

CASE No. 05-2604

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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CITIZENS FOR EQUAL PROTECTION, INC., et al.

Plaintiff-Appellees,

v.

ATTORNEY GENERAL JON BRUNING, in his official capacity,  
GOVERNOR DAVE HEINEMAN, in his official capacity,

Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

Honorable Joseph F. Bataillon, United States District Judge

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**BRIEF OF AMICUS CURIAE  
AMERICAN PSYCHOLOGICAL ASSOCIATION  
IN SUPPORT OF PLAINTIFFS-APPELLEES**

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## **INTEREST OF *AMICUS CURIAE***

The American Psychological Association is a nonprofit scientific and professional organization founded in 1892.<sup>1</sup> 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 two Resolutions relevant to this case, which are reproduced in the Addendum to this brief. In its *Resolution on Sexual Orientation and Marriage*, the Association, based on empirical research concerning sexual orientation, noted that "social prejudice, discrimination, and violence against lesbians, gay men, and bisexuals take a cumulative toll on the well-being of these individuals." Recognizing that "many gay men and lesbians want and have committed relationships," it resolved to "take a leadership role in opposing all discrimination in legal benefits, rights,

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<sup>1</sup> Pursuant to Fed. R. App. P. 29(a), all parties have consented to the filing of this brief.

and privileges against same-sex couples.” (Addendum A.) In its *Resolution on Sexual Orientation, Parents, and Children*, the Association further 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.” (Addendum B.) In both Resolutions, the Association resolved to provide scientific and educational resources, such as this *amicus* brief, to inform public discussion and understanding of these issues.

### **SUMMARY OF ARGUMENT**

*Amicus*, the nation’s leading association of psychology professionals and behavioral scientists, has prepared 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, *amicus* has 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.

Based on scientific research and clinical expertise, *amicus* and all other leading associations of mental health professionals in the United States recognize 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. The State's discrimination against same-sex couples, however, reinforces and perpetuates the stigma associated with homosexuality. It also increases the unique stressors facing lesbian, gay, and bisexual individuals. The reason for according same-sex relationships a different legal status than heterosexual relationships is ultimately only the sexual orientation of the individuals in the relationships. Characteristics or qualities of the relationships themselves (e.g., the levels of emotional commitment felt by the partners for each other) do not give rise to such differentiation; many gay and lesbian people are already in same-sex relationships that are equivalent to heterosexual relationships in essential respects.

In addition, a large number of children are currently being raised by lesbians and gay men, both in same-sex couples and as single parents. The State's official discrimination against same-sex couples harms the children being raised by these parents. Empirical research studies have consistently found that lesbian and gay parents do not differ from heterosexuals in their parenting skills, and their children do not show any deficits compared to children raised by heterosexual parents. It is the quality of parenting that predicts children's psychological and social adjustment, not the parents' sexual orientation or gender. If their parents' relationships are legally recognized, the children of same-sex couples will benefit

from the legal stability and other familial benefits that this recognition offers, as well as from elimination of state-sponsored stigmatization of their families.

## **ARGUMENT**

### **I. The Nature Of Scientific Evidence And Its Presentation In This Brief.**

This brief has been prepared and reviewed by expert members of *amicus* – the nation’s leading association of psychological professionals and psychological 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.<sup>2</sup> In the informed judgment of *amicus*, 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.

(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 from peer-reviewed, reputable academic journals, focusing on general patterns rather than any single

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<sup>2</sup> Counsel has assisted *amicus* in preparing this brief, but *amicus* and its expert members, not counsel, have taken sole responsibility for reviewing the scientific literature and summarizing the conclusions to be drawn therefrom.

study. Not every published paper meets this standard because academic journals differ widely in their publication criteria and the rigor of their peer review. 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.<sup>3</sup>

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<sup>3</sup> To confidently describe the frequency with which a phenomenon occurs in the population at large, for example, it is necessary to collect data from a probability sample (or "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.



(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 or states that 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 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. Homosexuality Is A Normal Variant Of Human 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.<sup>4</sup> 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.<sup>5</sup> 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

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<sup>4</sup> This section is based on scientific research reported or summarized in the following sources: Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. text rev. 2001); Am. Psychol. Ass'n, *Encyclopedia of Psychology* (A.E. Kazdin ed., 2000); *Corsini Encyclopedia of Psychology and Behavioral Science* (Craighead & Nemeroff eds., 3d ed. 2001); Gonsiorek, *The Empirical Basis for the Demise of the Illness Model of Homosexuality*, in *Homosexuality: Research Implications for Public Policy* 115 (Gonsiorek & Weinrich eds., 1991); Gonsiorek, *Results of Psychological Testing On Homosexual Populations*, 25 *Am. Behav. Sci.* 385 (1982); Gonsiorek & Weinrich, *The Definition and Scope of Sexual Orientation*, in *Homosexuality: Research Implications for Public Policy* 1 (Gonsiorek & Weinrich eds., 1991); Hart et al., *Psychological Adjustment of Nonpatient Homosexuals*, 39 *J. Clinical Psychiatry* 604 (1978); Hooker, *The Adjustment of the Male Overt Homosexual*, 21 *J. Projective Techniques* 17 (1957); Reiss, *Psychological Tests in Homosexuality*, in *Homosexual Behavior: A Modern Reappraisal* 296 (Marmor ed., 1980).

<sup>5</sup> 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.

*bisexual* (having a significant degree of sexual and romantic attraction to both men and women).<sup>6</sup>

Though distinct from other components of sex and sexuality, sexual orientation is commonly discussed as a characteristic of the *individual*, like biological sex (the anatomical, physiological, and genetic characteristics associated with being male or female) or gender identity (the psychological sense of being male or female). Although accurate insofar as it goes, this perspective is incomplete because sexual orientation necessarily implicates actual or desired *relationships* with other individuals. Sexual acts and romantic attractions are categorized as homosexual or heterosexual according to the biological sex of the individuals involved in them, relative to each other.

Though homosexuality was once viewed as a disorder, since 1973, the American Psychiatric Association has recognized that homosexuality *per se* implies no impairment in judgment, stability, reliability, or general social or vocational capabilities.<sup>7</sup> After a thorough review of the scientific data, the

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<sup>6</sup> This brief focuses specifically on persons with a homosexual orientation. Some of the research on which the brief relies addresses bisexual as well as homosexual persons. Many bisexual persons are 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.

<sup>7</sup> Am. Psychiatric Ass'n, *Position Statement on Homosexuality and Civil Rights* (1973), printed in 131 Am. J. Psychiatry 497 (1974).

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 orientation.<sup>8</sup> The National Association of Social Workers, with nearly 150,000 members, has adopted a similar policy.<sup>9</sup> Thus, mental health professionals and researchers have long recognized that being homosexual poses no inherent obstacle to leading a happy, healthy, and productive life, and that the vast majority of gay and lesbian people function well in the full array of social institutions and interpersonal relationships.

### **III. Legal Discrimination Against Gay People And Same-Sex Couples Reinforces And Perpetuates The Stigma Historically Associated With Homosexuality.**

Although homosexuality is a normal variation of human sexual orientation, it has traditionally been stigmatized.<sup>10</sup> Indeed, the former incorrect and

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<sup>8</sup> Am. Psychol. Ass'n, *Minutes of the Annual Meeting of the Council of Representatives*, 30 *Am. Psychologist* 620 (1975).

<sup>9</sup> Nat'l Ass'n of Soc. Workers, *Policy Statement on Lesbian and Gay Issues* (1993) (approved by NASW Delegate Assembly), *reprinted in Social Work Speaks: NASW Policy Statements* 224 (6th ed. 2003).

<sup>10</sup> This section is based on scientific research reported or summarized in the following sources: Badgett, *Money, Myths, and Change: The Economic Lives of Lesbians and Gay Men* (2001); Badgett, *Will Providing Marriage Rights to Same-Sex Couples Undermine Heterosexual Marriage? Evidence from Scandinavia and the Netherlands*, 1 *Sexuality Res. Soc. Pol'y* 1 (2004); Berrill, *Antigay Violence and Victimization in the United States: An Overview*, in *Hate Crimes: Confronting Violence Against Lesbians and Gay Men* 19 (Herek & Berrill eds., 1992); Cohen et al., *Psychological Stress, Cytokine Production, and Severity of Upper Respiratory Illness*, 61 *Psychosomatic Med.* 175 (1999); Cole et al., *Elevated Physical Health*

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*Risk Among Gay Men Who Conceal Their Homosexual Identity*, 15 *Health Psychol.* 243 (1996); Crocker et al., *Social Stigma*, in 2 *The Handbook of Social Psychology* 504 (Gilbert et al. eds., 4th ed. 1998); Dohrenwend, *The Role of Adversity and Stress in Psychopathology*, 41 *J. Health & Soc. Behav.* 1 (2000); *Familiarity Encourages Acceptance*, 11 *Pub. Perspective* 31 (2000); Folkman et al., *Postbereavement Depressive Mood and Its Prebereavement Predictors in HIV + and HIV - Gay Men*, 70 *J. Personality & Soc. Psychol.* 336 (1996); Franzoi, *Social Psychology* (3d ed. 2003); Garnets et al., *Violence and Victimization of Lesbians and Gay Men: Mental Health Consequences*, 5 *J. Interpersonal Violence* 366 (1990); Gergen & Gergen, *Social Psychology* (1981); Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963); Hammersmith & Weinberg, *Homosexual Identity: Commitment, Adjustment and Significant Others*, 36 *Sociometry* 56 (1973); Herek, *Why Tell If You're Not Asked?*, in *Out in Force: Sexual Orientation and the Military* (Herek et al. eds., 1996); Herek & Capitanio, "Some of My Best Friends": *Intergroup Contact, Concealable Stigma, and Heterosexuals' Attitudes Toward Gay Men and Lesbians*, 22 *Personality & Soc. Psychol. Bull.* 412 (1996); Herek & Glunt, *Identity and Community Among Gay and Bisexual Men in the AIDS Era*, in *AIDS, Identity, and Community* 55 (Herek & Greene eds., 1995); Herek & Glunt, *Interpersonal Contact and Heterosexuals' Attitudes Toward Gay Men: Results from a National Survey*, 30 *J. Sex Res.* 239 (1993); Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 *J. Consulting & Clinical Psychol.* 945 (1999); Kiecolt-Glaser et al., *Psychoneuroimmunology*, 70 *J. Consulting & Clinical Psychol.* 537 (2002); Leserman et al., *Gay Identification and Psychological Health in HIV-Positive and HIV-Negative Gay Men*, 24 *J. Applied Soc. Psychol.* 2193 (1994); Link & Phelan, *Conceptualizing Stigma*, 27 *Annual Rev. Soc.* 363 (2001); Martin, *Psychological Consequences of AIDS-Related Bereavement Among Gay Men*, 56 *J. Consulting & Clinical Psychol.* 856 (1988); Mays & Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 *Am. J. Pub. Health* 1869 (2001); Meyer, *Minority Stress and Mental Health in Gay Men*, 36 *J. Health & Soc. Behav.* 38 (1995); Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations*, 129 *Psychol. Bull.* 674 (2003); Pettigrew & Tropp, *Does Intergroup Contact Reduce Prejudice?*, in *Reducing Prejudice and Discrimination: Social Psychological Perspectives* 93 (Oskamp ed., 2000); Schneider & Lewis, *The Straight Story on Homosexuality and Gay Rights*, 7 *Pub. Opinion* 16 (Feb.-Mar. 1984); Sherrill & Yang, *From Outlaws to In-Laws: Anti-Gay Attitudes Thaw*, 11 *Pub. Persp.* 20 (2000); Smyth & Pennebaker, *What Are the Health Effects of Disclosure?*, in *Handbook of Health Psychology* (Baum et al. eds., 2001).

unscientific classification of homosexuality as a disorder or disease was simply a manifestation of this stigma. A status or characteristic is stigmatized when it is negatively valued by members of society and, as a consequence, is a basis for disadvantaging and disempowering those who have it. Legal pronouncements singling out same-sex couples for adverse treatment mark committed intimate relationships with people of the same sex as inferior to heterosexual relationships and less deserving of society's protection. Through that stigma, the State devalues and delegitimizes the relationships that are the core of a homosexual orientation and perpetuates power differentials that afford heterosexuals greater access than non-heterosexuals to a variety of resources and benefits. This process of according disadvantaged status to the members of one group relative to another is the crux of stigma.

Stigma gives rise to prejudice, discrimination, harrassment, and violence against people based on their sexual orientation. Research indicates that the experience of stigma and discrimination is associated with heightened psychological distress among gay men and lesbians, as it is for other minority groups.<sup>11</sup> Being the target of extreme enactments of stigma, such as an antigay

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<sup>11</sup> Although the specific content of prejudice varies across different minority groups, the psychological dynamics of prejudice are similar regardless of the group toward which that prejudice is directed.

criminal assault, is associated with greater psychological distress than experiencing a similar crime not based on one's sexual orientation.

Fear of stigma also makes some gay and lesbian persons feel compelled to conceal their sexual orientation. Like heterosexuals, lesbians and gay men benefit to the extent that they are able to share their lives with and receive support from their family, friends, and other acquaintances. For example, lesbians and gay men have been found to manifest better mental health when they hold positive feelings about their own sexual orientation, have developed a positive sense of personal identity based on it, and have integrated it into their lives by disclosing it to others. By contrast, lesbians and gay men who feel compelled to conceal their sexual orientation tend to report more frequent mental health concerns than their openly gay counterparts, and may even be at risk for physical health problems.

Additionally, to the extent that stigma motivates some lesbians and gay men to conceal their sexual orientation, it further reinforces anti-gay prejudices among heterosexuals. Research has consistently shown that prejudice against minorities, including gay people, decreases significantly when members of the majority group knowingly have contact with minority group members. Consistent with this general pattern, empirical research demonstrates that having personal contact with an openly gay person is one of the most powerful influences on heterosexuals' tolerance and acceptance of gay people. Anti-gay attitudes are significantly less

common among members of the population who report having a close friend or family member who is gay or lesbian, particularly when the gay person has directly disclosed his or her sexual orientation to the heterosexual person. Thus, insofar as it prevents heterosexuals from interacting with openly gay people, the State policy compounds and perpetuates the stigma historically attached to homosexuality.

This stigma has negative consequences for all gay and lesbian people, regardless of their relationship status. To the extent that stigma subjects gay persons to additional stress beyond what is normally experienced by the heterosexual population, they may, as a group, manifest somewhat higher levels of illness or psychological distress. In a recent policy statement, *amicus* concluded 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.” (Addendum A.) Similarly, in adopting an official Position Statement in support of legal recognition of same-sex relationships, the American Psychiatric Association – the nation’s leading association of psychiatrists – observed that same-sex couples



“experience several kinds of state-sanctioned discrimination that can adversely affect the stability of their relationships and their mental health.”<sup>12</sup>

#### **IV. Gay Men And Lesbians Form Stable, Committed Relationships That Are Equivalent To Heterosexual Relationships In Essential Respects.**

As already noted (*supra*, Part II), one’s sexual orientation necessarily implicates actual or desired *relationships* with other individuals.<sup>13</sup> It is by acting with another person — or desiring to act — that individuals express their

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<sup>12</sup> 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](http://www.psych.org/edu/other_res/lib_archives/archives/200502.pdf).

<sup>13</sup> This section is based on scientific research reported or summarized in the following sources: Blumstein & Schwartz, *American Couples: Money, Work, Sex* (1983); Cochran et al., *Prevalence of Mental Disorders, Psychological Distress, and Mental Health Services Use Among Lesbian, Gay, and Bisexual Adults in the United States*, 71 *J. Consulting & Clinical Psychol.* 53 (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* (2001); Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 *J. Marriage & Fam.* 880 (2004); Kurdek, *Differences Between Heterosexual-Nonparent Couples and Gay, Lesbian and Heterosexual-Parent Couples*, 22 *J. Fam. Issues* 727 (2001); Kurdek, *Lesbian and Gay Couples*, in *Lesbian, Gay, and Bisexual Identities Over the Lifespan* 243 (D’Augelli & Patterson eds., 1995); Mackey et al., *Psychological Intimacy in the Lasting Relationships of Heterosexual and Same-Gender Couples*, 43 *Sex Roles* 201 (2000); Mills et al., *Health-Related Characteristics of Men Who Have Sex with Men*, 91 *Am. J. Pub. Health* 980 (2001); 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 (Levine et al. eds., 1997); Peplau, *Lesbian and Gay Relationships*, in *Homosexuality: Implications for Public Policy* 195 (Gonsiorek & Weinrich eds., 1991); Peplau & Beals, *The Family Lives of Lesbians and Gay Men*, in *Handbook of Family Communication* 233 (Vangelisti ed., 2004); Peplau & Spalding, *The Close Relationships of Lesbians, Gay Men and Bisexuals*, in *Close Relationships* 111 (Hendrick & Hendrick eds., 2000).

heterosexuality, homosexuality, or bisexuality. This includes actions as simple as holding hands with or kissing another person. Thus, sexual orientation is integrally linked to the intimate personal relationships that human beings form with others to meet their deeply felt needs for love, attachment, and intimacy. It defines the universe of persons with whom one is likely to find the fulfilling relationships that, for many individuals, comprise an essential component of personal identity.

Like their heterosexual counterparts, substantial numbers of gay men and lesbians form stable, long-lasting, committed relationships. Empirical studies using non-probability 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. Recent surveys based on more representative samples of gay men, lesbians, and bisexuals support these findings and indicate that many same-sex couples are cohabiting. A preliminary analysis of data from the 2000 U.S. 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.<sup>14</sup>

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<sup>14</sup> Simmons & O'Connell, *Married-Couple and Unmarried-Partner Households: 2000* (U.S. Census Bureau 2003), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf> (accessed Oct. 6, 2004). These findings necessarily

Empirical research demonstrates that the psychological and social aspects of these committed relationships between same-sex partners strongly resemble those of heterosexual partnerships. Both heterosexual couples and same-sex couples form deep emotional attachments and face similar relationship issues such as those concerning intimacy, love, equity, loyalty, and stability. Empirical research examining the quality of intimate relationships also shows that most gay men and lesbians are successful in creating intimate relationships and that same-sex couples are no more vulnerable to relationship problems than their heterosexual counterparts. Based on the empirical research, the American Psychological Association has concluded that the “[p]sychological research on relationships and couples provides no evidence to justify discrimination against same-sex couples.” (Addendum A.)

Given the absence of any grounds for discrimination against gay people or their intimate relationships, laws that single out same-sex couples for adverse treatment – such as the Nebraska Amendment (section 29) – have no basis except for prejudice against gay people and same-sex relationships as such. This

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represent a low estimate of the number of same-sex couples in the United States because the Census form excluded couples who were not living together. Additionally, some cohabiting same-sex couples likely did not identify themselves due to fear of stigma or ignorance about this portion of the Census form.

discrimination, by definition, expresses and reinforces the stigma associated with homosexuality.

## **V. The Children Of Lesbians And Gay Men.**

### **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.<sup>15</sup> Although data are not

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<sup>15</sup> This section is based on official resolutions by professional organizations, U.S. Census data, and scientific research reported or summarized in the following sources: Action by American Counseling Association Governing Council (1999); Amato, *Children of Divorce in the 1990s*, 15 J. Fam. Psychol. 355 (2001); Amato & Keith, *Parental Divorce and the Well-Being of Children*, 110 Psychol. Bull. 26 (1991); Amato & Keith, *Parental Divorce and Adult Well-Being*, 53 J. Marriage & Fam. 43 (1991); Am. Acad. Pediatrics, *Homosexuality and Adolescence* (1993); Am. Psychiatric Ass'n, *Position Statement: Psychiatric Treatment and Sexual Orientation* (1998); Am. Psychol. Ass'n, *Encyclopedia of Psychology* (Kazdin ed., 2000); Bozett, *Gay Fathers*, in *Gay and Lesbian Parents* 3 (Bozett ed., 1987); Bozett, *Gay Fathers: How and Why They Disclose Their Homosexuality to Their Children*, 29 Fam. Relations 173 (1980); Brewaeys et al., *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*, 12 Human Reproduction 1349 (1997); Chan et al., *Division of Labor Among Lesbian and Heterosexual Parents: Associations with Children's Adjustment*, 12 J. Family Psychol. 402 (1998); Chan et al., *Psychological Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 Child Dev. 443 (1998); *Corsini Encyclopedia of Psychology and Behavioral Science* (Craighead & Nemeroff eds., 3d ed. 2001); Falk, *Lesbian Mothers: Psychosocial Assumptions in Family Law*, 44 Am. Psychologist 941 (1989); Golombok et al., *Children with Lesbian Parents*, 39 Dev. Psychol. 20 (2003); Green, *Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents*, 135 Am. J. Psychiatry 692 (1978); Green et al., *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 Archives Sexual Behav. 167 (1986); Hotvedt & Mandel, *Children of Lesbian Mothers*, in *Homosexuality: Social, Psychological, and Biological Issues* 275 (Paul et al. eds., 1982); Kirkpatrick et al., *Lesbian Mothers and Their*

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

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*Children*, 51 *Am. J. Orthopsychiatry* 545 (1981); Kurdek, *Differences Between Heterosexual-Nonparent Couples and Gay, Lesbian and Heterosexual-Parent Couples*, 22 *J. Fam. Issues* 727 (2001); Lamb, *Parental Behavior, Family Processes, and Child Development in Nontraditional and Traditionally Understudied Families*, in *Parenting and Child Development in "Nontraditional" Families* 6 (Lamb ed., 1999); McLanahan & Sandefur, *Growing Up With a Single Parent: What Hurts, What Helps* (1994); Nat'l Ass'n of Soc. Workers, *Policy Statement: Lesbian, Gay, and Bisexual Issues* (1996); Parks, *Lesbian Parenthood*, 68 *Am. J. Orthopsychiatry* 376 (1998); Patterson, *Children of the Lesbian Baby Boom*, in *Lesbian and Gay Psychology: Theory, Research, and Clinical Applications* 156 (Greene & Herek eds., 1994); Patterson, *Families of the Lesbian Baby Boom: Parents' Division of Labor and Children's Adjustment*, 31 *Developmental Psychol.* 115 (1995); Patterson, *Families of the Lesbian Baby Boom: Maternal Mental Health and Child Adjustment*, 4 *J. Gay & Lesbian Psychotherapy* 91 (2001); Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052 (2000); Patterson, *Gay Fathers*, in *The Role of the Father in Child Development* (Lamb ed., 4th ed. 2004); Patterson, *Lesbian and Gay Parents and Their Children*, in *The Lives of Lesbians, Gays, and Bisexuals: Children to Adults* 274 (Savin-Williams & Cohen eds., 1996); Patterson & Friel, *Sexual Orientation and Fertility*, in *Infertility in the Modern World: Biosocial Perspectives* (Bentley & Mascie-Taylor eds., 2000); Patterson et al., *Division of Labor Among Lesbian and Heterosexual Parenting Couples*, 11 *J. Adult Dev.* 179 (2004); Perrin, *Sexual Orientation in Child and Adolescent Health Care* (2002); 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); Rutter & Quinton, *Parental Psychiatric Disorder: Effects on Children*, 14 *Psychol. Med.* 853 (1984); Simmons & O'Connell, *Married-Couple and Unmarried-Partner Households: 2000* (U.S. Census Bureau 2003); Smith, *Parental Mental Health*, 9 *Child & Fam. Soc. Work* 3 (2004); Stacey & Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159 (2001); Tasker & Golombok, *Growing Up in a Lesbian Family: Effects on Child Development* (1997); Wainright et al, *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, 75 *Child Dev.* 1886 (2004).

cohabiting with a same-sex partner, 33% of women and 22% of men had a son or daughter under 18 years living in their home. These percentages correspond to approximately 65,600 gay fathers and 96,000 lesbian mothers who are heads of household, have at least one child under 18 living with them, and are cohabiting with a partner. If one includes noncohabiting 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 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.

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. The children in many 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. In addition, the legal trend in many states 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.

**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 are not supported by the scientific research literature.<sup>16</sup>

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 validly attributed to the parents' *gender* or *sexual orientation*. Research in households with heterosexual

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<sup>16</sup> 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.

parents generally indicates that – all else being equal – children do better with two parenting figures rather than just one. 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.

Indeed, the relevant scientific research 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. Researchers have concluded that heterosexual and lesbian mothers do not differ in their parenting ability. 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.

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 family members is impaired in any significant way 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. 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 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.

Nor does empirical research support the misconception that having a homosexual parent harms children's *gender identity* development.<sup>17</sup> Studies concerning the children of lesbian mothers have not found any difference from those of heterosexual parents in their patterns of gender identity. As a panel of the American Academy of Pediatrics concluded on the basis of their examination of peer-reviewed studies, none 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.

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<sup>17</sup> As noted above, *gender identity* concerns the child's psychological sense of being male or female.

Similarly, most published studies have not found reliable differences in *social gender role* conformity between the children of lesbian and heterosexual mothers.<sup>18</sup> Data have not been reported on the gender identity development or gender role orientation of the sons and daughters of gay fathers.

Finally, concerning the adult sexual orientation of children raised by gay or lesbian parents, 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. As noted above, 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 available evidence indicates that the vast majority of lesbian and gay adults were raised by heterosexual parents and the vast majority of children raised by lesbian and gay parents eventually grow up to be heterosexual.

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<sup>18</sup> *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; for instance, they were more likely than daughters of heterosexual mothers to aspire to non-traditional occupations for women, such as doctor, astronaut, lawyer, or engineer. However, the majority of published studies have *not* found meaningful differences in this regard. And, to the extent such differences may exist, many psychologists would consider them healthy in a world in which gender-based discrimination persists. Indeed, less traditionally gender-typed children are arguably better prepared should the future involve more egalitarian societies.

*Amicus* emphasizes that the abilities of gay and lesbian persons as parents and the positive outcomes for their children are *not areas where credible scientific researchers disagree*. Thus, after careful scrutiny of decades of research in this area, the American Psychological Association concluded in its recent *Resolution on Sexual Orientation, Parents, and Children* 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.” (Addendum B.) Similarly, the American Academy of Pediatrics, the nation’s preeminent pediatric authority with 57,000 pediatrician members, has adopted a formal policy declaring 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 parents.”<sup>19</sup> And the National Association of Social Workers, the largest social work association in the world, 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

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<sup>19</sup> 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).

children are to heterosexual parents and their children that were included in the studies.”<sup>20</sup> Most recently, the American Psychiatric Association observed that “no research has shown that the children raised by lesbians and gay men are less well adjusted than those reared within heterosexual relationships.”<sup>21</sup>

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. It is the quality of parenting that predicts children’s psychological and social adjustment, not the parents’ sexual orientation or gender.

**C. By Singling Out Same-Sex Relationships as Inferior, the State Harms the Children of Those Couples.**

Discrimination against same-sex couples in no way helps children raised in heterosexual households. It does, however, harm children raised by same-sex couples in at least three ways. First, children of same-sex couples are harmed by the lack of a clearly defined legal relationship with both of their *de facto* parents, particularly for those families that lack the means or wherewithal to complete a second-parent adoption. Such legal clarity is especially important during times of

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<sup>20</sup> Nat’l Ass’n of Soc. Workers, *Policy Statement: Lesbian, Gay, and Bisexual Issues, in Social World Speaks* 193 (1997).

<sup>21</sup> 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](http://www.psych.org/edu/other_res/lib_archives/archives/200502.pdf).

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 particularly stressful occasion for a child. In those situations, the stable legal bonds afforded by legal recognition of same-sex relationships 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.

Second, by denying same-sex couples legal rights available to everyone else, the State will prevent children of same-sex couples from enjoying the greater stability and security likely to characterize their parents' relationship when it is legally recognized. Children obviously benefit to the extent that their parents are financially secure, physically and psychologically healthy, and not subjected to high levels of stress. They also benefit to the extent that their parents' relationship is stable and likely to endure.<sup>22</sup> Thus, the children of same-sex couples can be expected to benefit when their parents' relationship is not the target of legal disabilities and discrimination.

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<sup>22</sup> Research on parent-child relations in heterosexual parent families has consistently revealed that children's adjustment is often related to indices of parental mental health. Some research suggests that a similar pattern holds when the parents are lesbian or gay.

Third, by singling out same-sex relationships as inferior, the State exacerbates the stigma associated with the children of gay and lesbian couples. Such stigma can derive from various sources. Children of same-sex couples may be secondary targets of stigma directed at their parents because of the parents' sexual orientation. The effects of such stigma may be indirect, as when lesbian or gay parents experience greater strain on their relationship as a result of not receiving social support to the same extent as heterosexual couples. The effects may also be direct if the children of lesbian and gay parents, like children from other minority groups, experience teasing at the hands of other children. As noted above, children of lesbians have *not* been found to differ from the children of heterosexual parents in the quality of their peer relationships. However, lesbian and gay parents and their children are generally aware of the potential for stigma and may take specific steps to avoid it. Thus, the threat of stigma represents a burden with which families headed by same-sex couples must cope, and it is reasonable to predict that state-imposed discrimination against those couples will further contribute to that burden.

## CONCLUSION

Laws that single out gay persons and same-sex couples for discriminatory treatment and deny rights available to others have *no* scientific basis, but simply reflect and perpetuate stigmatization of gay persons and their children.









## CERTIFICATE OF SERVICE

I certify that on November 7, 2005, I caused to be served two copies of the brief of *Amicus Curiae* American Psychological Association on counsel of record for the Plaintiffs-Appellees and for the Defendants-Appellants herein by placing said copies in the care of regular U.S. mail, addressed to the following:

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