herek, *Primary and Secondary Victimization in*
 24 *Anti-Gay Hate Crimes*, 5 *J. Interpersonal Violence* 401, 410 (1990); Gregory M. Herek, *The*
Context of Anti-Gay Violence: Notes on Cultural and Psychological Heterosexism, 5 *J.*
Interpersonal Violence 316, 323-26 (1990).

25 ²⁵ See Gregory M. Herek, *Hate Crimes Against Lesbians and Gay Men*, 44 *Am.*
 26 *Psychologist* 948, 949 (1989) (describing antigay hate crimes as a “logical outgrowth” of a
 27 climate of government intolerance, which “fosters” violent behavior); Meyer, *Prejudice, supra*,
 28 at 680 (stating that abuses against gay men and women are “sanctioned by governments and
 societies through formal mechanisms such as discriminatory laws and informal mechanisms,
 including prejudice”); Gregory M. Herek, *The Psychology of Sexual Prejudice*, 9 *Current*
Directions in Psychological Science 19, 21 (Feb. 2000).

1 The reason that government action affects private behavior is clear: “laws send
2 cultural messages; they *give permission*.”²⁶ As noted by Professor Herek, when they operate as
3 “structural stigma,” laws “identif[y] which members of society are devalued [and give] a level
4 of permission to attack or denigrate particular groups.” Trial Tr. at 2053. The result is that the
5 State is a “major factor in creating [the] social environment that [is] prejudicial or stigmatizing.”
6 Trial Tr. at 880. It follows that when California separates same-sex couples, it gives the public
7 permission to view gay men and women as separate and different, fueling prejudice and
8 discrimination against them. *See Lawrence v. Texas* 539 U.S. 558, 575 (2003) (“When
9 homosexual conduct is made criminal by the law of the State, that declaration in and of itself is
10 an invitation to subject homosexual persons to discrimination both in the public and in the
11 private spheres.”). As Professor Chauncey testified at trial, the “most significant” aspect of the
12 long history of anti-gay actions on the part of governments is that such actions have given “the
13 imprimatur of . . . government officials to . . . images of stereotypes of homosexuals.” Trial Tr.
14 at 405.

15 By giving same-sex committed relationships a different legal status, segregated
16 from that enjoyed by opposite-sex relationships, the State conveys a message that relationships
17 with people of the same sex are different and, implicitly, inferior.²⁷ The public listens to this
18 message and understands that gay men and women are not, in the eyes of the government,
19 worthy of equal participation in all of society’s institutions.²⁸ Professor Meyer touched on this
20 issue when he testified that, in addition to sending the message that “gay relationships . . . are of

21 ²⁶ Nancy Levit, *A Different Kind of Sameness: Beyond Formal Equality and*
22 *Antisubordination Strategies in Gay Legal Theory*, 61 Ohio St. L.J. 867, 879 (2000) (emphasis
23 in original); *see also* Limandri, *supra*, at 70 (“Societal messages that some behaviors or
conditions are taboo become[] manifested in discrimination”).

24 ²⁷ *See* Herek, *Legal Recognition, supra*, at 617.

25 ²⁸ Conversely, as Defendants’ expert David Blankenhorn admitted at trial, placing same-
26 sex relationships on equal legal footing with heterosexual relationships would undermine this
27 broad sense that gay men and women are unequal. Mr. Blankenhorn agreed that “[s]ame-sex
marriage would signify greater social acceptance of homosexual love and the worth and validity
of same-sex intimate relationships.” Trial Tr. at 2850. Moreover, Mr. Blankenhorn agreed that
28 “[g]ay marriage might contribute over time to a decline in anti-gay prejudice. . . .” *Id.* at 2851.

1 secondary value,” Proposition 8 “sends a strong message about the values of the State,” which
 2 “would . . . encourage or at least is consistent with holding prejudicial attitudes.” Trial Tr. at
 3 854. In other words, Proposition 8 sends a State-sponsored “message” that “it is okay to reject”
 4 gay individuals and same-sex relationships. *Id.* at 863. The resulting stigma attaches, not only
 5 to same-sex couples who seek to be married, but to all gay men and women, regardless of their
 6 relationship status or desire to marry.²⁹

7 The long history of official government harassment and discrimination directed
 8 at gay men and women – and of the parallel discrimination inflicted by private parties – has
 9 been discussed at length at trial and in other briefs to this Court and need not be repeated here.³⁰
 10 Significantly, the link between the State’s policy of segregation of gay couples and
 11 discriminatory private conduct continues today, even though in virtually every context other
 12 than the one at issue here, California law condemns discrimination against gay men and
 13 women.³¹ Yet, by treating gay men and women differently in the area of marriage – an area
 14 both sides in this case agree to be of tremendous significance – the State continues to perpetuate
 15 and compound the historical stigma against them, sending the public the message that at least
 16 some discrimination is still acceptable. Such a mixed message inherently undercuts the
 17 antidiscrimination policy that the State of California otherwise actively pursues.

18 Moreover, the State’s failure to permit same-sex couples to marry provides a
 19 structure that affirmatively enables private discrimination against same-sex couples. In some
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 22 ²⁹ Herek, *Legal Recognition, supra*, at 617.

23 ³⁰ See, e.g., Trial Testimony of Prof. George Chauncey, Trial Tr. at 357-442.

24 ³¹ See, e.g., Cal. Civ. Code, § 51 (equal accommodation in business establishments); *id.*, §
 25 51.7 (violence based on sexual orientation); Cal. Code Civ. Proc., § 204 (jury service); Cal. Ed.
 26 Code, § 220 (State-funded educational institutions); *id.*, § 32228 (hate violence in schools); Cal.
 27 Gov. Code, § 11135 (State-funded programs); *id.*, §§ 12921, 12940 (employment); *id.*, §§
 28 12921, 12955 (housing); Cal. Health & Saf. Code, § 1365.5 (contract availability or terms); *id.*,
 § 1586.7 (adult day care centers); Cal. Ins. Code, § 10140 (life and disability insurance); Cal.
 Lab. Code, § 1735 (contractors); *id.*, § 4600.6 (workers’ compensation); Cal. Pen. Code, §§
 422.55, 422.6 (hate crimes); Cal. Welf. & Inst. Code, § 9103.1 (services provided under Older
 Americans Act); *id.*, § 16001.9 (foster children’s access to services).

1 instances, the fact that same-sex couples are not married can give “cover” to private parties who
2 discriminate on the basis of sexual orientation.³²

3 Proposition 8 thus stands as the latest example in a long history of government-
4 sponsored discrimination against gay men and women. This discriminatory policy, now
5 embodied in the very Constitution of the State of California, fosters and encourages a continued
6 public sentiment that gay individuals and same-sex relationships are of inherently lesser value
7 than society’s heterosexual majority and opposite-sex relationships.

8 **III. Depriving Same-Sex Couples of the Ability to Marry Has Adverse Effects on Their** 9 **Children**

10 The State’s refusal to permit same-sex couples to marry does not merely affect
11 the couples themselves; it also affects their children. This was a core opinion offered by
12 Professor Michael Lamb in trial, where he stated that the “adjustment of [children of same-sex
13 couples] would be promoted were their parents able to get married.” Trial Tr. at 1010. Indeed,
14 this opinion was readily confirmed by Defendants’ expert, David Blankenhorn, who expressed
15 his belief that “it is almost certainly true that gay and lesbian couples and their children would
16 benefit by having gay marriage.” *Id.* at 2839.

17 One reason for this conclusion is that parental marriage “allows . . . children to
18 benefit from some of the advantages that accrue to marriage, including the fact that [it is] a
19 recognized social institution.” *Id.* at 1042-43. This view is confirmed by a recent study funded
20 by the American Academy of Pediatrics, which concluded that, in families headed by same-sex
21 parents, “[c]ivil marriage can help foster financial and legal security, psychosocial stability, and
22 an augmented sense of societal acceptance and support. . . . Children who are raised by civilly
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25 ³² One arguable example of this is *North Coast Women’s Care Medical Group v. Superior*
26 *Court*, 137 Cal. App. 4th 781 (2006), in which two doctors refused to perform an artificial
27 insemination procedure for a woman in a domestic partnership, claiming as their reason, not the
28 fact that she is a lesbian, but rather that she is not married. Regardless of whether or not this
explanation was a pretext for discrimination based on her sexual orientation, permitting the
couple to marry would have removed the doctors’ ability to offer it.

1 married parents benefit from the legal status granted to their parents.”³³ Thus, children raised
 2 by same-sex couples would benefit from the greater stability and security that would
 3 characterize their parents’ relationship if it were recognized as a marriage.³⁴

4 The positive benefits children accrue from being raised by civilly married parents
 5 are independent of those parents’ sexual orientation. In the consensus view of the field of
 6 developmental psychology of children, the traits of an effective parent do not depend on the
 7 gender of that parent.³⁵ This is because the factors that most affect child development – the
 8 quality of the relationship between the parent and child, the quality of the relationship between
 9 the individuals raising the child, and the circumstances in which the child is raised – have
 10 nothing to do with parental gender or sexual orientation.³⁶

11 These *amici* and others have issued statements consistent with Professor Lamb’s
 12 testimony on these issues. According to the official position of the American Psychoanalytic
 13 Association, the “[a]ccumulated evidence suggests the best interest of the child requires
 14 attachment to committed, nurturing and competent parents. Evaluation of an individual or
 15 couple for these parental qualities should be determined without prejudice regarding sexual
 16 orientation.”³⁷ In a similar vein, the American Psychological Association has concluded that

17 [n]ot a single study has found children of lesbian or gay parents to
 18 be disadvantaged in any significant respect relative to children of
 19 heterosexual parents. Indeed, the evidence to date suggests that
 20 home environments provided by lesbian and gay parents are as
 likely as those provided by heterosexual parents to support and
 enable children’s psychosocial growth.³⁸

21 ³³ James G. Pawelski et al., *The Effects of Marriage, Civil Union, and Domestic*
 22 *Partnership Laws on the Health and Well-Being of Children*, 118 *Pediatrics* (Official J. of the
 Am. Academy of Pediatrics) 349, 361 (2006).

23 ³⁴ Herek, *Legal Recognition*, *supra*, at 616; Raymond W. Chan et al., *Psychosocial*
 24 *Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual*
Mothers, 69 *Child Development* 443, 455 (1998).

25 ³⁵ Trial Tr. at 1014-15.

26 ³⁶ *Id.* at 1010-11, 1014-15, 1025.

27 ³⁷ 2002 Position Statement of the American Psychoanalytic Association, *available at*
 28 <http://www.secondparentadoption.org/org/supporters.htm>.

³⁸ American Psychological Association, *Lesbian & Gay Parenting* 15 (2005), *available at*
<http://www.apa.org/pi/lgbt/resources/parenting-full.pdf>.

