

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Suffolk County

No. SJC-08860

HILARY GOODRIDGE, JULIE GOODRIDGE,
DAVID WILSON, ROBERT COMPTON,
MICHAEL HORGAN, EDWARD BALMELLI,
MAUREEN BRODOFF, ELLEN WADE,
GARY CHALMERS, RICHARD LINNELL,
HEIDI NORTON, GINA SMITH,
GLORIA BAILEY and LINDA DAVIES,

Plaintiffs-Appellants,

v.

DEPARTMENT OF PUBLIC HEALTH and
HOWARD KOH, COMMISSIONER
OF THE DEPT. OF PUBLIC HEALTH,

Defendants-Appellees.

On Appeal from a Judgment
from the Superior Court, Suffolk County

**BRIEF OF THE MASSACHUSETTS PSYCHIATRIC SOCIETY, THE AMERICAN
PSYCHOANALYTIC ASSOCIATION, THE NATIONAL ASSOCIATION OF
SOCIAL WORKERS, THE MASSACHUSETTS CHAPTER OF THE NATIONAL
ASSOCIATION OF SOCIAL WORKERS, THE BOSTON PSYCHOANALYTIC
SOCIETY AND INSTITUTE, INC., THE MASSACHUSETTS ASSOCIATION
FOR PSYCHOANALYTIC PSYCHOLOGY, THE GOTTMAN INSTITUTE, BARRY
ZUCKERMAN, M.D., IVAN D. FRANTZ, III, M.D., ELLEN C. PERRIN,
M.D., AND JUDITH PALFREY, M.D.**

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INTEREST OF AMICI CURIAE¹

The Amici Curiae joining this brief -- the Massachusetts Psychiatric Society, the American Psychoanalytic Association, the National Association of Social Workers, the Massachusetts Chapter of the National Association of Social Workers, the Boston Psychoanalytic Society and Institute, the Gottman Institute, the Massachusetts Association for Psychoanalytic Psychology, Barry Zuckerman, M.D., Ivan D. Frantz, III, M.D., Ellen C. Perrin, M.D., and Judith Palfrey, M.D. -- are psychiatric, psychological, social work, and social science organizations, as well as research scientists and pediatricians, including chairpersons of the departments of pediatrics at Boston-area hospitals. A description of each of the Amici is contained in Addendum A to this brief.

The Amici have expertise in a wide range of issues relating to child welfare, relationship development, and psychology, including those areas relating to same-sex relationships and the children of lesbians and gay men. The Amici submit this brief to bring to the Court's attention the substantial body of scientific literature that establishes beyond dispute that same-sex relationships have the same qualities and longevity of opposite sex relationships, and that their children

¹ The Amici accept the Statement of the Issue, Statement of the Case, and Statement of Facts as set forth in the brief of the plaintiff-appellants.

are not disadvantaged in any way. Social science research also demonstrates that ending the exclusion of same-sex couples from marriage would benefit these couples, their children, and society as a whole.

SUMMARY OF ARGUMENT

1. Social science research demonstrates that lesbians and gay men have the same capacity as heterosexuals to form stable, long-lasting, intimate relationships that are comparable in quality to heterosexual relationships. Therefore, marriages between persons of the same sex would be functionally equivalent to those of opposite-sex couples. (pp. 4 to 10).

2. The exclusion of same-sex couples from marriage weakens the social support for gay and lesbian relationships, thereby imposing disadvantages upon them in the same way it would if heterosexuals were excluded from marriage. Ending the exclusion of same-sex couples from marriage would enhance and fortify the stability of relationships between two adults that are based on commitment, love, and mutual support and care. It would also provide important economic, health, and social benefits of marriage and end the harmful stigma of second-class citizenship for same-sex couples. (pp. 10 to 13).

3. This Court should not countenance cultural myths and stereotypes about gays and lesbians that have

no scientific basis, including distortions of the rate of HIV among gay men, unfounded assertions that same-sex couples will not be capable of fidelity within marriage, and baseless claims that there is greater violence in same-sex relationships and that gay men pose a greater risk of child molestation. (pp. 13 to 16).

4. There is no scientific basis for any assertion that excluding same-sex couples from marriage is supportable for reasons related to child-rearing. To the contrary, according to the nation's leading child welfare organizations -- including the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatrists and the American Psychological Association -- it is beyond reasonable scientific dispute that children of lesbian and gay parents are not disadvantaged in any way. There is a scientific consensus based on over 25 years of research and 50 peer-reviewed scientific studies that: (1) same-sex couples have parenting abilities least equal to those of heterosexual parents; and (2) children of same-sex parents fare as well as children of heterosexual parents in mental health, psychological and social adjustment, intelligence, peer relationships, and all other measures of adjustment and well-being. (pp. 17 to 39).

5. Given that same-sex couples raise children and will continue to do so, ending the exclusion of same-sex couples from marriage will enhance the welfare and best interests of this population of families. Specifically, marriage for same-sex couples will: (1) facilitate the permanence and security in parental relationships that the American Academy of Pediatrics recently declared is as critical for children of same-sex couples as it is for children of heterosexuals; and (2) eliminate the unequal status of same-sex couples that communicates to children of lesbians or gays that their parents' relationship is less worthy than that of heterosexual parents. (pp. 39 to 41).

In sum, there is no scientific basis (much less any rational one) for the State to exclude same-sex couples from what the Superior Court characterized as "the most important civil institution, 'the very basis of the whole fabric of civil society.'" ²

ARGUMENT

I. THE SOCIAL SCIENCE DRAWS NO DISTINCTION BETWEEN OPPOSITE-SEX AND SAME-SEX COUPLES.

There is no credible scientific support for any argument by the State or other amici that same-sex marriages would be less stable or fundamentally different from opposite-sex marriages. The social

² Memorandum and Order, Record Appendix ("R.A.") 115, internal citation omitted.

science research demonstrates that sexual orientation is irrelevant to a couple's capacity to nurture long-lasting, stable relationships. In fact, as discussed infra, same-sex couples are indistinguishable from heterosexual couples with respect to the issues potentially relevant to this appeal.

A. Gay and Lesbian Couples Live in Stable, Committed, Long-Term Relationships.

Research shows that sexual orientation has nothing to do with the capacity to form lasting, stable, committed relationships. A recent study by University of Virginia Psychology Professor Charlotte Patterson, for example, reports that "many if not most" gays and lesbians live in stable, committed long-term relationships because they "desire for an enduring love relationship with a partner of the same gender."³ Other recent studies confirm that between 45 and 80 percent of lesbian women, and between 40 and 60 percent of gay men, presently are involved in a steady romantic relationship.⁴

³ See Charlotte J. Patterson, Family Relationships of Lesbians and Gay Men, 62 J. Marriage & Fam. 1052, 1053 (2000).

⁴ See Lawrence A. Kurdek, Lesbian and Gay Couples, in Lesbian, Gay, Bisexual Identities Over the Lifespan: Psychological Perspectives 243, 243 (A.R. D'Augelli & C.J. Patterson eds., 1995). See also L.A. Peplau et al., Gay and Lesbian Relationships, in The Lives of Lesbians, Gays and Bisexuals: Children to Adults 250, 251 (R.C. Savin-Williams & K.M. Cohen eds., 1996).

Lesbian and Gay couples form long-term relationships. The longevity of same-sex relationships is immediately apparent from the seven plaintiff couples who have lived in loving and committed relationships for 32, 23, 17, 14, 12, 8, and 5 years, respectively.⁵

The social science research makes clear that these seven couples typify many others. One study, conducted over a four-year period, found that 78 percent of lesbian couples and 88 percent of gay male couples remained together.⁶

In another study, of couples that had been together for less than two years, it was revealed that 22 percent of lesbian couples, 17 percent of unmarried heterosexual couples, 16 percent of gay couples, and 4 percent of heterosexual married couples had separated.⁷ Otherwise, there were no differences in durability between same-sex and opposite-sex relationships.⁸ And even those modest distinctions between same-sex and heterosexuals couples disappear all together for

⁵ R.A. 21, 24, 27, 29, 33, 36, 39.

⁶ See Lawrence A. Kurdek, Relationship Stability and Relationship Satisfaction in Cohabiting Gay and Lesbian Couples: A Prospective Longitudinal Test of the Contextual and Interdependence Models, 9 J. Soc. & Pers. Relationships 125, 132 (1992).

⁷ Philip Blumstein & Pepper Schwartz, American Couples 307-8 (1983).

⁸ Id.

couples that had been together for 10 years; the break-up rates were only 6 percent of lesbians, 4 percent of gay men, and 4 percent of married couples.⁹ The resilience of gay and lesbian relationships is particularly striking in light of the disadvantages imposed upon the formation of lesbian and gay relationships in this society.¹⁰

B. The Quality of Relationships Between Same-Sex Couples is Comparable to Those of Opposite-Sex Couples with Respect to What Matters About Marriage -- Commitment, Love and Mutual Support.

Social scientists find "no differences as a function of sexual orientation on any of the measures of relationship quality."¹¹ For instance, a leading expert on relationships recently concluded a five-year study of 236 married heterosexual couples, 66 gay male couples and 51 lesbian couples.¹² The most striking research finding was the consistency across all

⁹ Id.

¹⁰ One commentator observed that "[t]he message to these individuals was that marital-type commitments were not expected, nor recognized or protected." See Michael S. Wald, Same-Sex Couples: Marriage, Families, and Children, The Stanford Institute For Research on Women And Gender & The Stanford Center on Adolescence 10 (December 1999).

¹¹ See Patterson, supra note 3 at 1053 (surveying literature).

¹² Lawrence A. Kurdek, Relationship Outcomes and Their Predictors: Longitudinal Evidence from Heterosexual Married, Gay Cohabiting, and Lesbian Couples, 60 J. Marriage & Fam. 553 (1998).

relationships, regardless of sexual orientation.¹³ That is, each of the three groups enjoyed comparable levels of relationship satisfaction at the beginning of the study, and reported similar changes in relationship quality during the five-year period.¹⁴

The seven plaintiff couples' relationships (but for their sexual orientation) are just like those of heterosexual couples.¹⁵ Maureen Brodoff and Ellen Wade,

¹³ Id. at 564. A recent study of gay and lesbian couples conducted by the Gottman Institute of the University of Washington replicated Kurdek's research, again finding that relationship satisfaction and quality are the same across gay, lesbian, and heterosexual couples. See The Gottman Institute, 12-Year Study of Gay & Lesbian Couples (2002) available at <http://www.gottman.com/research/projects/gaylesbian/index.php> (summary abstract of research findings to be published in The Journal of Homosexuality).

¹⁴ Kurdek, supra note 12 at 564. See also Lawrence A. Kurdek & J. Patrick Schmitt, Relationship Quality of Partners in Heterosexual Married, Heterosexual Cohabiting, and Gay and Lesbian Relationships, 51 J. Personality & Soc. Psychol. 711, 718 (1986) (in study of married couples, unmarried heterosexual couples, and gay and lesbian couples, authors found that "[t]he most striking finding regarding the correlates of relationship quality was the consistency obtained across the four types of partners"); Sally M. Duffy & Caryl E. Rusbult, Satisfaction and Commitment in Homosexual and Heterosexual Relationships, 12 J. of Homosexuality 1, 21 (Winter 1985/86) (noting that "[t]he close relationships of lesbians, gay men, and heterosexual women and men are really quite similar, driven by similar general forces") (emphasis supplied); L. A. Peplau & Susan D. Cochran, A Relationship Perspective on Homosexuality, in Homosexuality/Heterosexuality 321, 333-334 (David P. McWhirter et al. eds., 1990) (no differences with respect to love of partner, liking of partner, and relationship satisfaction) (emphasis supplied).

¹⁵ See R.A. 110-111.

for example, are difficult to distinguish from any other family in Newton.¹⁶ Together for twenty years, they are the parents of an active, social twelve-year old daughter and share a home that they co-own.¹⁷ Brodoff and Wade also support one another as any other couple would.¹⁸ When Wade was diagnosed with breast cancer, Brodoff assisted her as any married spouse would.¹⁹

Similarly, plaintiffs Richard Linnell and Gary Chalmers, who have been together for over thirteen years, are much like many married couples.²⁰ Living together in the Linnell's childhood home with Richard's mother who asked that they move in, Linnell and Chalmers raise their nine-year old daughter, spend time with their families and are involved in their community.²¹

The quality of plaintiffs' committed relationships again typifies that of other same-sex couples. One man described the love and support of his partner of sixteen years:

¹⁶ R.A. 29-33.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id. at 33-36

²¹ Id.

Later in our relationship, our first home was destroyed by Hurricane Hugo. . . . Though our home was torn apart by the forces of nature, our relationship grew stronger through it all. Shortly after rebuilding our home, my father passed away suddenly. Ron was right there by my side through it all Because my mother was handicapped, we purchased a house across the street from her and moved to be near her so we could help her. We had only been there about a year when she became ill with cancer and died [Ron] was there everyday at the hospital with me, right by her side.²²

Caring for one's partner not only benefits those directly involved, but also society as a whole.²³

C. Ending the Exclusion of Same-Sex Couples from Marriage Would Serve the Same Important Interests as Marriage Does for Heterosexuals.

The Amici -- which include organizations of social scientists and mental health professionals -- submit that marriages between same-sex partners would provide those individuals, as well as society as a whole, with the same critical benefits and protections that are provided by opposite-sex marriages.

²² See Alfred Lees & Ronald Nelson eds., Longtime Companions: Autobiographies of Gay Male Fidelity 170 (1999). See also R.A. 25 (appellant couple took one partner's parent into their home after she had heart attack and cared for one partner's father after he had stroke).

²³ That married persons who take care of one another benefits society generally is demonstrated by a study concluding that the risk of being discharged from a hospital to a nursing home, with the attendant increased costs, was 2.5 times greater for unmarried than married couples. See Howard S. Gordon & Gary E. Rosenthan, Impact of Marital Status on Hospital Outcomes: Evidence from an Academic Medical Center, 155 Archives of Internal Medicine 2465, 2465 (Dec. 1995).

First, ending the exclusion of same-sex couples from marriage would enhance the stability and durability of their relationships. Social scientists have found that barriers to ending a relationship are a significant factor affecting the level of commitment of people in that relationship, and that married partners report the most barriers to leaving their relationship.²⁴ Moreover, gay and lesbian couples generally report less social support for their relationships from family and society.²⁵ Same-sex partners who are married will be more likely to receive the type of social support that is given by parents, grandparents, friends and neighbors to married couples.²⁶ In sum, the underlying social structure denying marriage to same-sex couples disadvantages those relationships in the same way that it would for heterosexual couples if they were denied marriage.

Second, the economic and social benefits of civil marriage will promote the health and well-being of gay men and lesbians. Marriage is at the core of our health care, pension, and other social safety net systems. Indeed, married people are reportedly

²⁴ See, e.g., Kurdek & Schmitt, supra note 14 at 717.

²⁵ See, e.g., id. at 718.

²⁶ See Wald, supra note 10 at 10.

healthier, live longer, and experience less poverty than their non-married counterparts.²⁷

Third, stigma based on sexual orientation unfortunately has persisted in our social history.²⁸ Indeed, the denial of the legitimacy of same-sex relationships -- for example, by excluding them from social institutions like marriage -- is "perhaps the most pervasive, persistent, and profound stressor for lesbian and gay partnerships."²⁹

Finally, to the extent the legal protections and obligations of civil marriage are designed, at least in part, to support and fortify committed relationships, same gender partners would benefit from the same

²⁷ See Leatha Lamison-White, Poverty in the United States: 1996, Bureau of the Census, Current Population Reports, Series P60-198, viii (Washington, DC Sept. 1997) (married people less likely to live in poverty); Catherine E. Ross, et al., The Impact of the Family on Health: Decade in Review, 52 J. Marriage & Fam. 1059, 1061 (1990) (unmarried people have higher mortality rates); and James S. Goodwin, et al., The Effect of Marital Status on Stage, Treatment, and Survival of Cancer Patients, 258 J. Am. Medical Ass'n 3125, 3125 (1987) (married surgical patients much less likely to die).

²⁸ See Gregory M. Herek, The Psychology of Sexual Prejudice, 9 Current Directions in Psychol. Science 19, 21 (2000) ("Stigma based on sexual orientation has been commonplace throughout the 20th century"); Stephen F. Morin & Esther Rothblum, Removing the Stigma, 46 Am. Psychologist 947, 948 (1991) (noting societal barriers to developing positive lesbian and gay identities and work of American Psychological Association to defeat such barriers).

²⁹ Janis S. Bohan, Psychology and Sexual Orientation-Coming to Terms 196 (1996).

protections. Amici are not aware of any research to suggest that the many benefits of marriage would not accrue to same-sex couples to the same extent as they have to heterosexual couples. No recognized body of social science predicts that any negative consequences to individuals or society would result from same-sex marriage.³⁰

D. This Court Should Not Give Credence to Cultural Myths and Stereotypes About Gays and Lesbians.

While social science research has refuted archaic myths about gay and lesbian people, the mind-set of a small minority continues to be shaped by stereotypes and distortions.³¹ For example, some have exaggerated and mischaracterized statistics about the rate of HIV

³⁰ Some opponents of marriage for same-sex couples argue that because same-sex relationships resemble "cohabiting" relationships, they are less stable than marital relationships. Given the current unavailability of legal marriage to gay and lesbian couples, there is no logical basis to compare heterosexual couples who can marry, but choose not to, with same-sex couples who live in committed relationships and seek to marry, but cannot. In any event, the vague term "cohabitation" is not useful in any scientific inquiry because it embraces a wide range of dissimilar relationships and living-together arrangements, including people who ultimately plan to marry their partner, committed gay and lesbian couples who do not have the option to marry, roommates, people who have been previously married and divorced, and people who plan to live together indefinitely and not marry.

³¹ The social scientists filing this brief therefore believe that it is important to provide the Court with the accurate scientific information regarding some of the myths that were raised by Amici in the Trial Court proceedings in this case.

among gay men, in an attempt to claim that same-sex relationships are more "destructive" than other relationships.³² The distorted portrayal of HIV in the gay community is based on flawed logic. That a particular population has been disproportionately affected by HIV does not in any way lead to a conclusion that most people in that population have HIV. In fact, the most recent report from the Massachusetts Department of Public Health indicates that of 13,129 adults living with HIV or AIDS in Massachusetts, 31.9 percent of them report male-male sex as the mode of transmission.³³ Thus, it is clear that the epidemiological category of "men who have sex with men" constitutes a minority of the total number of AIDS cases, and that only a minuscule proportion of the gay male population in Massachusetts has HIV.

Similarly, despite the substantial research demonstrating that large numbers of same-sex couples enter into long-term relationships of comparable quality to those of opposite-sex couples (see § I(A)(2), supra), some ideological opponents of same-sex

³² See Brief of Amici Curiae Focus on the Family, The Common Good Foundation, Catholic Vote, and the American Center for Law and Justice in Suffolk Superior Court Civil Act No. 01-1647A at 26-29 ("Focus on the Family Brief").

³³ See Massachusetts Department of Public Health, Massachusetts HIV/AIDS Surveillance Program HIV/AIDS Summary Report (Winter 2002) available at <http://www.state.ma.us/dph/cdc/aids/winter2002.pdf>.

marriage rely on stereotypes of gay men as being promiscuous to claim that they will not be capable of sexual fidelity within marriage. However, these opponents do not compare (and amici are not aware of research upon which to compare) the fidelity of married heterosexuals with those same-sex couples who (but for the State's refusal) would marry.³⁴ That would be the only scientifically sound comparison to test such an assertion.

Some also continue to allege that gay men pose a greater risk of child molestation.³⁵ All the available data, however, indicates that gay men are no more likely than heterosexual men to sexually abuse children.³⁶ According to the research, many child

³⁴ See Focus on the Family Brief at 28, 30.

³⁵ See id. at 31.

³⁶ See Carole Jenny et al., Are Children at Risk for Sexual Abuse by Homosexuals, 94 Pediatrics 41, 44 (1994) (study of children seen in one-year period at a Denver children's hospital found that less than 1 percent of adult offenders were "potentially" gay or lesbian); A.N. Groth & H.J. Birnbaum, Adult Sexual Orientation and Attraction to Underage Persons, 7 Archives Sexual Behav. 175, 180 (1978) (study of 175 adult males convicted in Massachusetts for sexual assault of a child found that none identified as exclusively homosexual, only 24 percent identified as bisexual and among bisexuals none was primarily attracted to men). Notably, the sole source relied upon for the child molestation claim in the Focus on the Family Brief was an article by Paul Cameron and Kirk Cameron, Homosexual Parents, Adolescence 31 (1996). Paul Cameron has been allegedly discredited by the scientific community for engaging in unethical research conduct. See Note 84, *infra*.

molesters never develop the capacity for mature sexual relationships with other adults of any gender, but instead are predominantly attracted to children.³⁷ Thus, there certainly is no basis to assume that many men who sexually abuse boys are gay.

Finally, some opponents have made the utterly baseless claim that there is increased violence in same-sex relationships.³⁸ The sole support for this assertion is an out-of-context 1991 statistic that "married women in traditional families experience the lowest rate of violence compared with women in other types of relationships."³⁹ It does not follow, however, that there is increased violence in same-sex relationships.⁴⁰

³⁷ See D. Finkelhor & S. Araji, Explanations of Pedophilia A Four Factor Model, 22 J. Sex Research 145-161 (1986), cited in Gregory M. Herek, Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research, 1 Law & Sexuality 133, 153-54 (1991).

³⁸ Focus on the Family Brief at 30.

³⁹ Id.

⁴⁰ To the contrary, the most recent (2000) Department of Justice statistics, in fact, report that significantly fewer women (11%) who had lived with another woman as part of a couple experienced rape, physical assault or stalking by their partner than did women who had married or lived with a man (21.7%). See P. Tjaden & N. Thonnes, Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey, United States Department of Justice, National Institute of Justice and Centers for Disease Control and Prevention (July 2000) available at <http://www.ncjrs.org/pdffiles/nij/181867.pdf>. The same study concluded that gay men are

II. IT IS BEYOND REASONABLE SCIENTIFIC DISPUTE THAT CHILDREN OF GAYS AND LESBIANS FARE AS WELL ON ALL MEASURES OF WELL-BEING, DEVELOPMENT, AND ADJUSTMENT AS CHILDREN OF HETEROSEXUALS.

Many gay and lesbian couples, like their heterosexual counterparts, raise children together. As the American Academy of Pediatrics recently noted, "[l]esbian and gay adults choose to become parents for many of the same reasons heterosexuals do," including because the "desire for children is a basic human instinct and ... may satisfy people's desire to provide and accept love and nurturing from others."⁴¹ Precise statistics are not available, but social scientists generally agree that millions of children in this country have at least one parent who is lesbian or gay.⁴²

no more likely than heterosexual men to perpetrate domestic violence.

⁴¹ See Ellen C. Perrin, M.D. & the Committee on Psychosocial Aspects of Child and Family Health, American Academy of Pediatrics, Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents 109 Pediatrics 341, 341 (February 2002) available at <http://www.aap.org/policy/020008t.html> (hereinafter, "Pediatric Report").

⁴² See id. (estimating that between 1 and 9 million children in the United States have a gay or lesbian parent); Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 Child Development 1025, 1026 (1992) (citing various sources estimating as many as 14 million children of lesbian and gay parents). While many of these children were conceived in the context of a heterosexual relationship prior to a parent "coming out," lesbians and gay men are increasingly becoming parents in the context of established same-sex relationships -- including by alternative insemination with an anonymous or known donor, via assistance of a

In the Trial Court proceedings in this case, the State claimed that excluding same-sex couples from marriage is supportable for reasons related to child-rearing.⁴³ It asserted that "the Legislature could still rationally believe that the optimal setting for raising children is a two-parent family with one parent of each sex."⁴⁴ There is, however, no valid scientific basis to prefer opposite-sex parenting over same-sex parenting with respect to the welfare of children.

A. The Leading Experts -- Pediatricians, Psychiatrists, Psychologists, And Social Workers -- Agree: Children of Gay and Lesbian Parents Are as Psychologically Healthy and Well Adjusted as Children of Heterosexual Parents.

Every medical, psychological, and child-welfare organization to have addressed the topic has concluded what plaintiffs know from their own family experiences: children of same-sex parents are as healthy, happy, and well adjusted as their peers. These experts meticulously have examined the social science -- more than 50 peer-reviewed studies conducted over 25 years -- to reach a (rare) consensus that there is no

surrogate mother, or adoption. See Pediatric Report, supra note 41 at 341.

⁴³ See State's Memorandum in Opposition to Plaintiffs' Motion For Summary Judgment and In Support of Defendants' Motion for Summary Judgment (Dec. 19, 2001) at 63.

⁴⁴ Id.

relationship between the gender or sexual orientation of parents and the well-being of their children.

The *American Academy of Pediatrics*, the nation's preeminent pediatric authority with 57,000 pediatrician members, has adopted a formal policy declaring that:

[C]hildren who grow up with 1 or 2 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 1 or more gay parents.⁴⁵

Indeed, according to the American Academy of Pediatrics, the keys to positive outcomes are the quality of the parent-child relationship and the quality of the parents' own relationship, not the gender or sexual orientation of the parents. The Academy explains:

Children in all family constellations have been described by parents and teachers to have more behavioral problems when parents report more personal distress and more dysfunctional parent-child interactions. In contrast, children are rated as better adjusted when their parents report greater relationship satisfaction, higher levels of love, and lower interparental conflict regardless of their parents' sexual orientation. Children are apparently more

⁴⁵ Pediatric Report, supra note 41 at 341-42 (emphasis supplied). See also Ellen C. Perrin, M.D. & the Committee on Psychosocial Aspects of Child and Family Health, American Academy of Pediatrics, Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents 109 Pediatrics 339, 339 (February 2002) (policy statement accompanying Technical Report). Through its policies and educational materials, the Academy offers guidance to parents and others on child-rearing issues.

powerfully influenced by family processes and relationships than by family structure.⁴⁶

The American Psychological Association, representing more than 155,000 psychologists, concluded in a thorough research review in 1995 that:

Not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence suggests that home environments provided by gay and lesbian parents are as likely as those provided by heterosexual parents to support and enable children's psychosocial growth.⁴⁷

Similarly, the *National Association of Social Workers* (with nearly 150,000 members) 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.⁴⁸

The *American Psychoanalytic Association* also has been unequivocal:

⁴⁶ Pediatric Report, supra note 41 at 343 (emphasis supplied).

⁴⁷ American Psychological Association, Lesbian and Gay Parenting: A Resource for Psychologists 8 (1995) available at <http://www.apa.org/pi/parent.html> (emphasis supplied).

⁴⁸ See National Association of Social Workers, Policy Statement: Lesbian, Gay, and Bisexual Issues, in Social Work Speaks 193, 194 (1997) (emphasis supplied).

Gay and lesbian individuals and couples are capable of meeting the best interest of the child and should be afforded the same rights and should accept the same responsibilities as heterosexual parents.⁴⁹

Finally, the *American Academy of Child & Adolescent Psychiatry*, which represents over 6,500 psychiatrists, has concurred.⁵⁰ Indeed, Amici are unaware of any authoritative child welfare organization that has taken a contrary position.

B. Social Science Research Demonstrates That Lesbian and Gay Parents Are as Fit, Capable and Successful as Heterosexual Parents.

Social science research dating to the late 1970s has consistently established that the parenting ability of lesbians and gays is equivalent to that of heterosexual parents.⁵¹ Indeed, study after study

⁴⁹ American Psychoanalytic Association, Position Statement on Gay and Lesbian Parenting (May 16, 2002) available at <http://www.apsa-co.org/ctf/cgli/parenting.htm> (emphasis supplied).

⁵⁰ See American Academy of Child & Adolescent Psychiatry, Policy Statement on Gay, Lesbian and Bisexual Parents (June 1999) available at <http://www.aacap.org/publications/policy/ps46.htm> (emphasis supplied) ("Outcome studies of children raised by parents with a homosexual or bisexual orientation, when compared to heterosexual parents, show no greater degree of instability in parental relationship or developmental dysfunction in children").

⁵¹ Ellen C. Perrin, M.D., Children Whose Parent(s) Is/Are Lesbian or Gay, in Sexual Orientation in Child and Adolescent Health Care 105, 115-16 (2002) (no differences between lesbian and heterosexual mothers in parenting ability); Beverly Hoefffer, R.N., D.N.Sc., Children's Acquisition of Sex-Role Behavior in Lesbian-Mother Families, 51 *Am. J. of Orthopsychiatry* 536, 542-543 (1981) (finding similarities in parenting styles and skills between lesbians and heterosexuals);

demonstrates that there are no differences between same-sex parents and opposite-sex parents on every meaningful measure of parenting ability.⁵² The research

Frederick W. Bozett, Heterogeneous Couples in Heterosexual Marriages: Gay Men and Straight Women, 8 J. Marital & Fam. Therapy 81, 88 (1982) (gay fathers highly parental and placed importance on regular involvement with children); Brian Miller, Gay Fathers and Their Children, 28 Fam. Coordinator 544, 551 (1979) (sexual orientation has nothing to do with ability to parent); and Frederick W. Bozett, Gay Fathers: A Review of the Literature, in Homosexuality and the Family 137, 152-154 (Frederick W. Bozett ed., 1989) (concluded based on scientific evidence that being gay is compatible with effective parenting and that the father's sexual orientation is of little importance in the overall father-child relationship) (emphasis supplied).

⁵² See, e.g., Cheryl A. Parks, Ph.D., Lesbian Parenthood: A Review of the Literature, 68 Am. J. of Orthopsychiatry 376, 380, 386 (1998) (a critical examination of 17 peer-reviewed studies published between 1980 and 1992 concluded that "few differences" exist between heterosexual and lesbian mothers) (emphasis supplied); David K. Flaks et al., Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents And Their Children, 31 Developmental Psychol. 105, 111-112 (1995) (no differences between lesbian and heterosexual parents) (emphasis supplied); Sally L. Kveskin & Alicia S. Cook, Heterosexual and Homosexual Mothers' Self-Described Sex-Role Behavior and Ideal Sex-Role Behavior in Children, 8 Sex Roles 967, 971 (1982) (lesbian mothers and heterosexual mothers have comparable attitudes towards sex roles) (emphasis supplied); Martha Kirkpatrick, M.D., Clinical Implications of Lesbian Mother Studies, 14 J. of Homosexuality 201, 210 (1987) (lesbian mothers no different from heterosexual mothers in lifestyle, parenting style, or social support system) (emphasis supplied); K.F. McNeill et al., Families & Parenting: A Comparison of Lesbian & Heterosexual Mothers, 82 Psychol. Rep. 59, 59 (1998), (finding no differences in parenting behaviors or sex-role characteristics between lesbian and heterosexual mothers) (emphasis supplied); Pediatric Report, at 342 ("no differences" between gay and heterosexual fathers in providing appropriate recreation, encouraging autonomy, or "dealing with general problems of parenting") (emphasis supplied); Jerry J. Bigner, Ph.D.

debunks the myth that men cannot nurture.⁵³ Similarly, lesbian mothers are as child-oriented and committed to their maternal roles as heterosexual parents,⁵⁴ and are

& R. Brooke Jacobsen, Ph.D., Adult Responses to Child Behavior and Attitudes Toward Fathering: Gay and Nongay Fathers, 23 J. of Homosexuality 99, 109 (1992) (*almost no differences between gay and non-gay fathers in providing recreation, involvement, problem-solving and parenting styles*) (emphasis supplied); Jerry J. Bigner, Ph.D. & R. Brooke Jacobsen, Ph.D., The Value of Children to Gay and Heterosexual Fathers, 18 J. of Homosexuality 163, 169, 170 (1989) (gay fathers *did not differ* from heterosexual fathers on reasons for wanting to become a parent and value of children in their lives as an adult) (emphasis supplied); and Mary B. Harris, Ph.D. & Pauline H. Turner, Ph.D., Gay & Lesbian Parents, 12 J. of Homosexuality 101, 112 (Winter 1985/86) (comparing gay fathers, nongay fathers, lesbian mothers and non-lesbian mothers and finding *no significant differences* in the parents' relationship with their children) (emphasis supplied).

⁵³ Pediatric Report, supra note 41 at 342 ("Gay fathers have substantial evidence of nurturance and investment in their parental role"); Bozett, supra note 51 at 152-54 (finding that *gay fathers are more endorsing of parental nurturance* than heterosexual fathers) (emphasis supplied); and Jerry J. Bigner, Ph.D. & R. Brooke Jacobsen, Ph.D., Parenting Behaviors of Homosexual and Heterosexual Fathers, 18 J. of Homosexuality 173, 180 (1989) (finding that *gay fathers tend to be more responsive* to perceived needs of children than non-gay fathers) (emphasis supplied).

⁵⁴ Pediatric Report, supra note 41 at 342 ("lesbian mothers strongly endorse child-centered attitudes and commitment to their maternal roles" and are similar in marital and maternal interests, child-rearing practices, support networks and coping strategies); Bonnie M. Mucklow & Gladys K. Phelan, Lesbian and Traditional Mothers' Responses to Adult Response To Child Behavior and Self-Concept, 44 Psychol. Rep. 880, 881-882 (1979) (*no differences* between lesbian and heterosexual mothers on measures of maternal attitude and self-concept) (emphasis supplied); Judith Ann Miller, MS et al., The Child's Home Environment For Lesbians Vs. Heterosexual Mothers: A Neglected Area of Research, 7 J. of Homosexuality 49, 55 (1981) (mothers in lesbian sample were more child-oriented in responses

indistinguishable from other mothers in psychologic functioning and mental health.⁵⁵ In sum, there is no

to children) (emphasis supplied); Martha Kirkpatrick, M.D. et al., Lesbian Mothers and Their Children: A Comparative Survey, 51 Am. J. of Orthopsychiatry 545, 550 (1981) (*lesbian mothers and heterosexual mothers alike in their maternal interests, current life-styles, and child-rearing practices*) (emphasis supplied); Harris & Turner, supra note 52 at 111 (finding *few differences in maternal attitudes between heterosexual and homosexual mothers*) (emphasis supplied); Patricia J. Falk, Lesbian Mothers: Psychosocial Assumptions in Family Law, 44 Am. Psychologist 941, 944 (1989) ("research on maternal attitudes and caregiving behaviors 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") (emphasis supplied); and Susan Golombok et al., Children Raised in Fatherless Families From Infancy: Family Relationships and the Socioemotional Development of Children of Lesbian and Single Heterosexual Mothers, 38 J. Child Psychol. & Psychiatry & Allied Disciplines 783, 788, 789 (1997) (*no key differences between lesbian and heterosexual mothers in parenting roles*) (emphasis supplied).

⁵⁵ Pediatric Report, supra note 41 at 342 (few differences in research over two decades comparing lesbian and heterosexual mothers' self-esteem, psychologic adjustment, anxiety, depression and parenting stress); Catherine Rand, M.A. et al., Psychological Health and Factors The Court Seeks to Control in Lesbian Mother Custody Trials, 8 J. of Homosexuality 27, 32 (1982) (lesbian mothers at least as psychologically healthy as the larger standardized sample in psychological tests); Richard Green, M.D. et al., Lesbian Mothers and Their Children, 15 Archives Sexual Behav. 167, 173-74 (1986) (applying psychological tests to lesbian and heterosexual mothers and finding higher scores for lesbian mothers with respect to self-confidence); Charlotte J. Patterson, Ph.D., Children of Lesbian and Gay Parents, 19 Advances in Clinical Child Psychol. 235, 265, 266 (1997) (lesbian mothers scored within normal range on scales of mental health and self-esteem); and McNeill et al., supra note 52, at 59 (lesbian and heterosexual mothers "had remarkably similar scores on self-reported stress, adjustment,

scientific basis to prefer opposite-sex parents over same-sex parents.

C. The Children of Gay And Lesbian Parents Are as Well Adjusted and Psychologically Healthy as Those of Heterosexual Parents.

There is a scientific consensus that children of gay or lesbian parents are not disadvantaged in any respect (except that the State will not allow their parents to marry).⁵⁶ As one study concluded, "[t]he research is extraordinarily clear in its finding about lesbian and gay parents and their children: they look remarkably like their heterosexual counterparts and their children."⁵⁷

competence, and quality of the relationship with their families") (emphasis supplied).

⁵⁶ See, e.g., Perrin, supra note 51, at 129-30 ("every study to date has shown that parental sexual orientation has no measurable effect on the quality of parent-child relationships or on children's mental health or social adjustment ... a substantial body of research has failed to identify any significant developmental difficulties encountered by children whose parents are lesbian or gay"); Judith Stacey & Timothy Biblarz, (How) Does the Sexual Orientation of Parents Matter?, 66 Am. Soc. Rev. 159, 176 (2001) ("[E]very 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"); and Patterson supra note 3 at 1064 (examinations of all studies finding that "they provide no evidence that psychological adjustment among lesbians, gay men, their children, or other family members is impaired in any significant way").

⁵⁷ G. Dorsey Green & Frederick W. Bozett, Lesbian Mothers and Gay Fathers, in Homosexuality: Research Implications for Public Policy 198 (John C. Gonsiorek & James D. Weinrich eds., 1991) (emphasis supplied).

1. **Children of lesbians and gays fare as well as children of heterosexuals on all measures of emotional health, social and psychological adjustment, and cognitive development.**

Two decades of research uniformly shows that children of lesbians and gays are not disadvantaged by their parents' sexual orientation. There is no relationship between sexual orientation and any measure of a child's social and psychological adjustment or cognitive abilities. All studies conclusively show that there is no relationship between parental sexual orientation and measures of children's cognitive ability or intelligence.⁵⁸

As two leading scientists observed:

no reason exists 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.⁵⁹

⁵⁸ See Stacey & Biblarz, supra note 56 at 172 ("across studies, no relationship has been found between parental sexual orientation and measures of children's cognitive ability. Moreover, to our knowledge no theories predict such a link") (emphasis supplied); Flaks et al., supra note 52, at 109 (found no correlation between parental sexual orientation and the children's scores on cognitive functioning tests) (emphasis supplied); Green et al., supra note 55 at 174-179 (1986) (no difference in intelligence or cognitive functioning) (emphasis supplied); and Kirkpatrick, M.D. et al., supra note 54 at 547 (same).

⁵⁹ Charlotte J. Patterson & Raymond W. Chan, Gay Fathers and Their Children, in Textbook of Homosexuality and Mental Health 371, 388 (Robert P. Cabaj & Terry Stein eds., 1996).

Indeed, significant research demonstrates beyond dispute that children raised by gay men are not disadvantaged.⁶⁰

Similarly, several recent studies compared children born to lesbian mothers and heterosexual mothers, each of whom had been conceived through donor insemination. The research confirmed that there are no differences in behavioral adjustment or social or psychological functioning among the children and, in fact, determined that "*it was impossible to distinguish*" at all between either group.⁶¹ There also

⁶⁰ Jerry J. Bigner & Frederick W. Bozett, Parenting by Gay Fathers, 14 Marriage & Fam. Rev. 155, 163 (1990) ("There is no evidence of any kind that demonstrates that living with a homosexual parent has any significant negative effects on children"; gay fathers are as effective "and may be even more so in some ways than nongay parents") (emphasis supplied); Julie Schwartz Gottman, Children of Gay and Lesbian Parents, 14 Marriage & Fam. Rev. 177, 186 (1989) ("In general, none of the above studies on children of lesbian mothers and gay fathers reported negative effects on children"); Robert L. Barrett & Bryan E. Robinson, Children of Gay Fathers, in Gay Fathers 90-91 (1990) ("[c]hildren of homosexual fathers do not differ significantly from children reared in more traditional families.").

⁶¹ Raymond W. Chan et al., Psychosocial Adjustment Among Children Conceived Via Donor Insemination By Lesbian and Heterosexual Mothers, 69 Child Dev. 443, 445 (1998) ("It was *impossible to distinguish* between children born to and brought up by lesbian versus heterosexual parents," and concluding that the results refute the idea that "only heterosexual parents can raise healthy children") (emphasis supplied). See also A. Brewaeys et al., Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families, 12 Human Reproduction 1349, 1356 (1997) (*no differences* in behavioral adjustment of children in comparison groups and concluding that "children in lesbian mother

has been no difference in the rate of psychiatric difficulty, emotional difficulty, or behavioral difficulty among children of lesbians and heterosexual parents.⁶² The findings of no differences in emotional health and psychosocial adjustment hold true

families have been growing up for the first years of their lives in a warm and secure family environment, just like children in the heterosexual control groups") (emphasis supplied); and Flaks et al., supra note 52, at 105, 112 (donor insemination study finding *remarkable similarity* between the children of lesbian and heterosexual parents with respect to behavioral adjustment) (emphasis supplied).

⁶² Perrin, supra note 51, at 118 ("no differences were found between the children with lesbian and those with heterosexual mothers in the number or type of psychiatric difficulties") (emphasis supplied); Susan Golombok et al., Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal, 24 J. Child Psychol. Psychiatry 551, 565-567 (1983) (lesbian mothers strongly endorse child-centered attitudes and commitment to their maternal roles) (researchers found *no significant differences* between the children of lesbian mothers and those of heterosexual mothers with respect to emotional difficulties, conduct difficulties, unsociability, or hyperactivity) (emphasis supplied); Fiona Tasker & Susan Golombok, Growing Up In a Lesbian Family 134-144 (1997) (in a longitudinal study, researchers found *no difference* between the children raised by a lesbian mother and those raised by a heterosexual mother with respect to anxiety or depression, and no significant differences with respect to mental health problems of mothers) (emphasis supplied); Falk, supra note 54, at 944 ("[N]o evidence exists for a direct relationship between a mother's sexual orientation and the mental health of her offspring"); and Barbara McCandlish, Against All Odds: Lesbian Mother and Family Dynamics, in Gay and Lesbian Parents 23, 24 (Frederick W. Bozett ed., 1987) ("lesbian and gay parents provide effective parenting for their children, and observing that "children of gay and lesbian parents have *no more frequent psychiatric problems* and gender dysfunction than do the children of heterosexual parents") (emphasis supplied).

universally in studies comparing both children born to lesbian mothers with heterosexual mothers,⁶³ and children of divorced lesbian mothers with divorced heterosexual mothers.⁶⁴

⁶³ A. Brewaeys & E.V. Van Hall, Lesbian Motherhood: The Impact on Child Development and Family Functioning, 18 J. Psychosom. Obstet. Gynecol. 1, 13 (1997) (results of studies of children raised from birth by lesbian mothers "do not seem to suggest that different early childhood experiences with respect to the absence of a father and with respect to the presence of two lesbian mothers had any effect on child development"); Charlotte J. Patterson, Ph.D., Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex-Role Identity, in Contemporary Perspectives on Lesbian & Gay Psychology: Theory Research, & Application 156, 167-68 (B. Green & G. Herek eds., 1994) (children of lesbian mothers found to be similar to the normative sample on social competence, social behavior, self-esteem, sociability, and aggressiveness); Charlotte J. Patterson, Ph.D., Lesbian Mothers and Their Children: Findings From the Bay Area Families Study in Lesbians and Gays In Couples and Families: A Handbook for Therapists 420, 434 (J. Laird & R.J. Green eds., 1996) (results show "child development is proceeding normally") (emphasis supplied); Patterson, supra note 55 at 255 ("social competence among children with lesbian mothers was rated as normal"); Golombok et al., supra note 54 at 789 (finding no negative impact on children's psychological development when growing up with lesbian parents).

⁶⁴ Gottman, supra note 61 at 189-190 (daughters of lesbian mothers scored higher than daughters of non-remarried heterosexual mothers with respect to the individuals' sense of security in the world and in relationships); Kirkpatrick et al., supra note 54 at 547-548 (researchers found no differences in the type or frequency of pathology "by any measure ... available" between the children living with divorced lesbian mothers and the ones living in similar households with divorced heterosexual mothers) (emphasis supplied); Green et al., supra note 55 at 182 (children raised from early childhood by a lesbian mother are not different on parameters of psychosexual and psychosocial development from children raised by heterosexual mothers) (emphasis supplied); Kirkpatrick,

2. Children of lesbians and gays have peer relationships that are as strong as those of children of heterosexuals.

The research also is clear that children of lesbians and gays do not suffer adverse effects as a result of social reactions to homosexuality. For example, there are no significant differences in the quality of peer relationships between children of lesbian and heterosexual parents,⁶⁵ and studies show

supra note 52 at 207 ("[T]he comparative studies completed so far have not identified any damaging consequences to the children's development of growing up in a lesbian household"); Ann O'Connell, Voices From the Heart: The Developmental Impact of a Mother's Lesbianism On Her Adolescent Children, 63 Smith C. Stud. in Soc. Work 281, 284 (1993) (identifying numerous studies using various methods and samples across age groupings, which all report "no major differences in psychological or social development" between children of heterosexual and lesbian single parents) (emphasis supplied); Cheri A. Pies, Lesbians and the Choice to Parent, 14 Marriage & Fam. Rev. 137, 140 (1989) (referring to growing body of studies of children of lesbian parents and concluding that "children raised by lesbians have an equally good chance of developing into healthy, happy human beings as do children raised in heterosexual homes"); and Sharon L. Huggins, A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers, 17 J. of Homosexuality 123, 131 (1989) (study found *no significant statistical differences* in self-esteem scores of adolescent children with divorced lesbian mothers and adolescent children with divorced heterosexual mothers) (emphasis supplied).

⁶⁵ See, e.g., Susan Golombok et al., supra note 62, at 567 (1983). See also Tasker & Golombok, supra note 54 at 88 (follow-up study found that children of lesbians did not recall more teasing regarding their families than those raised by single heterosexual parents).

strong self-esteem and assessments of popularity among adolescent children of lesbians and gays.⁶⁶

While it nonetheless is unavoidable that children whose parents are lesbian or gay "undoubtedly contend with a degree of social stigma even under the best circumstance, the similarity seen repeatedly in children's outcomes suggests the presence of some compensatory processes in these families."⁶⁷ Importantly, "if ostracism, isolation, and teasing are problems for those children, neither the problem nor the solution can appropriately be located within these children or their families."⁶⁸ (This is, of course,

⁶⁶ Huggins, supra note 64 at 131-32 (1989) (no significant difference in self-esteem among the two groups of adolescents) (emphasis supplied); Green, supra note 55 at 178 (no significant differences between the children of lesbian and heterosexual mothers with respect to the children's self-ratings of popularity or the mothers' descriptions of the children's popularity) (emphasis supplied); and Mary E. Hotvedt & Jane B. Mandel, Children of Lesbian Mothers, in Homosexuality: Social, Psychological and Biological Issues 275, 282 (1982) (no differences in peer group relationships among boys of lesbian or heterosexual mothers, and, in fact, daughters of lesbian mothers reported that they were more popular than daughters of heterosexual women) (emphasis supplied).

⁶⁷ Perrin, supra note 51, at 129. See also Stacey & Biblarz, supra note 56, at 172 (noting that the fact that children of lesbians and gays do as well as children of heterosexuals in spite of being subjected to some teasing indicates that "children in these studies seem to exhibit impressive psychological strength").

⁶⁸ Perrin, supra note 51, at 124. Eliminating the exclusion of same-sex parents from marriage will go a long way toward eliminating stigma. See Argument, § III, infra.

also true when children are subjected to ignorance or bias based on race, religion, or other factors.)

3. There is no basis to claim that the sexual orientation of children is causally related to the sexual orientation of their parents.

Opponents of same-sex marriage sometimes claim that children of lesbians and gays are more likely to be lesbian or gay themselves. There is, however, no scientific basis to conclude that same-sex parents somehow "cause" children who do not otherwise feel same-sex attraction to have such feelings, or to enter romantic relationships with members of the same sex.⁶⁹

In addition to being unsupported, the supposed influence of parents' sexual orientation on that of their children is not relevant to this appeal, but instead simply restates the general bias of some against gays and lesbians. Of course, the mental health profession long ago jettisoned the notion that being gay or lesbian implies impairment or inferiority.⁷⁰ The State also has sought to eradicate

⁶⁹ See Pediatric Report, supra note 41 at 342 ("No differences have been found in the ... sexual orientation of adults who had a divorced homosexual parent (or parents), compared with those who had divorced heterosexual parents").

⁷⁰ Social science research demonstrates that "lesbians and gay men, as a group, do not differ in significant ways from heterosexuals except in terms of their sexual orientation." Herek, supra note 37 at 133. The psychiatric, psychological, and social work professions -- including the American Psychiatric Association, the

the prejudice that homosexuality is objectionable, requiring that lesbians and gays be treated equally (although it inexplicably excludes them from marriage).⁷¹

The exclusion of same-sex couples from marriage also cannot be justified by the observations of a few researchers that, when asked by a clinician, children of lesbian or gay parents may more readily acknowledge same-sex desire.⁷² It is, of course, hardly surprising that children raised by same-sex parents would be more

American Psychological Association, the National Association of Mental Health and others -- have long rejected the suggestion that a same-gender sexual orientation is a disorder. See Morin & Rothblum, supra note 28 at 947. Social science research has established that same-gender sexual orientation is neither uncommon nor unnatural and has been expressed throughout history and in all cultures. Id.

⁷¹ See M.G.L. c. 151B (2002) (forbidding sexual orientation discrimination in employment, housing, credit, and services); M.G.L. c. 272, § 98 (2002) (same re public accommodations); M.G.L. c. 76, § 5 (2002) (same re public education); M.G.L. c. 272, § 39 (2002) (same re hate crimes); E.N.O. v. L.M.M., 429 Mass. 824 (1999) (providing for recognition of nonbiological lesbian mothers as "de facto" parents); Adoption of Tammy, 416 Mass. 205 (1993) (second-parent adoption for same-sex parents).

⁷² On this point, some amici may distort the conclusions in the article, Judith Stacey & Timothy Biblarz, (How) Does the Sexual Orientation of Parents Matter?, 66 Am. Soc. Rev. 159, 170-171 (2001). The premise of Stacey and Biblarz's article is that many researchers have proceeded from a point of view that "accepts heterosexual parenting as the gold standard and investigates whether lesbian parents and their children are inferior." Stacey & Biblarz, supra note 56, at 162. Researchers have, therefore, presumed that such an approach "precludes acknowledging almost any differences in parenting or in child outcomes." Id.

comfortable acknowledging an existing same-sex desire than those being raised by opposite-sex parents. As one research team observed, children of gays and lesbians do differ in "modest" ways from children of heterosexuals, which is what would be expected in any subpopulation of parents.⁷³ Social scientists consider these to be mere differences or variations, and not deficits that affect the children's functioning, adjustment or well-being.⁷⁴

At bottom, even if there were scientific evidence that children raised by same-sex parents are more likely to be gay or lesbian, at most this would be a difference, not a deficit.⁷⁵ Mere differences, without harm, do not raise valid concerns with respect to child welfare, particularly when the conclusive research makes clear that the orientation of the parents has no bearing on children's well-being, adjustment or functioning. See supra at §§ II.A., II.C.

⁷³ Id. at 176.

⁷⁴ Id. at 164.

⁷⁵ Equally clear is that many children of heterosexuals are gay or lesbian, while many children of gay or lesbian parents are heterosexual. "[T]he important reality [is] that parental influence on children's sexual desires is neither direct nor easily predictable." See Stacey & Biblarz, supra note 56, at 170.

4. There are no differences in gender identity between children of lesbians and gays and children of heterosexuals.

The gender identity⁷⁶ of preadolescent children raised by lesbian mothers has been found consistently to be in line with their biologic sex.⁷⁷ The American Academy of Pediatrics concluded that "[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."⁷⁸

Stacey and Biblarz report that in a small number of studies, children of lesbians and gays more frequently depart from traditional sex roles or gender-typed prescriptions in play activity and career goals.⁷⁹ For example, these studies show that some daughters of lesbian mothers feel less constrained when making

⁷⁶ The term "gender identity" refers to the subjective sense that one is male or female.

⁷⁷ Pediatric Report, supra note 41 at 342.

⁷⁸ Pediatric Report, supra note 41 at 342. See also Golombok et al., supra note 62 at 568 (no significant differences with respect to gender identity); Gottman, supra note 61, at 180 (citing study of daughters of lesbian mothers and daughters of heterosexual mothers, finding groups comparable in gender identity); Hoeffler, supra note 51, at 542 (*no differences between children of heterosexual and lesbian mothers in sex-typing*) (emphasis supplied); Kirkpatrick, M.D. et al., supra note 54 at 551 (no difference in the gender development of the children in the two groups); Patterson, supra note 63 at 168-169 (sex role behaviors of children raised by lesbian parents were "quite normal").

⁷⁹ Stacey & Biblarz, supra note 56, at 168-170.

career choices and are more likely to aspire to nontraditional gender occupations such as doctor, astronaut, lawyer, and engineer.⁸⁰ This is not "harm."

Indeed, any assertion that these studies demonstrate harm to children of lesbian and gay parents is based on a false assumption that confuses gender identity and sex roles.⁸¹ As Michael Lamb, Ph.D., head of the Section on Social and Emotional Development at the National Institute of Child Health and Human Development, has noted, "the acquisition of a secure gender identity is developmentally important, but it need not involve conformity to a traditional gender role ... [o]ne cannot equate[] conformity to a traditional gender role with psychological adjustment."⁸² Departure from traditional cultural gender norms thus cannot in any way be regarded as detrimental. Amici cannot imagine any theory by which these differences could affect a person's adjustment and well-being.

⁸⁰ Id.

⁸¹ Gender roles refer to behaviors that are culturally ascribed to either females or males.

⁸² Michael E. Lamb, Ph.D., Parental Behavior, Family Processes, and Child Development in Nontraditional and Traditionally Understudied Families, in Parenting and Child Development in "Nontraditional" Families 6 (Michael E. Lamb, Ph.D. ed., 1999).

5. The opponents of ending the exclusion of same-sex couples from marriage cannot overcome 25 years of uniform social science research by quarrelling with "methodology."

Opponents to same-sex marriage cannot trivialize the conclusions of the leading authorities on children (and the large and uniform body of research behind them) by calling into question the methodology of individual studies. Nothing can change that the American Academy of Pediatrics and the other experts are uniquely qualified to assess the findings and methodology of the research in their fields. Having done so, they concluded, just as amici conclude, that lesbian and gay parents fare as well as their heterosexual counterparts by every measure.

As explained by the American Academy of Pediatrics, this consensus is based on sound and professionally-accepted principles of research methodology in the fields of child development and psychology:

The small and nonrepresentative samples studied and the relatively young age of most of the children suggest some reserve. However, the weight of evidence gathered during several decades using diverse samples and methodologies is persuasive in demonstrating that there is no systematic difference between gay and nongay parents in emotional health, parenting skills, and attitudes towards parenting. No data have pointed to any risk to children as a result

of growing up in a family with 1 or more gay parents.⁸³

Similarly, Perrin has observed:

Critiques of the scientific literature fail to acknowledge the power of the astonishingly similar findings reported over several decades by diverse investigators studying different samples and using different techniques. In contrast, not a single scientific investigation has been published to date that provides primary data demonstrating any adverse effects on children having a gay and/or lesbian parent(s).⁸⁴

Moreover, the proper research methods and standards in the social sciences are determined through a rigorous peer review process whereby an academic's work must satisfy the scrutiny and standards of established scholars and researchers considered to be experts in the field. Virtually all of the studies on lesbian and gay parenting have appeared in peer-reviewed journals. All of these studies found no harm to children of lesbians or gays. Indeed, no respectable social scientists conducting and publishing research today claim that there are even reasons to

⁸³ Pediatric Report, supra note 41 at 343 (emphasis supplied).

⁸⁴ See Perrin, supra note 51, at 126. See also Herman J. Loether & Donald G. McTavish, Descriptive and Inferential Statistics 416 (1993) (emphasis supplied) ("scientific generalizations are based upon replications of a study rather than a single, isolated study").

predict harm to children from same-sex parenting, much less data to support such a fear.⁸⁵

Accordingly, quibbling with individual studies -- whether based on size, sampling method, or some other claim -- does not address the accepted scientific analysis underlying the conclusions of the American Academy of Pediatrics and others. Nor can criticism of individual studies obscure that there is no research to suggest that children raised in same-sex households are in any way disadvantaged.

III. MARRIAGE WILL BENEFIT CHILDREN OF SAME-SEX COUPLES AND ENHANCE THE STABILITY OF THEIR FAMILIES.

Whether lesbian and gay couples should raise children is not an issue. Lesbians and gay men have parented for a long time, and research indicates they will continue to do so in greater numbers.⁸⁶ Given this

⁸⁵ According to reports published by other researchers and a Federal Court, the only "researcher" who has predicted such harm (Paul Cameron) allegedly resigned under pressure from the American Psychological Association to avoid an investigation into charges of unethical conduct as a psychologist, allegedly was expelled by the Nebraska Psychological Association, and allegedly was officially censured by the American Sociological Association for consistently misrepresenting and misinterpreting research on sexuality and homosexuality. See Stacey & Biblarz, supra, note 56, at 161; Herek, supra note 37 at 155-157 (1991); Baker v. Wade, 106 F.R.D. 526, 536-37 n.31 (N.D. Tex. 1985).

⁸⁶ The increase in the number of children raised by lesbians outside the context of heterosexual relationships has been well documented in the literature. See, e.g., Patterson, supra note 63 at 156 (citing numerous studies and noting that the numbers of lesbians bearing or adopting children in the context of

reality, ending the exclusion of same-sex couples from marriage will advance the Commonwealth's important child welfare policies by providing for the "best interests" of this growing population of children.⁸⁷

Ending the exclusion of same-sex partners from marriage will enhance the emotional health, well-being, and security of children of lesbians and gays. The American Academy of Pediatrics has advised that children of gays and lesbians need and deserve the same permanence and security in parental relationships as children of opposite-sex parents.⁸⁸ That parental breakup can be a difficult, and often destructive, experience for children is not seriously disputed.⁸⁹

their lives as lesbians are consistently described as growing). In addition, recent studies of gay men have found that more than half who were not fathers indicated that they would like to rear a child. Patterson, supra note 3 at 1058.

⁸⁷ See, e.g., Youmans v. Ramos, 429 Mass. 774, 782, 787 (1999) (observing the "primary objective" of our state's child welfare policy is to "serve the child's best interests," and emphasizing that courts must focus on the "future development of a child") (internal citations omitted); Adoption of Tammy, 416 Mass. 205, 210 ("The first and paramount duty is to consult the welfare of the child") (quoting Purinton v. Jamrock, 195 Mass. 187, 199 (1907)).

⁸⁸ Perrin, supra note 45 at 339.

committed relationships even without the legal, economic and social supports accompanying marriage, research suggests that marriage, and the protections, supports and obligations that accompany that status, can fortify long-term committed relationships. Comparisons of committed cohabiting couples and married couples consistently demonstrate that the latter group

Marriage will fortify committed relationships between parents and thereby enhance the stable care-taking, permanence, and security that come from having two available parents.

Finally, the exclusion of same-sex couples from marriage suggests to the children raised in those families that their parents' relationship is less acceptable than or inferior to that of heterosexuals. Allowing same-sex couples the choice to marry would reduce the prejudice and discrimination that today their children face.

is more likely to stay together. See, e.g., Blumstein & Schwartz, supra note 17 at 307-8 (1983) (only 4 percent of married couples in sample broke up during an 18 month period, in contrast to 17 percent of heterosexual cohabiting couples).

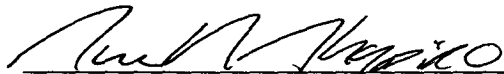
CONCLUSION

For the foregoing reasons, amici respectfully request that this Court reverse the judgment of the Superior Court and enter judgment granting the relief requested by the plaintiff-appellants.

Respectfully submitted,

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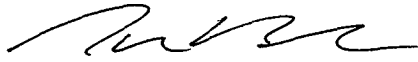
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Certificate of Counsel

I, Jonathan A. Shapiro, hereby certify pursuant to Mass. R. App. P. 13 (d) that on this 8th day of November, 2002, I served the within document by causing two copies thereof to be mailed, by first-class mail, postage prepaid, to: counsel for Defendant-Appellee, Judith S. Yogman, Assistant Attorney General, Office of the Attorney General, One Ashburton Place, Room 2019, Boston, MA 02108-1698 and counsel for Plaintiff-Appellee, Mary Bonuato, Esq., Gay and Lesbian Advocates and Defenders, 294 Washington Street, Suite 740, Boston, MA 02108-4608.

Signed under pains and penalties of perjury.



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