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IN RE: ADOPTION OF R.A. & M.A.

**ON APPEAL FROM THE
CUMBERLAND COUNTY PROBATE COURT**

**BRIEF OF AMICI CURIAE AMERICAN PSYCHOLOGICAL ASSOCIATION;
MAINE PSYCHOLOGICAL ASSOCIATION; NATIONAL ASSOCIATION OF
SOCIAL WORKERS; NATIONAL ASSOCIATION OF SOCIAL WORKERS,
MAINE CHAPTER; MAINE ASSOCIATION OF PSYCHIATRIC PHYSICIANS;
CHILD WELFARE LEAGUE OF AMERICA; MAINE CHILDREN'S ALLIANCE;
MAINE MEDICAL ASSOCIATION; AMERICAN ACADEMY OF PEDIATRICS,
MAINE CHAPTER; EVAN B. DONALDSON ADOPTION INSTITUTE; KIDS
FIRST; AND COMMUNITY COUNSELING CENTER
IN SUPPORT OF APPELLANTS**

October 12, 2006

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IDENTITY AND INTEREST OF AMICI CURIAE

The American Psychological Association is a nonprofit scientific and professional organization founded in 1892. The Association has more than 155,000 members and affiliates, including the majority of psychologists holding doctoral degrees from accredited universities in this country. Among the Association's major purposes is to increase and disseminate knowledge regarding human behavior and to foster the application of psychological learning to important human concerns. Human sexuality and familial relationships are professional concerns of a substantial number of the Association's members, either as researchers or as clinicians. In July 2004, the Association's Council of Representatives adopted a *Resolution on Sexual Orientation, Parents, and Children* (attached as Supplemental Legal Authority to this brief), which is relevant to this case. The Association recognized that "There is no scientific evidence that parenting effectiveness is related to parental sexual orientation: lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children." In its Resolution the Association resolved to provide scientific and educational resources, such as this *amicus* brief, to inform public discussion and understanding of these issues.

The Maine Psychological Association is a non-profit scientific and professional organization founded in 1950. The Association has more than 250 members, academicians and affiliates, the majority of which hold doctoral degrees from accredited universities in the U.S. The purpose of the Association

is to advance psychology as a science, as a profession, and as a means of promoting health and human welfare. As clinicians and academicians, Maine psychologists deal professionally with familial relationships, child development, and human sexuality. The association has a long history of involvement in educating the public in Maine about issues involving gay rights, taking the position in 1998 -- and reaffirming the position in 2000 and 2005 -- that Maine should outlaw discrimination based on sexual orientation.

The National Association of Social Workers ("NASW") was established in 1955 as a nonprofit professional association dedicated to the practice and interests of the social work profession. It is the largest social work association in the world with 149,000 members. The NASW Maine Chapter has approximately 1,400 members. In furtherance of its purposes to develop and disseminate high standards of social work practice, NASW promulgates professional standards and criteria, conducts research, publishes studies of interest to the profession, provides continuing education, and enforces the NASW Code of Ethics. NASW policy on foster care and adoption supports the right of every child "to a permanent, continuous, and nurturing relationship with a parenting person or people who convey to the child an enduring sense of love and care." National Association of Social Workers, *Policy Statement: Foster Care and Adoption*, reprinted in *Social Works Speaks: NASW Policy Statements* 164 (7th ed. 2006). Thus, NASW policy supports the removal of barriers that prevent children from permanent placements, such as resistance to "nontraditional family patterns (including lesbian and gay, bisexual, and

transgender parents) as potential foster care and adoption resources.” *Id.* at 168. NASW adopted a policy statement on gay issues in 1977, which was subsequently revised and expanded in 1987, 1993, 1996 and 2005; that policy prohibits social workers from discriminating on the basis of sexual orientation, as does the NASW Code of Ethics.

The Maine Association of Psychiatric Physicians (MAPP) is a district branch of the American Psychiatric Association. With almost 200 members, the MAPP strives to educate the public on mental health issues and serve as a resource to mental health professionals. Its purposes and objectives are: (a) to improve the treatment, rehabilitation, and care of persons with mental disorders (including mental retardation and substance-related disorders); (b) to promote the best interests of patients and those actually or potentially making use of mental health services; (c) to advance the standards of all psychiatric services and facilities; (d) to promote research, professional education in psychiatry and allied fields, and the prevention of psychiatric disabilities; (e) to foster the cooperation of all who are concerned with the medical, psychological, social, and legal aspects of mental health and illness; (f) to make psychiatric knowledge available to practitioners of medicine, to scientists, and to the public; (g) to promote the common professional interests of its members; and (h) to advocate for its members.

The Child Welfare League of America (CWLA) is the nation’s oldest and largest membership-based child welfare organization. CWLA is an association of more than 900 public and private nonprofit agencies that assist more than

3.5 million abused and neglected children and their families each year with a range of services. CWLA is committed to engaging people everywhere in promoting the well-being of children, youth, and their families, and protecting every child from harm. It envisions a future in which families, neighborhoods, communities, organizations, and governments ensure that all children and youth are provided with the resources they need to grow into healthy, contributing members of society. Among its member agencies, CWLA also values and encourages approaches to child welfare that are culturally competent and responsive to the specific needs of our society's broad and diverse population. Included in CWLA's definition of cultural competence is the ability to support children, youth, and families who are gay, lesbian, bisexual, or transgender (GLBT), as well as those individuals who may be questioning their sexual orientation or gender identity.

The Maine Children's Alliance was established in 1944 as a statewide, non-profit membership organization whose mission is to advocate for sound public policies that seek to improve the lives of all Maine's children, youth and families. The Alliance grew out of a clear need for a strong, unified approach to prioritize the needs of children, with the understanding that the future of Maine's communities is invariably linked to the well-being of its children.

The Maine Medical Association (MMA) is a voluntary association of over 2000 Maine physicians serving the profession and the public since 1853. A principal part of the mission of the MMA is advocating the interests of Maine physicians and their patients before the legislative and executive branches of

our federal and state governments. The purpose of this Association is to unite and support the physicians of Maine in promoting the health of Maine's citizens, protecting and promoting the quality of medicine, and supporting the physicians' function as advocates for their patients.

The Maine Chapter of the American Academy of Pediatrics is a non-profit organization that represents over 200 pediatricians and the patients they serve in the State of Maine. Its mission is to improve the lives of children and adolescents in Maine, and it supports the National American Academy of Pediatrics statement on supporting families regardless of race, socioeconomic status, or sexual orientation. It further supports efforts to provide comprehensive health insurance coverage and other benefits to children in all types of family situations.

The Evan B. Donaldson Adoption Institute is the pre-eminent research, policy and education organization in its field. Its mission is to provide leadership that improves laws, policies and practices -- through sound research, education and advocacy -- in order to better the lives of everyone touched by adoption. To achieve its goals, the Institute conducts and synthesizes research; offers education to inform public opinion; promotes ethical practices and legal reforms; and works to translate policy into action. The Institute is nonpartisan, non-profit, and independent of any constituency or cause.

Kids First is a private non-profit organization, which provides support to families going through separation and or divorce. It was founded by a

collaborative partnership between mental health professionals and legal professionals. Since 1988, it has been providing co-parenting education to divorcing and separated parents. In January of 1998, it opened as the Kids First Center and expanded its services to include many more programs, incorporating a professional education component to our agency, including an annual conference offering the opportunity for all professionals who work with separating couples to put the needs of their children in the forefront. Last year's conference was entitled, Same Sex Parenting-The Creation and Separation of Family: Legal and Social Issues for Partners and Their Children. Kids First believes that all children have a right to a relationship with their parents and that children benefit from those relationships. It also believes that families come in many configurations and that successful co-parenting prioritizes the needs of children.

Community Counseling Center is a leading provider of behavioral health and family services in Maine. A private, non-profit agency with roots dating back to 1879, its mission is to develop and provide quality services that enhance the emotional strength and well-being of Maine residents throughout their lives. The agency provides counseling services, parenting education, child abuse prevention and treatment, marriage and family therapy programs, youth development, and mental health services. Community Counseling Center is licensed by the Department of Health and Human Services, accredited by the national Council on Accreditation for Children and Family Services, a member of the Alliance for Children and Families and supported by the United Way of

Greater Portland. Community Counseling Center employs a professional staff of 110 people and has a 7.6 million dollar operating budget.

SUMMARY OF ARGUMENT

Amici, the nation's and state's leading associations of psychology professionals, behavioral scientists, psychiatrists, and physicians, present this brief to provide the Court with a comprehensive, fair, and balanced review of the scientific and professional literature pertinent to the issues before the Court. In preparing this brief, *amici* have been guided solely by criteria relating to the scientific rigor and reliability of studies and literature, not by whether a given study supports or undermines a particular conclusion.¹

Scientific research has firmly established that homosexuality is not a disorder or disease, but rather a normal variant of human sexual orientation. The vast majority of gay and lesbian individuals lead happy, healthy, well-adjusted, and productive lives. Indeed, a person's sexual orientation tells nothing about that person's suitability to be a parent. A large number of children are currently being raised by lesbians and gay men, both in same-sex couples and as single parents. Empirical research has consistently shown that lesbian and gay parents do not differ from heterosexuals in their parenting skills, and their children do not show any deficits compared to children raised by heterosexual parents. It is the quality of parenting that predicts children's psychological and social adjustment, not the parents' sexual orientation or

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

gender. Moreover, to the extent that household stability may be a factor in adoption placements, sexual orientation is not an indicator of a couple's stability or commitment. Many gay and lesbian people are already in same-sex relationships that are equivalent to heterosexual relationships in essential respects. The scientific consensus thus is that lesbian and gay parents are as capable and as fit as 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 the *amici* – the nation's and state's leading associations of psychological professionals and researchers – who are thoroughly familiar with current scientific theory, research methods, empirical findings, and clinical techniques concerning sexual orientation, marriage and non-marital relationships, and parenting.² In the informed judgment of *amici*, this brief presents an accurate and balanced summary of the current state of scientific and professional knowledge about these issues. To further assist the Court, we briefly explain the professional standards we have followed for selecting individual studies and literature reviews for citation and for drawing conclusions from research data and theory.

² Counsel has assisted the psychologist *amici* in identifying issues potentially relevant to this case, presenting scientific information herein in a manner that will assist the Court, and preparing the brief for filing with the Court in compliance with applicable rules. In preparing this brief, however, the psychologist *amici* and their expert members have taken responsibility for reviewing the scientific literature and summarizing the conclusions to be drawn therefrom.

(1) We are ethically bound to be accurate and truthful in describing research findings and in characterizing the current state of scientific knowledge.

(2) We rely on the best empirical research available, focusing on general patterns rather than any single study. Whenever possible, we cite original empirical studies and literature reviews that have been peer-reviewed and published in reputable academic journals. Not every published paper meets this standard because academic journals differ widely in their publication criteria and the rigor of their peer review. We cite chapters, academic books, and technical reports, which typically are not subject to the same peer-review standards as journal articles, when they report research employing rigorous methods, are authored by well-established researchers, and accurately reflect professional consensus about the current state of knowledge. In assessing the scientific literature, we have been guided solely by criteria of scientific validity, and have neither included studies merely because they support, nor excluded credible studies merely because they contradict, particular conclusions.

(3) Before citing any study, we critically evaluate its methodology, including the reliability and validity of the measures and tests it employed, and the quality of its data-collection procedures and statistical analyses. We also evaluate the adequacy of the study's sample, which must always be considered in terms of the specific research question posed by the study.³ In this brief, we

³ To confidently describe the prevalence or frequency with which a phenomenon occurs in the population at large, for example, it is necessary to collect data from a

note when a study's findings should be regarded as tentative because of a particularly small or selective sample, or because of possible limitations to the procedures used for measuring a key variable.

(4) No empirical study is perfect in its design and execution. All scientific studies can be constructively criticized, and scientists continually try to identify ways to improve and refine their own work and that of their colleagues. When a scientist identifies limitations or qualifications to a study's findings (whether the scientist's own research or that of a colleague), or when she or he notes areas in which additional research is needed, this should not necessarily be interpreted as a dismissal or discounting of the research. Rather, critiques are part of the process by which science is advanced.

(5) Scientific research cannot prove that a particular phenomenon never occurs or that two variables are never related to each other. When repeated studies with different samples consistently fail to establish the existence of a phenomenon or a relationship between two variables, researchers become increasingly convinced that, in fact, the phenomenon does not exist or the

probability sample (often referred to in common parlance as a "representative sample"). By contrast, simply to document that a phenomenon occurs, case studies and nonprobability samples are often adequate. For comparisons of different populations, probability samples drawn from each group are desirable but not necessary and rarely feasible. Hence, researchers often rely on nonprobability samples that have been matched on relevant characteristics (e.g., educational level, age, income). Some groups are sufficiently few in number — relative to the entire population — that locating them with probability sampling methods is extremely expensive or practically impossible. In the latter cases, the use of nonprobability samples is often appropriate; when numerous studies with different samples reach similar conclusions, we place greater confidence in those conclusions than when they are derived from a single study. We therefore rely as much as possible on empirical findings that have been replicated in multiple studies by different researchers.

variables are unrelated. In the absence of supporting data from prior studies, if a researcher wants to argue that two phenomena are correlated, the burden of proof is on that researcher to show that the relationship exists.

II. Sexual Orientation and Homosexuality.

A. The Nature of Sexual Orientation.

Sexual orientation refers to an enduring pattern or disposition to experience sexual, affectional, or romantic attractions primarily to men, to women, or to both sexes. It also refers to an individual's sense of personal and social identity based on those attractions, behaviors expressing them, and membership in a community of others who share them.⁴ Although sexual orientation ranges along a continuum from exclusively heterosexual to exclusively homosexual, it is usually discussed in terms of three categories: *heterosexual* (having sexual and romantic attraction primarily or exclusively to members of the other sex), *homosexual* (having sexual and romantic attraction primarily or exclusively to members of one's own sex), and *bisexual* (having a significant degree of sexual and romantic attraction to both men and women).⁵

⁴ See *Sexual Orientation*, in Am. Psychol. Ass'n, 7 *Encyclopedia of Psychology* 260 (A.E. Kazdin ed., 2000); 2 *The Corsini Encyclopedia of Psychology and Behavioral Sciences* 683 (W.E. Craighead & C.B. Nemeroff eds., 3d ed. 2001); J.C. Gonsiorek & J.D. Weinrich, *The Definition and Scope of Sexual Orientation*, in *Homosexuality: Research Implications for Public Policy* 1 (J.C. Gonsiorek & J.D. Weinrich eds., 1991). As used in this brief, "gay" refers to men and women whose social identity or sexual orientation is based on their primary erotic, affectional, and romantic attraction to members of their own sex, and "lesbian" refers to women who are gay.

⁵ In this brief, we focus specifically on persons with a homosexual orientation – gay men and lesbians. It should be noted that some of the research we cite concerns bisexual as well as homosexual persons. Moreover, many bisexual persons are

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).

B. Homosexuality Is a Normal Expression of Human Sexuality.

In 1952, when the American Psychiatric Association published its first *Diagnostic and Statistical Manual of Mental Disorders*, homosexuality was included as a disorder.⁶ Almost immediately, however, that classification began to be subjected to critical scrutiny in research funded by the National Institute of Mental Health. That study and subsequent research consistently failed to provide any empirical or scientific basis for regarding homosexuality as a disorder or abnormality, rather than a normal and healthy sexual orientation.⁷ As results from such research accumulated, professionals in

involved in committed same-sex relationships and, to the extent they are, many of the statements in this brief apply with equal force to them.

⁶ A mental disorder is “a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress (e.g., a painful symptom) or disability (i.e., impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.” Am. Psychiatric Ass’n, *Diagnostic and Statistical Manual of Mental Disorders* xxxi (4th ed. text rev. 2001).

⁷ In one of the first rigorous examinations of the mental health status of homosexuality, Dr. Evelyn Hooker administered widely used psychological tests to matched groups of homosexual and heterosexual males who were not incarcerated and not receiving psychiatric care. Ratings of the men’s psychological adjustment, obtained from independent experts who were unaware of each man’s sexual orientation, did not differ significantly between the heterosexuals and homosexuals. Hooker concluded from her data that homosexuality is not inherently associated with psychopathology and that “homosexuality as a clinical entity does not exist.” E.

medicine, mental health, and the behavioral and social sciences reached the conclusion that the classification of homosexuality as a mental disorder was incorrect and that it reflected untested assumptions based on once-prevalent social norms as well as on clinical impressions from unrepresentative samples comprising patients seeking therapy and individuals whose conduct brought them into the criminal justice system.

In recognition of the scientific evidence, the American Psychiatric Association removed homosexuality from its *Diagnostic and Statistical Manual of Mental Disorders* in 1973. The Psychiatric Association's resolution stated that "homosexuality *per se* implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."⁸ After a thorough review of the scientific data, the American Psychological Association adopted the same position in 1975, and urged all mental health professionals to help dispel the stigma of mental illness that had long been associated with homosexual

Hooker, *The Adjustment of the Male Overt Homosexual*, 21 *J. Projective Techniques* 17 (1957). Hooker's findings were replicated and amplified over the next two decades by numerous studies, using a variety of research techniques, which similarly concluded that homosexuality is not inherently associated with psychopathology or social maladjustment. For reviews, see J.C. Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality*, in *Homosexuality: Research Implications for Public Policy* 115, 115 (J.C. Gonsiorek & J.D. Weinrich eds., 1991); J.C. Gonsiorek, *Results of Psychological Testing On Homosexual Populations*, 25 *Am. Behav. Sci.* 385 (1982); B.F. Reiss, *Psychological Tests in Homosexuality*, in *Homosexual Behavior: A Modern Reappraisal* 296 (J. Marmor ed., 1980); M. Hart et al., *Psychological Adjustment of Nonpatient Homosexuals: Critical Review of the Research Literature*, 39 *J. Clinical Psychiatry* 604 (1978).

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

orientation.⁹ The National Association of Social Workers, with nearly 150,000 members, has adopted a similar policy.¹⁰

Thus, mental health professionals and researchers have long recognized that being homosexual inherently poses no obstacle to leading a happy, healthy, and productive life, and that the vast majority of gay and lesbian people function well in the full array of social institutions and interpersonal relationships. With particular relevance to the issues before the Court in this case, such functioning includes the capacity to raise healthy and well-adjusted children and to form stable intimate relationships with another person of the same sex.

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 ever increasing number of gay and lesbian couples, like their heterosexual counterparts, raise children together. Although data are not available to indicate the exact number of lesbian and gay parents in the United States, the 2000 Census found that, among heads of household who reported cohabiting with a same-sex partner, 33% of women and 22% of men had a son

⁹ Am. Psychol. Ass'n, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975).

¹⁰ Nat'l Ass'n of Soc. Workers, *Policy Statement on Lesbian, Gay and Bisexual Issues* (1993) (approved by NASW Delegate Assembly), reprinted in *Social Work Speaks: NASW Policy Statements* 224 (6th ed. 2003).

or daughter under 18 years living in their home.¹¹ These percentages correspond to approximately 65,600 gay fathers and 96,000 lesbian mothers who are heads of U.S. households, have at least one child under 18 living with them, and are cohabiting with a partner. With regards to Maine specifically, the same Census data found that among the 3,394 households who reported cohabiting with a same-sex partner, 25% of women and 19% of men had a son or daughter under 18 living in their home.¹² These percentages correspond to approximately 284 gay fathers and 475 lesbian mothers who are head of Maine households, have at least one child under 18 living with them, and are cohabiting with a partner. If one includes noncohabitating and single parents, parents of offspring 18 years or older, and parents who chose not to disclose to the Census Bureau that they live with a same-sex partner, researchers estimate that considerably more -- perhaps millions of American parents and thousands of Maine parents -- today identify themselves as gay, lesbian, or bisexual. They further suggest that the sons and daughters of gay, lesbian, and bisexual parents in the United States today are likely to number more than one million.¹³

¹¹ T. Simmons & M. O'Connell, *Married-Couple and Unmarried-Partner Households: 2000*, at 9 (U.S. Census Bureau 2003) (Table 4), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf> (accessed Oct. 10, 2006).

¹² *Id.*; see also *infra* Part III.D.

¹³ See C.J. Patterson & L.V. Friel, *Sexual Orientation and Fertility*, in *Infertility in the Modern World: Biosocial Perspectives* 238 (G. Bentley & N. Mascie-Taylor eds., 2000); E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341 (2002).

Families comprising same-sex couples and their children have diverse origins and take a variety of forms. Some couples have children conceived in one partner's prior heterosexual marriage (or nonmarital heterosexual relationship) predating that individual's present same-sex relationship. In these cases, the biological parent's same-sex partner often assumes the role of *de facto* step-parent, albeit without the legal framework provided by marriage. In addition, a growing number of same-sex couples are becoming parents through methods including donor insemination (with either an anonymous or known donor), assistance of a surrogate mother, and adoption.¹⁴ The children in many if not most families headed by same-sex couples have a legal relationship with only one of the parents, either through birth or adoption. However, both members of the couple typically function as parents for the children, even if they are not legally recognized as such.¹⁵ In addition, the legal trend toward allowing second-parent adoption by same-sex couples is resulting in an increasing number of families wherein both members of the same-sex couple are legally recognized as the parents of their children – even though the

¹⁴ See, e.g., R.W. Chan et al., *Psychosocial Adjustment Among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 *Child Dev.* 443 (1998); F.W. Bozett, *Gay Fathers*, in *Gay and Lesbian Parents* 3 (F.W. Bozett ed., 1987); C.J. Patterson, *Lesbian and Gay Parents and Their Children*, in *The Lives of Lesbians, Gays, and Bisexuals: Children to Adults* 274 (R.C. Savin-Williams & K.M. Cohen eds., 1996).

¹⁵ C.J. Patterson, *Families of the Lesbian Baby Boom: Parents' Division of Labor and Children's Adjustment*, 31 *Developmental Psychol.* 115 (1995); R.W. Chan et al., *Division of Labor Among Lesbian and Heterosexual Parents: Associations with Children's Adjustment*, 12 *J. Fam. Psychol.* 402 (1998); C.J. Patterson et al., *Division of Labor Among Lesbian and Heterosexual Parenting Couples: Correlates of Specialized Versus Shared Patterns*, 11 *J. Adult Dev.* 179 (2004).

parents themselves are not allowed to form a legally recognized relationship with each other through marriage.

B. Gay and Lesbian Parents Are as Fit and Capable as Heterosexual Parents, and Their Children Are as 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 assertions find no support in the scientific research literature.¹⁶

When comparing the outcomes of different forms of parenting, it is critically important to make appropriate comparisons. For example, differences resulting from the *number* of parents in a household cannot be attributed to the parents' *gender* or *sexual orientation*. Research in households with heterosexual parents generally indicates that – all else being equal – children

¹⁶ The research literature on gay, lesbian, and bisexual parents includes more than two dozen empirical studies. These studies vary in the quality of their samples, research design, measurement methods, and data analysis techniques. However, they are impressively consistent in their failure to identify deficits in the development of children raised in a lesbian or gay household. In summarizing the findings from these studies, the psychologist *arnici* refer to several reviews of the empirical literature published in respected, peer-reviewed journals and academic books. These include J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159 (2001); 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* 342 (2002); E.C. Perrin, *Sexual Orientation in Child and Adolescent Health Care* (2002); C.J. Patterson, *Gay Fathers*, in *The Role of the Father in Child Development* 397 (M.E. Lamb ed., 4th ed. 2004); 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), and recent empirical studies, e.g., J.L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, 75 *Child Dev.* 1886, 1895 (2004).

do better with two parenting figures rather than just one.¹⁷ The specific research studies typically cited in this regard do not address parents' sexual orientation, however, and therefore do not permit any conclusions to be drawn about the consequences of having heterosexual versus nonheterosexual parents, or two parents who are of the same versus different genders.¹⁸

Indeed, the scientific research that has directly compared outcomes for children with gay and lesbian parents with outcomes for children with heterosexual parents has been remarkably consistent in showing that lesbian and gay parents are every bit as fit and capable as heterosexual parents, and their children are as psychologically healthy and well-adjusted as children reared by heterosexual parents. Empirical research over the past two decades has failed to find any meaningful differences in the parenting ability of lesbian and gay parents compared to heterosexual parents. Most research on this topic has focused on lesbian mothers and refutes the stereotype that lesbian parents are not as child-oriented or maternal as non-lesbian mothers.¹⁹

¹⁷ See, e.g., S. McLanahan & G. Sandefur, *Growing Up With a Single Parent: What Hurts, What Helps* 39 (1994).

¹⁸ In their review of 21 published empirical studies in this area, Stacey and Biblarz criticize the practice of "extrapolat[ing] (inappropriately) from research on single mother families to portray children of lesbians as more vulnerable to everything from delinquency, substance abuse, violence, and crime, to teen pregnancy, school dropout, suicide, and even poverty," and note that "the extrapolation is 'inappropriate' because lesbigay-parent families have never been a comparison group in the family structure literature on which these authors rely." J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159, 162 & n.2 (2001).

¹⁹ See 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* 342 (2002); P.J. Falk, *Lesbian Mothers: Psychosocial Assumptions in Family Law*, 44 *Am. Psychologist* 941, 944 (1989) (reviewing empirical studies and concluding

Researchers have concluded that heterosexual and lesbian mothers do not differ in their parenting ability.²⁰ Studies examining gay fathers are fewer in number, but those that exist find that gay men are similarly fit and able parents, as compared to heterosexual men.²¹

Turning to the children of gay parents, researchers reviewing the scientific literature conclude that studies “provide no evidence that psychological adjustment among lesbians, gay men, their children, or other

that “research on maternal attitudes and caregiving of lesbian mothers indicates either that there are no substantial differences between this group and their heterosexual counterparts or that lesbian mothers may actually be more child-oriented than heterosexual mothers”).

²⁰ See, e.g., E.C. Perrin, *Sexual Orientation in Child and Adolescent Health Care* 105, 115-16 (2002); C.A. Parks, *Lesbian Parenthood: A Review of the Literature*, 68 *Am. J. Orthopsychiatry* 376 (1998); S. Golombok et al., *Children with Lesbian Parents: A Community Study*, 39 *Developmental Psychol.* 20 (2003). Some studies have found that a child with two lesbian parents may enjoy some advantages over a child raised by a biological mother and a stepfather. Based on their review of the research literature, Stacey and Biblarz noted two possible advantages for children with two lesbian mothers: “First, studies find the nonbiological lesbian comothers . . . to be more skilled at parenting and more involved with the children than are stepfathers. Second, lesbian partners in the two-parent families studied enjoy a greater level of synchronicity in parenting than do heterosexual partners.” J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159, 174 (2001).

²¹ 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* 342 (2002) (finding “no differences” between gay and heterosexual fathers in providing appropriate recreation, encouraging autonomy, or “dealing with general problems of parenting,” and finding that “[g]ay fathers have substantial evidence of nurturance and investment in their parental role”); C.J. Patterson, *Gay Fathers, in The Role of the Father in Child Development* 397, 413 (M.E. Lamb ed., 4th ed. 2004) (reviewing published empirical studies and concluding that, although additional research is needed, “[o]n the basis of existing research, we can conclude that there is no reason for concern about the development of children living in the custody of gay fathers; on the contrary, there is every reason to believe that gay fathers are as likely as heterosexual fathers to provide home environments in which children grow and flourish”).

family members is impaired in any significant way”²² and that “every relevant study to date shows that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships or on children’s mental health or social adjustment.”²³ 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.²⁴

Nor does empirical research support the misconception that having a homosexual parent has a deleterious effect on children’s *gender identity* development.²⁵ Studies concerning the children of lesbian mothers have not found any difference from those of heterosexual parents in their patterns of

²² C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052, 1064 (2000).

²³ J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159, 176 (2001). A more recent study, J.L. Wainright *et al.*, *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, 75 *Child Dev.* 1886, 1895 (2004), is fully consistent with this summary.

²⁴ J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159, 169, 171 (2001). For additional reviews of the research literature, see C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052, 1058-1063 (2000); E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 342 (2002); Perrin, *Sexual Orientation in Child and Adolescent Health Care* (2002).

²⁵ As noted in Section II.A above, *gender identity* concerns the child’s psychological sense of *being* male or female.

gender identity. As a panel of the American Academy of Pediatrics concluded on the basis of their examination of peer-reviewed studies, “[n]one of the more than 300 children studied to date have shown evidence of gender identity confusion, wished to be the other sex, or consistently engaged in cross-gender behavior.”²⁶

Similarly, most published studies have not found reliable differences in *social gender role* conformity between the children of lesbian and heterosexual mothers.²⁷ Data have not been reported on the gender identity development or gender role orientation of the sons and daughters of gay fathers.²⁸

²⁶ 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* 342 (2002).

²⁷ As noted in Section II.A. above, *social gender role* refers to *adherence to cultural norms* defining feminine and masculine behavior. One group of researchers found that daughters of lesbian mothers were significantly less conforming to stereotypical social gender roles in some respects, e.g., daughters of lesbian mothers were more likely than daughters of heterosexual mothers to aspire to non-traditional occupations for women, such as doctor, astronaut, lawyer, or engineer. R. Green et al., *Lesbian Mothers and Their Children: A Comparison With Solo Parent Heterosexual Mothers and Their Children*. 15 *Archives Sexual Behav.* 167 (1986); see also M. Hotvedt & J.B. Mandel, *Children of Lesbian Mothers*, in *Homosexuality: Social, Psychological, and Biological Issues* 275 (W. Paul et al. eds., 1982).

However, the majority of published studies have *not* found meaningful differences in this regard. See, e.g., M. Kirkpatrick et al., *Lesbian Mothers and Their Children: A Comparative Survey*, 51 *Am. J. Orthopsychiatry* 545(1981); R. Green, *Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents*, 135 *Am. J. Psychiatry* 692 (1978); C.J. Patterson, *Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex Role Identity*, in *Lesbian and Gay Psychology: Theory, Research, and Clinical Applications* 156 (B. Greene & G.M. Herek eds., 1994); A. Brewaeys et al., *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*, 12 *Human Reproduction* 1349 (1997). For reviews of these findings, see C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052 (2000).

We note that Stacey and Biblarz, based on their review of the literature, assert that six empirical studies have indicated that children of lesbian mothers display significantly less gender role conformity than children of heterosexual mothers. J.

As noted in Section II.B *supra*, homosexuality is neither an illness nor a disability, and the mental health professions do not regard a homosexual orientation as harmful, undesirable, or requiring intervention or prevention. The factors that cause an individual to become heterosexual, homosexual, or bisexual — including possible biological, psychological, or social effects of the parents' sexual orientation — are not well understood.²⁹ However, the available evidence indicates that the vast majority of lesbian and gay adults

Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159, 168-70 (2001). We have reviewed the studies cited by Stacey and Biblarz, however, and only the two cited in the first paragraph of this footnote (which appear to have been derived from the same ongoing study) actually reveal significant differences in this regard.

In any event, the important point is that to the extent such differences concerning conformance to stereotypical gender roles could be shown to exist, many psychologists would consider them healthy in a world in which gender-based discrimination persists. Indeed, as a leading researcher and former head of the Section on Social and Emotional Development at the National Institute of Child Health and Human Development has explained, conformity to a traditional gender role should not be equated with psychological adjustment: "There is no justification for this assumed congruence; in fact, less traditionally gender-typed children are arguably better prepared should the future involve more egalitarian societies." M.E. Lamb, *Parental Behavior, Family Processes, and Child Development in Nontraditional and Traditionally Understudied Families*, in *Parenting and Child Development in "Nontraditional" Families* 6 (M.E. Lamb ed., 1999).

²⁸ Empirical data on gay fathers is relatively sparse. For a review of the relevant studies, see C.J. Patterson, *Gay Fathers*, in *The Role of the Father in Child Development* 397 (M.E. Lamb ed., 4th ed. 2004).

²⁹ Although much research has examined the possible genetic, hormonal, developmental, social, and cultural influences on sexual orientation, no findings have emerged that permit scientists to conclude that sexual orientation is determined by any particular factor or factors. The evaluation of psychologist *amici* is that, although some of this research may be promising in facilitating greater understanding of the development of sexual orientation, it does not permit a conclusion based in sound science at the present time as to the cause or causes of sexual orientation, whether homosexual, bisexual, or heterosexual. See generally Am. Psychol. Ass'n, 7 *Encyclopedia of Psychol.* 260 (A.E. Kazdin ed., 2000); 2 *Corsini Encyclopedia of Psychology and Behavioral Science* 683 (W.E. Craighead & C.B. Nemeroff eds., 3d ed. 2001).

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

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.³¹ Thus, after careful scrutiny of decades of

³⁰ See C.J. Patterson, *Gay Fathers*, in *The role of the Father in Child Development* 397, 407-09 (M.E. Lamb ed., 4th ed. 2004); J. Stacey & T.J. Biblarz, (*How*) *Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159, 170-71 (2001); C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052, 1059-60 (2000).

³¹ A study from Australia, S. Sarantakos, *Children in Three Contexts: Family, Education, and Social Development*, 21 *Children Australia* 23 (1996), has been cited as demonstrating deficits among children raised by gay and lesbian parents in Australia compared to children raised by heterosexual couples. In the *amici's* judgment, the anomalous results reported by this study – which contradict the accumulated body of research findings in this field – are attributable to idiosyncrasies in its sample and methodologies and are therefore not reliable. An expert reading of the Sarantakos article reveals that certain characteristics of its methodology and sample are highly likely to have skewed the results and rendered them an invalid indicator of the well-being of children raised by gay parents in at least three respects: (1) the children raised by gay and lesbian parents experienced unusually high levels of extreme social ostracism and overt hostility from other children and parents, which probably accounted for the former's lower levels of interaction and social integration with peers, *see id.* at 25-26; (2) nearly all indicators of the children's functioning were based on subjective reports by teachers, who, as noted repeatedly by the author, may have been biased, *id.* at 24, 26, 30 (indeed, the author notes that “the influence of the attitudes of teachers to life styles on the process of evaluation of the students' performance cannot be underestimated,” *id.* at 26); and (3) 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, *id.* at 30. (Indeed, although the differences Sarantakos observed among the children are anomalous in the context of research on parents' sexual orientation, they are highly consistent with findings from studies of the effects of parental divorce on children, *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); P.R. Amato & B. Keith, *Parental Divorce and the Well-Being of Children: A Meta-Analysis*, 110 *Psychol. Bull.* 26 (1991)). Moreover, *Children Australia* is an obscure regional journal that is not widely known outside Australia. As such, it cannot be considered a source upon which one should rely for understanding the state of scientific knowledge in this field, particularly when the results contradict those that have been repeatedly replicated in studies published in reputable scientific journals.

research in this area, the American Psychological Association concluded in its recent *Resolution on Sexual Orientation, Parents, and Children*: “There is no scientific evidence that parenting effectiveness is related to parental sexual orientation: Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children” and that “Research has shown that adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish.”³² Similarly, the American Academy of Pediatrics, the nation’s preeminent pediatric authority with 57,000 pediatrician members, has concluded that “Children who grow up with one or two gay and/or lesbian parents fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are heterosexual No data have pointed to any risk to children as a result of growing up in a family with one or more gay

Accordingly, the Sarantakos study does not undermine the consistent pattern of results reported in other empirical studies addressing this topic.

Amici are also aware that some non-scientific organizations have attempted to convince courts that there is an actual scientific dispute in this area by citing research performed by Paul Cameron as supporting the existence of deficits in gay and lesbian parents or their children compared to heterosexual parents or their children. In fact, as stated above, there is *no scientific* evidence of such deficits. Cameron’s research does not satisfy the standards set out at the beginning of this brief; his key findings in this area have not been replicated and are contradicted by the reputable published research; and unlike research that makes a contribution to science, his key findings and conclusions have rarely been cited by subsequent scientific studies published in peer-reviewed journals as informing their scientific inquiry. For a detailed critique of the research project on which Cameron has based many of his published papers, see G.M. Herek, *Bad Science in the Service of Stigma: A Critique of the Cameron Group’s Survey Studies*, in *Stigma and Sexual Orientation* 223 (G.M. Herek, ed. 1998).

³² Am. Psychol. Ass’n, *Resolution on Sexual Orientation, Parents, and Children* (2004) (emphasis added) (attached as Supplemental Legal Authority to this brief).

parents.”³³ And the National Association of Social Workers has determined that “The most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to heterosexual parents and their children that were included in the studies.”³⁴ Most recently, in adopting an official Position Statement in support of legal recognition of same-sex civil marriage, the American Psychiatric Association – the nation’s leading association of psychiatrists – 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.”³⁵

These statements by the leading associations of experts in this area reflect professional consensus that children raised by lesbian or gay parents do not differ in any important respects from those raised by heterosexual parents. No credible empirical research suggests otherwise. It is the quality of parenting that predicts children’s psychological and social adjustment, not the parents’ sexual orientation or gender.

³³ 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* 341-42 (2002).

³⁴ Nat’l Ass’n of Soc. Workers, *Policy Statement: Lesbian, Gay, and Bisexual Issues*, in *Social World Speaks* 193, 194 (1997).

³⁵ Am. Psychiatric Ass’n, *Position Statement: Support of Legal Recognition of Same-Sex Civil Marriage* (2005), available at http://www.psych.org/edu/other_res/lib_archives/archives/200502.pdf.

C. The Foster Children of a Same-Sex Couple Will Benefit If Both Members of That Couple Can Legally Adopt Them.

Allowing both members of a same-sex couple to legally adopt foster children they are already caring for will not have any detrimental effect on children raised in heterosexual households, but it will benefit those foster children. Those children will benefit from having a clearly defined legal relationship with both of their *de facto* parents. Such legal clarity is especially important during times of crisis, ranging from school and medical emergencies involving the child to the incapacity or death of a parent. The death of a parent is a highly stressful occasion for a child and is likely to have important effects on the child's well-being.³⁶ In those situations, the stable legal bonds afforded by legal adoption by both parental figures can provide the child with as much continuity as possible in her or his relationship with the surviving parent, and can minimize the likelihood of conflicting or competing claims by non-parents for the child's custody. Children will therefore benefit from the greater stability and security that is likely to result if both parental figures are permitted to legally adopt them.

³⁶ See, e.g., P.R. Amato & B. Keith, *Parental Divorce and the Well-Being of Children: A Meta-Analysis*, 110 *Psychol. Bull.* 26 (1991) (reporting that, across studies, children who experienced the death of a parent subsequently manifested significantly lower academic achievement, psychological adjustment, and self-esteem, compared to children in intact two-parent families).

D. Gay Men and Lesbians Form Stable, Committed Relationships That Are Equivalent to Heterosexual Relationships in Essential Respects.

To the extent critics might attempt to prevent gay and lesbian couples from adopting children because homosexual relationships are unstable, this assertion is inconsistent with the scientific evidence. Like their heterosexual counterparts, substantial numbers of gay men and lesbians desire to form stable, long-lasting, committed relationships.³⁷ Many are successful in doing so. Empirical studies using nonrepresentative samples of gay men and lesbians show that the vast majority of participants have been involved in a committed relationship at some point in their lives, that large proportions are currently involved in such a relationship (across studies, roughly 40 - 70% of gay men and 45 - 80% of lesbians), and that a substantial number of those couples have been together 10 or more years.³⁸ Recent surveys based on more representative samples of gay men, lesbians, and bisexuals support these

³⁷ In a 2000 poll with a probability sample of 405 lesbians, gay men, and bisexuals from 15 major U.S. metropolitan areas, 74% responded affirmatively to the question, "If you could get legally married to someone of the same sex, would you like to do that someday or not?" Henry J. Kaiser Family Foundation, *Inside-Out: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation* 31 (2001), available at <http://www.kff.org/kaiserpolls/loader.cfm?url=/commonspot/security/getfile.cfm&PageD=13875>.

³⁸ See L.A. Peplau & L.R. Spalding, *The Close Relationships of Lesbians, Gay Men and Bisexuals*, in *Close Relationships: A Sourcebook* 114 (Hendrick & Hendrick eds., 2000); L.A. Kurdek, *Lesbian and Gay Couples*, in *Lesbian, Gay, and Bisexual Identities over the Lifespan* 243 (A.R. D'Augelli & C.J. Patterson eds., 1995); P.M. Nardi, *Friends, Lovers, and Families: The Impact of AIDS on Gay and Lesbian Relationship in In Changing Times: Gay Men and Lesbians Encounter HIV/AIDS* 55, 71-72 (Tables 3.1 and 3.2) (Martin P. Levine, Peter M. Nardi & John H. Gagnon eds., 1997).

findings and indicate that many same-sex couples are cohabiting.³⁹ A preliminary analysis of data from the 2000 US Census reported that same-sex couples headed more than 594,000 households in the United States, with at least one cohabiting same-sex couple in 99% of the nation's counties. The same analysis indicates that same-sex couples head approximately 3,394 households in Maine.⁴⁰

Empirical research demonstrates that the psychological and social aspects of these committed relationships between same-sex partners strongly resemble those of heterosexual partnerships. Like heterosexual couples, same-sex couples form deep emotional attachments and commitments. Heterosexual and same-sex couples alike face similar challenges concerning issues such as intimacy, love, equity, loyalty, and stability, and they go through similar processes to address those challenges.⁴¹ Empirical research examining the

³⁹ See T.C. Mills et al., *Health-Related Characteristics of Men Who Have Sex with Men: A Comparison of Those Living in "Gay Ghettos" with Those Living Elsewhere*, 91 Am. J. Pub. Health, 980, 982 (Table 1) (2001); S.D. Cochran et al., *Prevalence of Mental Disorders, Psychological Distress, and Mental Services Use Among Lesbian, Gay, and Bisexual Adults in the United States*, 71 J. Consulting & Clinical Psychol. 53, 56 (Note to Table 1) (2003); Henry J. Kaiser Family Foundation, *Inside-OUT: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation*, at 33 (Questions D4, D5) (2001). The latter two surveys probably underrepresent the actual number of respondents in a committed same-sex relationship because the question wording focused on marital status and cohabitation, which probably led many respondents who were currently in a same-sex couple but not cohabiting to describe themselves as single.

⁴⁰ T. Simmons & M. O'Connell, *Married-Couple and Unmarried-Partner Households: 2000*, at 4 (U.S. Census Bureau 2003) (Table 2), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf> (accessed Oct. 10, 2006). As with the national figures, these findings necessarily represent a low estimate. See *supra* note 39.

⁴¹ L.A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 J. Marriage & Fam. 880 (2004); see also L.A.

quality of intimate relationships also shows that gay and lesbian couples do not differ from heterosexual couples in their satisfaction with the relationship.⁴² A review of the literature on gay and lesbian couples in 1991 concluded that “most lesbians and gay men want intimate relationships and are successful in creating them. Homosexual partnerships appear no more vulnerable to problems and dissatisfactions than their heterosexual counterparts.”⁴³

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

Kurdek, *Differences Between Heterosexual-Nonparent Couples and Gay, Lesbian and Heterosexual-Parent Couples*, 22 *J. Fam. Issues* 727 (2001); R.A. Mackey et al., *Psychological Intimacy in the Lasting Relationships of Heterosexual and Same-Gender Couples*, 43 *Sex Roles* 201 (2000); see generally L.A. Peplau & L.R. Spalding, *The Close Relationships of Lesbians, Gay Men and Bisexuals*, in *Close Relationships: A Sourcebook* 111, 114 (Hendrick & Hendrick eds., 2000).

⁴² L.A. Peplau & L.R. Spalding, *The Close Relationships of Lesbians, Gay Men and Bisexuals*, in *Close Relationships: A Sourcebook* 114 (Hendrick & Hendrick eds., 2000) (“Empirical research has found striking similarities in the reports of love and satisfaction among contemporary lesbian, gay and heterosexual couples”); see also R.A. Mackey et al., *Psychological Intimacy in the Lasting Relationships of Heterosexual and Same-Gender Couples*, 43 *Sex Roles* 201 (2000); 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).

⁴³ L.A. Peplau, *Lesbian and Gay Relationships*, in *Homosexuality: Implications for Public Policy* 195 (J.C. Gonsiorek & J.D. Weinrich eds., 1991); see also L.A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 *J. Marriage & Fam.* 880 (2004) (finding no differences between gay and lesbian couples and heterosexual couples without children on individual personality differences, views on relationships, conflict resolution, and satisfaction); L.A. Kurdek, *Differences Between Heterosexual-Nonparent Couples and Gay, Lesbian and Heterosexual-Parent Couples*, 22 *J. Fam. Issues* 727 (2001) (same). The authors of a major study of heterosexual and gay couples in the United States undertaken in the early 1980s similarly observed that “[c]ouplehood, either as a reality or an aspiration, is as strong among gay people as it is among heterosexuals.” P. Blumstein & P. Schwartz, *American Couples: Money, Work, Sex* 45 (1983).

couples provides no evidence to justify discrimination against same-sex couples.”⁴⁴

CONCLUSION

Laws that have the effect of barring same-sex couples from legally adopting foster children for whom they are caring have no scientific basis.

⁴⁴ Am. Psychol. Ass’n, *Resolution on Sexual Orientation and Marriage* (2004) (attached as Supplemental Legal Authority to this brief).

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Resolution on Sexual Orientation, Parents, and Children

Adopted by the APA Council of Representatives, July 2004

Research Summary

Lesbian and Gay Parents

Many lesbians and gay men are parents. In the 2000 U. S. Census, 33% of female same-sex couple households and 22% of male same-sex couple households reported at least one child under the age of 18 living in the home. Despite the significant presence of at least 163,879 households headed by lesbian or gay parents in U.S. society, three major concerns about lesbian and gay parents are commonly voiced (Falk, 1994; Patterson, Fulcher & Wainright, 2002). These include concerns that lesbians and gay men are mentally ill, that lesbians are less maternal than heterosexual women, and that lesbians' and gay men's relationships with their sexual partners leave little time for their relationships with their children. In general, research has failed to provide a basis for any of these concerns (Patterson, 2000, 2004a; Perrin, 2002; Tasker, 1999; Tasker & Golombok, 1997). First, homosexuality is not a psychological disorder (Conger, 1975). Although exposure to prejudice and discrimination based on sexual orientation may cause acute distress (Mays & Cochran, 2001; Meyer, 2003), there is no reliable evidence that homosexual orientation per se impairs psychological functioning. Second, beliefs that lesbian and gay adults are not fit parents have no empirical foundation (Patterson, 2000, 2004a; Perrin, 2002). Lesbian and heterosexual women have not been found to differ markedly in their approaches to child rearing (Patterson, 2000; Tasker, 1999). Members of gay and lesbian couples with children have been found to divide the work involved in childcare evenly, and to be satisfied with their relationships with their partners (Patterson, 2000, 2004a). The results of some studies suggest that lesbian mothers' and gay fathers' parenting skills may be superior to those of matched heterosexual parents. There is no scientific basis for concluding that lesbian mothers or gay fathers are unfit parents on the basis of their sexual orientation (Armesto, 2002; Patterson, 2000; Tasker & Golombok, 1997). On the contrary, results of research suggest that lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children.

Children of Lesbian and Gay Parents

As the social visibility and legal status of lesbian and gay parents has increased, three major concerns about the influence of lesbian and gay parents on children have been often voiced (Falk, 1994; Patterson, Fulcher & Wainright, 2002). One is that the children of lesbian and gay parents will experience more difficulties in the area of sexual identity than children of heterosexual parents. For instance, one such concern is that children brought up by lesbian mothers or gay fathers will show disturbances in gender identity and/or in gender role behavior. A second category of concerns involves aspects of children's personal development other than sexual identity. For example, some observers have expressed fears that children in the custody of gay or lesbian parents would be more vulnerable to mental breakdown, would exhibit more adjustment difficulties and behavior problems, or would be less psychologically healthy than other children. A third category of concerns is that children of lesbian and gay parents will experience difficulty in social relationships. For example, some observers have expressed concern that children living with lesbian mothers or gay fathers will be stigmatized, teased, or otherwise victimized by peers. Another common fear is that children living with gay or lesbian parents will be more likely to be sexually abused by the parent or by the parent's friends or acquaintances.

Results of social science research have failed to confirm any of these concerns about children of lesbian and gay parents (Patterson, 2000, 2004a; Perrin, 2002; Tasker, 1999). Research suggests that sexual identities (including gender identity, gender-role behavior, and sexual orientation) develop in much the same ways among children of lesbian mothers as they do among children of heterosexual parents (Patterson, 2004a). Studies of other aspects of personal development (including personality, self-concept, and conduct) similarly reveal few differences between children of lesbian mothers and children

of heterosexual parents (Perrin, 2002; Stacey & Biblarz, 2001; Tasker, 1999). However, few data regarding these concerns are available for children of gay fathers (Patterson, 2004b). Evidence also suggests that children of lesbian and gay parents have normal social relationships with peers and adults (Patterson, 2000, 2004a; Perrin, 2002; Stacey & Biblarz, 2001; Tasker, 1999; Tasker & Golombok, 1997). The picture that emerges from research is one of general engagement in social life with peers, parents, family members, and friends. Fears about children of lesbian or gay parents being sexually abused by adults, ostracized by peers, or isolated in single-sex lesbian or gay communities have received no scientific support. Overall, results of research suggest that the development, adjustment, and well-being of children with lesbian and gay parents do not differ markedly from that of children with heterosexual parents.

Resolution

WHEREAS APA supports policy and legislation that promote safe, secure, and nurturing environments for all children (DeLeon, 1993, 1995; Fox, 1991; Levant, 2000);

WHEREAS APA has a long-established policy to deplore "all public and private discrimination against gay men and lesbians" and urges "the repeal of all discriminatory legislation against lesbians and gay men" (Conger, 1975);

WHEREAS the APA adopted the Resolution on Child Custody and Placement in 1976 (Conger, 1977, p. 432)

WHEREAS Discrimination against lesbian and gay parents deprives their children of benefits, rights, and privileges enjoyed by children of heterosexual married couples;

WHEREAS some jurisdictions prohibit gay and lesbian individuals and same-sex couples from adopting children, notwithstanding the great need for adoptive parents (Lofton v. Secretary, 2004);

WHEREAS 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 (Patterson, 2000, 2004; Perrin, 2002; Tasker, 1999);

WHEREAS Research has shown that the adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish (Patterson, 2004; Perrin, 2002; Stacey & Biblarz, 2001);

THEREFORE BE IT RESOLVED That the APA opposes any discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services;

THEREFORE BE IT FURTHER RESOLVED That the APA believes that children reared by a same-sex couple benefit from legal ties to each parent;

THEREFORE BE IT FURTHER RESOLVED That the APA supports the protection of parent-child relationships through the legalization of joint adoptions and second parent adoptions of children being reared by same-sex couples;

THEREFORE BE IT FURTHER RESOLVED That APA shall take a leadership role in opposing all discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services;

THEREFORE BE IT FURTHER RESOLVED That APA encourages psychologists to act to eliminate all discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services in their practice, research, education and training ("Ethical Principles," 2002, p. 1063);

THEREFORE BE IT FURTHER RESOLVED That the APA shall provide scientific and educational resources that inform public discussion and public policy development regarding discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health services and that assist its members, divisions, and affiliated state, provincial, and territorial psychological associations.

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Resolution on Sexual Orientation and Marriage

Adopted by the APA Council of Representatives, July 2004

Research Summary

Minority Stress in Lesbian, Gay, and Bisexual Individuals

Psychological and psychiatric experts have agreed since 1975 that homosexuality is neither a form of mental illness nor a symptom of mental illness (Conger, 1975). Nonetheless, there is growing recognition that social prejudice, discrimination, and violence against lesbians, gay men, and bisexuals take a cumulative toll on the well-being of these individuals. Researchers (e.g., DiPlacido, 1998; Meyer, 2003) use the term "minority stress" to refer to the negative effects associated with the adverse social conditions experienced by individuals who belong to a stigmatized social group (e.g., the elderly, members of racial and ethnic minority groups, the physically disabled, women, the poor or those on welfare, or individuals who are gay, lesbian, or bisexual).

A recent meta-analysis of population-based epidemiological studies showed that lesbian, gay, and bisexual populations have higher rates of stress-related psychiatric disorders (such as those related to anxiety, mood, and substance use) than do heterosexual populations (Meyer, 2003). These differences are not large but are relatively consistent across studies (e.g., Cochran & Mays, 2000; Cochran, Sullivan, & Mays, 2003; Gilman et al., 2001; Mays & Cochran, 2001). Meyer also provided evidence that within lesbian, gay, and bisexual populations, those who more frequently felt stigmatized or discriminated against because of their sexual orientation, who had to conceal their homosexuality, or who were prevented from affiliating with other lesbian, gay, or bisexual individuals tended to report more frequent mental health concerns. Research also shows that compared to heterosexual individuals and couples, gay and lesbian individuals and couples experience economic disadvantages (e.g., Badgett, 2001). Finally, the violence associated with hate crimes puts lesbians, gay men and bisexual individuals at risk for physical harm to themselves, their families, and their property (D'Augelli, 1998; Herek, Gillis, & Cogan, 1999). Taken together, the evidence clearly supports the position that the social stigma, prejudice, discrimination, and violence associated with not having a heterosexual sexual orientation and the hostile and stressful social environments created thereby adversely affect the psychological, physical, social, and economic well-being of lesbian, gay, and bisexual individuals.

Same-Sex Couples

Research indicates that many gay men and lesbians want and have committed relationships. For example, survey data indicate that between 40% and 60% of gay men and between 45% and 80% of lesbians are currently involved in a romantic relationship (e.g., Bradford, Ryan, & Rothblum, 1994; Falkner & Garber, 2002; Morris, Balsam, & Rothblum, 2002). Further, data from the 2000 United States Census (United States Census Bureau, 2000) indicate that of the 5.5 million couples who were living together but not married, about 1 in 9 (594,391) had partners of the same sex. Although the Census data are almost certainly an underestimate of the actual number of cohabiting same-sex couples, they indicated that a male householder and a male partner headed 301,026 households and that a female householder and a female partner headed 293,365 households.¹

Despite persuasive evidence that gay men and lesbians have committed relationships, three concerns about same-sex couples are often raised. A first concern is that the relationships of gay men and lesbians are dysfunctional and unhappy. To the contrary, studies that have compared partners from same-sex couples to partners from heterosexual couples on standardized measures of relationship

¹The same-sex couples identified in the U.S. Census may include couples in which one or both partners are bisexually identified, rather than gay or lesbian identified.

quality (such as satisfaction and commitment) have found partners from same-sex and heterosexual couples to be equivalent to each other (see reviews by Peplau & Beals, 2004; Peplau & Spalding, 2000).

A second concern is that the relationships of gay men and lesbians are unstable. However, research indicates that, despite the somewhat hostile social climate within which same-sex relationships develop, many lesbians and gay men have formed durable relationships. For example, survey data indicate that between 18% and 28% of gay couples and between 8% and 21 % of lesbian couples have lived together 10 or more years (e.g., Blumstein & Schwartz, 1983; Bryant & Demian, 1994; Falkner & Garber, 2002; Kurdek, 2003). Researchers (e.g., Kurdek, in press) have also speculated that the stability of same-sex couples would be enhanced if partners from same-sex couples enjoyed the same levels of social support and public recognition of their relationships as partners from heterosexual couples do.

A third concern is that the processes that affect the well-being and permanence of the relationships of lesbian and gay persons are different from those that affect the relationships of heterosexual persons. In fact, research has found that the factors that predict relationship satisfaction, relationship commitment, and relationship stability are remarkably similar for both same-sex cohabiting couples and heterosexual married couples (Kurdek, 2001, in press).

Resolution

WHEREAS APA has a long-established policy to deplore "all public and private discrimination against gay men and lesbians" and urges "the repeal of all discriminatory legislation against lesbians and gay men" (Conger, 1975, p. 633);

WHEREAS the APA adopted the Resolution on Legal Benefits for Same-Sex Couples in 1998 (Levant, 1998, pp. 665-666.

WHEREAS Discrimination and prejudice based on sexual orientation detrimentally affects psychological, physical, social, and economic well-being (Badgett, 2001; Cochran, Sullivan, & Mays, 2003; Herek, Gillis, & Cogan, 1999; Meyer, 2003);

WHEREAS "Anthropological research on households, kinship relationships, and families, across cultures and through time, provide[s] no support whatsoever for the view that either civilization or viable social orders depend upon marriage as an exclusively heterosexual institution" (American Anthropological Association, 2004);

WHEREAS Psychological research on relationships and couples provides no evidence to justify discrimination against same-sex couples (Kurdek, 2001, in press; Peplau & Beals, 2004; Peplau & Spalding, 2000);

WHEREAS The institution of civil marriage confers a social status² and important legal benefits, rights, and privileges³;

² Turner v. Safley, 482 U.S. 78, 95-96 (1987) (summarizing intangible social benefits of marriage in the course of striking down state restrictions on prisoner marriage, "[m]arriages . . . are expressions of emotional support and public commitment. These elements are an important and significant aspect of the marital relationship."); *Maynard v. Hill*, 125 U.S. 190, 211 (1888) (marriage is more than a mere contract, it is "the foundation of the family and of society"); *Goodridge v. Dep't of Public Health*, 798 N.E.2d 941 (Mass. 2003) ("[m]arriage also bestows enormous private and social advantages on those who choose to marry. Civil marriage is at once a deeply personal commitment to another human being and a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family"); James M. Donovan, *Same-Sex Union Announcements: Whether Newspapers Must Publish Them, and Why Should we Care*, 68 BROOK. L. REV. 721, 746 (2003) ("the intangible benefit of public recognition is arguably the most important benefit of marriage to the couple as a unit"); Gil Kujovich, *An Essay on the Passive Virtue of Baker v. State*, 25 VT. L. REV. 93, 96 (2000) ("historically, marriage has been the only state-sanctioned and socially approved means by which two people commit themselves to each other. It has been the most favored context for forming a family and raising children. From this perspective, creation of a same-sex alternative to marriage amounts

WHEREAS The United States General Accounting Office (2004) has identified over 1,000 federal statutory provisions in which marital status is a factor in determining or receiving benefits, rights, and privileges, for example, those concerning taxation, federal loans, and dependent and survivor benefits (e.g., Social Security, military, and veterans);

WHEREAS There are numerous state, local, and private sector laws and other provisions in which marital status is a factor in determining or receiving benefits, rights, and privileges, for example, those concerning taxation, health insurance, health care decision-making, property rights, pension and retirement benefits, and inheritance⁴;

WHEREAS Same-sex couples are denied equal access to civil marriage⁵;

WHEREAS Same-sex couples who enter into a civil union are denied equal access to all the benefits, rights, and privileges provided by federal law to married couples (United States General Accounting Office, 2004)⁶;

WHEREAS The benefits, rights, and privileges associated with domestic partnerships are not universally available⁷, are not equal to those associated with marriage⁸, and are rarely portable⁹;

to an exclusion from the preferred and accepted status--an exclusion that could imply the inferiority or unworthiness of the couples who are excluded, even if the alternative confers precisely the same tangible benefits and protections as marriage.”); Greg Johnson, Vermont Civil Unions: The New Language of Marriage, 25 Vt. L. Rev. 15, 17 (2000) (reflecting on the inferior status of civil unions as compared to marriage).

³ See e.g., *Goodridge v. Dep't of Public Health*, 798 N.E.2d 941, 955-958 (Mass. 2003) (outlining Massachusetts statutory benefits and rights previously available only to married persons); *Baker v. State*, 744 A.2d 864, 883-84 (Vt. 1999) (outlining Vermont statutory benefits and rights previously available only to married persons); *Baehr v. Lewin*, 852 P.2d 44, 59 (Haw. 1993) (summarizing some of the state law benefits available only to married persons in Hawaii).

⁴ See Note 3.

⁵ WILLIAM N. ESKRIDGE, JR., *GAYLAW: CHALLENGING THE APARTHEID OF THE CLOSET* 134-35 (1999) (describing the continuing exclusion of gays and lesbians from civil marriage).

⁶ William N. Eskridge, Jr., *Equality Practice: Liberal Reflections on the Jurisprudence of Civil Unions*, 64 ALB. L. REV. 853, 861-62 (2001) (describing the “unequal benefits and obligations” of civil unions under federal law); Mark Strasser, *Mission Impossible: On Baker, Equal Benefits, and the Imposition of Stigma*, 9 WM. & MARY BILL RTS. J. 1, 22 (2000) (“[S]ame-sex civil union partners still would not be entitled to federal marital benefits . . .”); Recent Legislation, *Act Relating to Civil Unions*, 114 HARV. L. REV. 1421, 1423 (2001) (“Furthermore, the parallel between civil unions and marriage extends only to those aspects of each that do not implicate federal law. As the ‘Construction’ section of ARCU [the Act Relating to Civil Union] acknowledges, ‘[m]any of the laws of [Vermont] are intertwined with federal law, and the general assembly recognizes that it does not have the jurisdiction to control federal laws or the benefits, protections and responsibilities related to them.’”).

⁷ Gary D. Allison, *Sanctioning Sodomy: The Supreme Court Liberates Gay Sex and Limits State Power To Vindicate the Moral Sentiments of the People*, 39 TULSA L. REV. 95, 137 (2003) (“Currently, eight states have domestic partnership laws in place. By the late 1990s, 421 cities and states, and over 3,500 businesses or institutions of higher education offered some form of domestic partner benefit.”) (citations and internal quotations omitted).

⁸ Eileen Shin, *Same-Sex Unions and Domestic Partnership*, 4 GEO. J. GENDER & L. 261, 272-78 (2002) (describing the limited reach of various domestic partnership laws); Mark Strasser, *Some Observations about DOMA, Marriages, Civil Unions, and Domestic Partnerships*, 30 CAP. U. L. REV. 363, 381 (2002) (noting that while domestic partnerships “provide particular financial benefits” and offer “a vehicle whereby individuals can express that they have a particular kind of relationship with someone else,” they “are neither the equivalent of civil unions nor the equivalent of marriage”).

⁹ Nancy J. Knauer, *The September 11 Attacks and Surviving Same-Sex Partners: Defining Family Through Tragedy*, 75 TEMP. L. REV. 31, 93 (2002) (“The two major drawbacks of domestic partnership are that it tends to grant relatively few rights and it is almost never portable.”).

WHEREAS people who also experience discrimination based on age, race, ethnicity, disability, gender and gender identity, religion, and socioeconomic status may especially benefit from access to marriage for same-sex couples (Division 44/Committee on Lesbian, Gay, and Bisexual Concerns Joint Task Force on Guidelines for Psychotherapy with Lesbian, Gay, and Bisexual Clients, 2000);

THEREFORE BE IT RESOLVED That the APA believes that it is unfair and discriminatory to deny same-sex couples legal access to civil marriage and to all its attendant benefits, rights, and privileges;

THEREFORE BE IT FURTHER RESOLVED That APA shall take a leadership role in opposing all discrimination in legal benefits, rights, and privileges against same-sex couples;

THEREFORE BE IT FURTHER RESOLVED That APA encourages psychologists to act to eliminate all discrimination against same-sex couples in their practice, research, education and training ("Ethical Principles," 2002, p. 1063);

THEREFORE BE IT FURTHER RESOLVED That the APA shall provide scientific and educational resources that inform public discussion and public policy development regarding sexual orientation and marriage and that assist its members, divisions, and affiliated state, provincial, and territorial psychological associations.

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