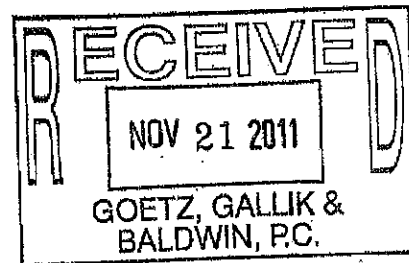

No. DA 11-0451
IN THE SUPREME COURT
OF THE STATE OF MONTANA

JAN DONALDSON and MARY ANNE
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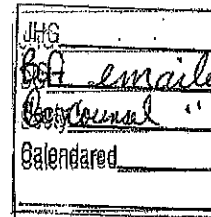


Plaintiffs and Appellants,

vs.

STATE OF MONTANA,

Defendants and Appellees.



BRIEF OF AMERICAN PSYCHOLOGICAL ASSOCIATION AND MONTANA
PSYCHOLOGICAL ASSOCIATION AS AMICI CURIAE IN SUPPORT OF
PLANTIFFS-APPELLANTS

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IDENTITY AND INTEREST OF AMICI CURIAE

The American Psychological Association (APA) is a nonprofit educational and scientific organization founded in 1892. The APA has over 150,000 members, including the majority of psychologists holding doctoral degrees from accredited universities in this country. Among the APA's major purposes is to increase and disseminate knowledge regarding human behavior and to foster the application of research findings to important human concerns. Human sexuality and family relationships are professional concerns of a substantial number of the APA's members, either as researchers or clinicians.

The Montana Psychological Association is a nonprofit member organization whose mission is to promote and advance the art, science and practice of psychology in service of all Montanans.

The APA has adopted multiple research-based policy statements supporting the rights of gay and lesbian people including, most recently in 2011, a statement supporting full marriage equality and calling on the federal government "to extend full recognition to legally married same-sex couples, and to accord them all of the rights, benefits, and responsibilities that it provides to legally married different-sex couples." Am. Psychol. Ass'n, *Resolution on Marriage Equality For Same-Sex Couples* (2011), available at <http://www.apa.org/about/governance>

/council/policy/same-sex.pdf. Although this case is not about access to marriage, *Amici* believe the research that led to the APA's policy statement supporting marriage equality is relevant to the equal protection claim at issue here, as it shows there is no basis to discriminate in providing legal recognition to same-sex couples.

All parties have consented to the filing of this brief.

ARGUMENT

I. The Scientific Evidence Presented In This Brief.

In the informed judgment of *Amici*, which represent the leading national associations of psychological professionals worldwide, this brief presents an accurate, responsible, and balanced summary of the current state of scientific and professional knowledge concerning sexual orientation and family relevant to this case. The brief relies on the best empirical research available, focusing on general patterns rather than any single study.

Every study cited herein has been critically evaluated to assess 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. The adequacy of the study's sample, which must always be considered in terms of the specific research question posed by the study, was also evaluated.

No empirical study is perfect in design and execution. Critiques are part of the process by which science is advanced. When a scientist identifies limitations

or qualifications to a study's findings or notes areas in which additional research is needed, this does not mean the research should be dismissed or discounted.

Most of the studies and literature reviews cited herein have been peer-reviewed and published in reputable academic journals. Other cited academic books, book chapters, and technical reports, which typically are not subject to the same peer-review standards as journal articles, are included because they report research employing rigorous methods, are authored by well-established researchers, and accurately reflect professional consensus about the current state of knowledge. The sole criteria applied in assessing the scientific literature cited herein are those relevant to scientific validity.

II. Homosexuality Is A Normal Expression Of Human Sexuality, Is Generally Not Chosen, And Is Highly Resistant To Change.

Sexual orientation refers to an enduring pattern of or disposition to experience sexual, affectional, or romantic attractions to one or both sexes. It encompasses an individual's sense of personal and social identity based on those attractions, on behaviors expressing those attractions, and on membership in a community of others who share those attractions and behaviors.¹ Although sexual

¹ See A.R. D'Augelli, *Sexual Orientation*, in 7 Am. Psychol. Ass'n, *Encyclopedia of Psychology* 260 (A.E. Kazdin ed., 2000); 2 *The Corsini Encyclopedia of*

orientation ranges along a continuum from exclusively heterosexual to exclusively homosexual, it is usually discussed in three categories: *heterosexual* (having sexual and romantic attraction primarily or exclusively to members of the other sex), *homosexual* (having sexual and romantic attraction primarily or exclusively to members of one's own sex), and *bisexual* (having a significant degree of sexual and romantic attraction to both sexes). Sexual orientation is distinct from other components of sex and sexuality, including *biological sex* (the anatomical, physiological, and genetic characteristics associated with being male or female), *gender identity* (psychological sense of being male or female), and *social gender role* (adherence to cultural norms defining feminine and masculine behavior).

For decades, the consensus of mental health professionals and researchers has been that homosexuality and bisexuality are normal expressions of human sexuality and pose 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.²

Research shows that most gay men and lesbians do not experience their sexual orientation as the result of a voluntary choice and that sexual orientation is

Psychology and Behavioral Science 683 (W.E. Craighead & C.B. Nemeroff eds., 3d ed. 2001).

² See, e.g., Am. Psychiatric Ass'n, *Position Statement on Homosexuality and Civil Rights* (1973), in 131 *Am. J. Psychiatry* 497 (1974); Am. Psychol. Ass'n, *Minutes of the Annual Meeting of the Council of Representatives*, 30 *Am. Psychologist* 620, 633 (1975).

highly resistant to change. Current scientific and professional understanding is that the core feelings and attractions that form the basis for adult sexual orientation typically emerge between middle childhood and early adolescence without any necessary prior sexual experience.³ Most gay men and lesbians do not experience their sexual orientation as the result of a voluntary choice. In a national probability sample of 662 self-identified lesbian, gay, and bisexual adults, 88% of gay men and 68% of lesbians reported perceiving no choice at all about their sexual orientation.⁴

Research and the clinical experience of the APA's members indicate that, once established, sexual orientation is resistant to change. Nonetheless, several groups and individuals have offered clinical interventions—sometimes called “conversion” or “reparative” therapies—that purport to change sexual orientation from homosexual to heterosexual. No scientifically adequate research has shown that such interventions are effective or safe. On the contrary, an APA task force

³ See A. Bell, M. Weinberg & S. Hammersmith, *Sexual Preference: Its Development in Men and Women* 186-87 (1981); G. Herek et al., *Demographic, Psychological, and Social Characteristics of Self-Identified Lesbian, Gay, and Bisexual Adults in a US Probability Sample*, 7 *Sexuality Res. & Soc. Policy* 176, 188 (2010); G. Remafedi et al., *Demography of Sexual Orientation in Adolescents*, 89 *Pediatrics* 714 (1992); R.C. Savin-Williams & L.M. Diamond, *Sexual Identity Trajectories Among Sexual-Minority Youths: Gender Comparisons*, 29 *Archives of Sexual Behavior* 419 (2000).

⁴ G. Herek et al., *Demographic*, *supra* note 3; see also G. Herek et al., *Internalized Stigma Among Sexual Minority Adults: Insights From a Social Psychological Perspective*, 56 *J. of Counseling Psychol.* 32 (2009); R.C. Savin-Williams, *Gay and Lesbian Youth: Expressions of Identity* 77, 79 (1990).

conducting a systematic review of the peer-reviewed journal literature on sexual orientation change efforts concluded that efforts to change sexual orientation are unlikely to be successful and indeed can be harmful.⁵ All major national mental health organizations have adopted policy statements cautioning the profession and the public about treatments that purport to change sexual orientation.⁶

⁵ Am. Psychol. Ass'n, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009); see also Am. Psychol. Ass'n, *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts* (2009), both available at <http://www.apa.org/pi/lgbt/resources/sexual-orientation.aspx>; D. Haldeman, *The Practice and Ethics of Sexual Orientation Conversion Therapy*, 62 *J. of Consulting & Clinical Psychol.* 221, 224 (1994).

⁶ Am. Psychol. Ass'n, *Resolution*, *supra* note 5; Am. Psychiatric Ass'n, *Position Statement: Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies)* (2000), available at <http://www.psych.org/Departments/EDU/Library/APAOfficialDocumentsandRelated/PositionStatements/200001.aspx>; Am. Ass'n for Marriage & Fam. Therapy, *Reparative/Conversion Therapy* (2009), available at http://www.aamft.org/iMIS15/AAMFT/MFT_Resources/Content/Resources/Position_On_Couples.aspx; Am. Med. Ass'n, Policy H-160.991, *Health Care Needs of the Homosexual Population*, available at <http://www.ama-assn.org/ama/pub/about-ama/our-people/member-groups-sections/gibt-advisory-committee/ama-policy-regarding-sexual-orientation.page>; Nat'l Ass'n of Social Workers, *Position Statement: "Reparative" and "Conversion" Therapies for Lesbians and Gay Men* (2000), available at <http://www.naswdc.org/diversity/lgb/reparative.asp>; Joy S. Whitman et al., Am. Counseling Ass'n, *Ethical Issues Related to Conversion or Reparative Therapy* (2006), available at <http://www.counseling.org/pressroom/newsreleases.aspx?AGuid=b68aba97-2f08-40c2-a400-0630765f72f4>; B.L. Frankowski, *Sexual Orientation and Adolescents*, 113 *Pediatrics* 1827 (2004).

III. Sexual Orientation and Relationships

A. Gays and Lesbian Individuals Form Strong Long-Term Intimate Relationships.

Like their heterosexual counterparts, many gay and lesbian people desire to form stable, long-lasting, committed relationships,⁷ and many do so. Many studies of gay and lesbian people have found 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, 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.⁸ Recent surveys based on probability

⁷ In a national probability sample of 662 self-identified lesbian, gay, and bisexual adults, of those gay men and lesbians who were not currently in a relationship, 34% of the gay men and 46% of the lesbians said that they would like to marry someday and of those who were currently in a same-sex relationship, 78% of the gay men and 87% of the lesbians said it was likely they would marry their current partner, if it were legal, and 89% of all respondents supported civil unions as a way to recognize committed same-sex relationships. See G. Herek et al., *Demographic, supra* note 3; Henry J. Kaiser Family Foundation, *Inside-Out: A Report on the Experiences of Lesbians, Gays and Bisexuals in America and the Public's Views on Issues and Policies Related to Sexual Orientation* 31 (2001) available at <http://www.kff.org/kaiserpolls/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=13875>; A.R. D'Augelli et al., *Lesbian and Gay Youths' Aspirations for Marriage and Raising Children*, *J. LGBT Issues Counseling* 77 (2007).

⁸ See L.A. Peplau & L.R. Spalding, *The Close Relationships of Lesbians, Gay Men and Bisexuals, in Close Relationships: A Sourcebook* 114 (C.A. Hendrick & S.A. Hendrick eds., 2000); L.A. Kurdek, *Lesbian and Gay Couples, in Lesbian, Gay, and Bisexual Identities over the Lifespan* 243 (A.R. D'Augelli & C.J. Patterson eds., 1995); P.M. Nardi, *Friends, Lovers, and Families: The Impact of AIDS on*

samples of gay, lesbian, and bisexual people support these findings and indicate that many same-sex couples are cohabiting.⁹ An analysis of data from the 2010 US Census reported that same-sex couples headed more than 600,000 US households, including 1,348 same-sex couples in Montana.¹⁰

B. There Is No Basis For Distinguishing Between Relationships Of Gay And Lesbian People And Relationships Of Heterosexuals.

The scientific literature provides no basis for treating committed relationships of gay and lesbian people differently than those of their heterosexual counterparts. On the contrary, empirical research demonstrates that the psychological and social aspects of committed relationships between same-sex partners closely resemble those of heterosexual partnerships. Like heterosexual couples, same-sex couples form deep emotional attachments and commitments. Heterosexual and same-sex couples alike face similar issues concerning intimacy,

Gay and Lesbian Relationship, in In Changing Times: Gay Men and Lesbians Encounter HIV/AIDS 55, 71-72 (Tables 3.1, 3.2) (Martin P. Levine et al. eds., 1997).

⁹ Herek et al., *Demographic, supra note 3*; T.C. Mills et al., *Health-Related Characteristics of Men Who Have Sex with Men: A Comparison of Those Living in "Gay Ghettos" with Those Living Elsewhere*, 91 Am. J. Pub. Health, 980, 982 (Table 1) (2001); S.D. Cochran et al., *Prevalence of Mental Disorders, Psychological Distress, and Mental Services Use Among Lesbian, Gay, and Bisexual Adults in the United States*, 71 J. Consulting & Clinical Psychol. 53, 56 (2003); Henry J. Kaiser Family Found., *supra note 8*.

¹⁰ Same-Sex Unmarried Partner or Spouse Households by Sex of Householder by Presence of Own Children: 2010 Census and 2010 American Community Survey, available at <http://www.census.gov/hhes/samesex/files/supp-table-AFF.xls>.

love, equity, loyalty, and stability, and they go through similar processes to address those issues.¹¹ Empirical research examining the quality of intimate relationships also shows that gay and lesbian couples have similar or higher levels of relationship satisfaction than do heterosexual couples.¹² There is simply no empirical basis for treating committed relationships of gay and lesbian people differently from those of their heterosexual counterparts, in form or in substance.

11 L.A. Kurdek, *Change in Relationship Quality for Partners from Lesbian, Gay Male, and Heterosexual Couples*, 22 J. of Fam. Psychol. 701 (2008); L.A. Kurdek, *Are Gay and Lesbian Cohabiting Couples Really Different from Heterosexual Married Couples?*, 66 J. Marriage & Fam. 880 (2004); L.A. Kurdek, *Differences Between Heterosexual-Nonparent Couples and Gay, Lesbian and Heterosexual-Parent Couples*, 22 J. Fam. Issues 727 (2001); R.A. Mackey et al., *Psychological Intimacy in the Lasting Relationships of Heterosexual and Same-Gender Couples*, 43 Sex Roles 201 (2000); G.I. Roisman et al., *Adult Romantic Relationships as Contexts for Human Development: A Multimethod Comparison of Same-Sex Couples with Opposite-Sex Dating, Engaged, and Married Dyads*, 44 Developmental Psychol. 91-101 (2008); see generally L.A. Kurdek, *What Do We Know About Gay and Lesbian Couples?* 14 Current Directions in Psychol. Sci. 251-54 (2005); L.A. Peplau & A.W. Fingerhut, *The Close Relationships of Lesbians and Gay Men*. 58 Ann. Rev. Psychol. 405 (2007); Peplau & Spalding, *supra* note 8, at 114.

12 K.F. Balsam et al., *Three-Year Follow-Up of Same-Sex Couples Who Had Civil Unions in Vermont, Same-Sex Couples Not in Civil Unions, and Heterosexual Married Couples*, 44 Developmental Psychol. 102-116 (2008) (compared to heterosexual married participants, same-sex couples reported greater relationship quality, compatibility, and intimacy and lower levels of conflict); L.A. Kurdek, *Change in Relationship Quality for Partners From Lesbian, Gay Male, and Heterosexual Couples*, 22 J. of Fam. Psychol., 701-711 (2008); Peplau & Spalding, *supra* note 8, at 114 (“Empirical research has found striking similarities in the reports of love and satisfaction among contemporary lesbian, gay and heterosexual couples.”); see also R.A. Mackey et al., *supra* note 11; L.A. Peplau & K.P. Beals, *The Family Lives of Lesbians and Gay Men, in Handbook of Family Communication* 233, 236 (A.L. Vangelisti ed., 2004).

IV. The Children of Gay and Lesbian Parents

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

A large number of gay and lesbian couples, like their heterosexual counterparts, raise children together. Although data are not available to indicate the exact number of lesbian and gay parents, the 2010 Census reported that 111,033 same-sex couples in the United States were raising children under 18 years old, including 297 couples in Montana.¹³ Researchers estimate the number of lesbian or gay parents to be substantially higher than Census estimates.¹⁴

B. The Factors That Positively Affect The Adjustment Of Children Are Not Dependent On The Gender Of Parents.

The factors that affect the adjustment of children and adolescents are the same regardless of parental sexual orientation. Hundreds of studies over the past 30 years have led to a consensus on the factors that are associated with healthy adjustment among children and adolescents. The three most important are (1) the qualities of parent-child relationships, (2) the qualities of relationships among

¹³ 2010 Census and 2010 American Community Survey, *supra* note 10.

¹⁴ See C.J. Patterson & L.V. Friel, *Sexual Orientation and Fertility, in Infertility in the Modern World: Present and Future Prospects* 238 (G. Bentley & N. Mascie-Taylor eds., 2000); E.C. Perrin & Committee on Psychosocial Aspects of Child & Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341 (2002). The Census form does not ask directly about sexual orientation but rather includes information that allows the Census Bureau to deduce that same-sex partners live in a household.

significant adults in child or adolescent lives (e.g., relationships between parents), and (3) the economic and other resources available to the child or adolescent. There is no empirical support for the notion that presence of both male and female role models in the home promotes adjustment or well-being among children or adolescents.¹⁵

Mental health professionals use the term 'adjustment' to refer to characteristics that allow children and adolescents to function well in their daily lives. Youngsters who are well-adjusted have sufficient social skills to get along with peers as well as with adults, to function well in school, to function well in the workplace, and eventually to establish and maintain meaningful intimate relationships. In contrast, maladjustment may be characterized by the occurrence of behavior problems such as aggressive behavior, or deficient social skills, that impair the ability to form and/or maintain positive relationships with others.¹⁶

On the basis of findings from many years of research, mental health professionals have reached a consensus that, when parent-child and parent-

¹⁵ Golombok, *Parenting: What Really Counts?* (2002); C.J. Patterson, & P.D. Hastings, *Socialization in the Context of Family Diversity*, in *Handbook of Socialization: Theory and Research* 328-51 (J.E. Grusec & P.D. Hastings eds., 2007); J. Stacey & T.J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Soc. Rev.* 159 (2001).

¹⁶ Golombok, *supra* note 15; M.E. Lamb & C. Lewis, *The Role of Parent-Child Relationships in Child Development*, in *Developmental Science: An Advanced Textbook* 429-68 (M.H. Bornstein & M.E. Lamb eds., 5th ed. 2005); Patterson & Hastings, *supra* note 15.

adolescent relationships are characterized by warmth, love and affection, emotional commitment, reliability, and consistency, as well as by appropriate guidance and limit-setting, children and adolescents are likely to show more positive adjustment. Children and teenagers whose parents provide loving guidance in the context of secure home environments are more likely to flourish – and this is just as true for children of same-sex parents as it is for children of opposite-sex parents.¹⁷

Based on research findings, mental health professionals have also reached a consensus that the quality of relationships among significant adults in a child's or adolescent's life is associated with adjustment. When relationships between parents are characterized by love, warmth, cooperation, security, and mutual support, children and adolescents are more likely to show positive adjustment. In contrast, when relationships between parents are conflict-ridden and acrimonious, the adjustment of children and adolescents is likely to be less favorable. These correlations are just as true for children of same-sex parents as for children of opposite-sex parents.¹⁸

¹⁷ Lamb & Lewis, *supra* note 16; Patterson & Hastings, *supra* note 15.

¹⁸ *The Family Context of Parenting in Children's Adaptation to Elementary School* (P.A. Cowan, C.P. Cowan, J.C. Ablow, V.K. Johnson & J.R. Measelle eds., 2005); E.M. Cummings, M.C. Goeke-Morey & L.M. Papp, *Children's Responses to Everyday Marital Conflict Tactics in the Home*, 74 *Child Dev.* 1918 (2003); E.M. Cummings, M.C. Goeke-Morey & L.M. Papp, *Everyday Marital Conflict and Child Aggression*, 32 *J. Abnormal Child Psychol.* 191 (2004); Golombok, *supra* note 15.

Finally, researchers also acknowledge the association between child and adolescent adjustment and access to economic and other resources. Children and adolescents who have access to sufficient economic resources are likely to live in safer neighborhoods, breathe cleaner air, and eat more nutritious food. They are also more likely to have opportunities to participate in positive after-school activities and hence to have access to social and emotional resources from teammates, coaches, youth leaders, and others. Children with access to such resources are more likely to show positive adjustment, and this is just as true for children of same-sex parents as it is for children of opposite-sex parents.¹⁹

In short, the very same factors that are linked to positive development of children and adolescents with heterosexual parents are also linked to positive development of children and adolescents with lesbian and gay parents.²⁰

¹⁹ *Neighborhood Poverty: Context and Consequences for Children* (J. Brooks-Gunn, G.J. Duncan & J.L. Aber eds., 1997); *Consequences of Growing Up Poor* (G.J. Duncan & J. Brooks-Gunn eds., 1997); Patterson & Hastings, *supra* note 15.

²⁰ See R.W. Chan, B. Raboy & C.J. Patterson, *Psychosocial Adjustment Among Children Conceived Via Donor Insemination By Lesbian and Heterosexual Mothers*, 69 *Child Dev.* 443 (1998); C.J. Patterson, *Lesbian and Gay Parents and Their Children: A Social Science Perspective*, in *Contemporary Perspectives on Lesbian, Gay, and Bisexual Identities, Nebraska Symposium on Motivation* 141 (D.A. Hope ed., 2009); Stacey & Biblarz, *supra* note 15; C.J. Telingator & C.J. Patterson, *Children and Adolescents of Lesbian and Gay Parents*, 47 *J. Am. Acad. of Child & Adolescent Psychiatry* 1364 (2008); J.L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents With Same-Sex Parents*, 75 *Child Dev.* 1886 (2009).

C. There Is No Basis For Concluding That Gay And Lesbian Parents Are Any Less Fit Or Capable Than Heterosexual Parents, Or That Their Children Are Any Less Psychologically Healthy And Well Adjusted.

The scientific literature supports the conclusion that gays and lesbians do an equally good job raising children as do heterosexual parents.²¹ 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 thus our knowledge

²¹ The research literature on gay, lesbian, and bisexual parents includes dozens of empirical studies. These studies vary in the quality of their samples, research design, measurement methods, and data analysis techniques. However, they are impressively consistent in their failure to identify deficits in parenting abilities or in the development of children raised in a lesbian or gay household. Their findings are summarized in several reviews of empirical literature published in respected, peer-reviewed journals and academic books and empirical studies. *E.g.*, J. Stacey & T.J. Biblarz, *supra* note 15; Perrin & Committee, *supra* note 14; C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marriage & Fam.* 1052 (2000); N. Anderssen et al., *Outcomes for Children with Lesbian or Gay Parents*, 43 *Scand. J. Psychol.* 335 (2002); J.G. Pawelski et al., *The Effects of Marriage, Civil Union, and Domestic Partnership Laws on the Health and Well-being of Children*, 118 *Pediatrics* 349, 358-60 (2006); Wainright et al., *supra* note 20, at 1895; A.E. Goldberg, *Lesbian and Gay Parents and Their Children: Research on the Family Life Cycle*, in *Am. Psychol. Ass'n, Contemporary Perspectives on Lesbian, Gay, and Bisexual Psychology* (2010); G.M. Herek, *Legal Recognition of Same-Sex Relationships in the United States: A Social Science Perspective*, 61 *Am. Psychol.* 607 (2006).

of them is broader,²² but the studies that exist on gay fathers also find that they are as fit and able as parents of heterosexual fathers.²³

Notwithstanding the strong consensus noted above, opponents of homosexuality have argued against the parental rights of lesbian and gay people on the basis of research showing that outcomes for children are better when they have two parents rather than one.²⁴ But differences resulting from the *number* of parents in a household cannot be attributed to the parents' *gender* or *sexual orientation*.

²² See, e.g., R.H. Farr et al., *Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?*, 14 Applied Developmental Sci. 164, 176 (2010); E.C. Perrin, *Sexual Orientation in Child and Adolescent Health Care* 105, 115-16 (2002); C.A. Parks, *Lesbian Parenthood: A Review of the Literature*, 68 Am. J. Orthopsychiatry 376 (1998); S. Golombok et al., *Children with Lesbian Parents: A Community Study*, 39 Developmental Psychol. 20 (2003).

²³ Farr et al., *supra* note 22, at 176; Perrin & Committee, *supra* note 14, at 342; C.J. Patterson, *Gay Fathers*, in *The Role of the Father in Child Development* 397, 413 (M.E. Lamb ed., 4th ed. 2004); see also S. Erich et al., *Gay and Lesbian Adoptive Families: An Exploratory Study of Family Functioning, Adoptive Child's Behavior, and Familial Support Networks*, 9 J. Fam. Soc. Work 17 (2005); S. Erich, et al., *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, 1 J. GLBT Fam. Stud. 43 (2005).

²⁴ In *Lofton v. Secretary of the Department of Children & Family Services*, 358 F.3d 804 (11th Cir. 2004), upholding a Florida statute banning adoption by gay and lesbian individuals, the court cited as scientific evidence a booklet by an anti-marriage-equality advocacy group, an article calling for additional studies, and an article concluding, contrary to the court's description, that "there is no evidentiary basis for considering parental sexual orientation in decisions about children's interests." Substantial additional research has been published since then. Moreover, in 2010 the same statute involved in *Lofton* was held to violate Florida's constitutional guarantee of equal protection See *Fla. Dep't of Children & Families v. Adoption of X.X.G. & N.R.G.*, 45 So. 3d 79 (Fla. Dist. Ct. App. 2010). The State of Florida sought no further review.

Research regarding heterosexual parents generally indicates that children do better with two parenting figures rather than just one,²⁵ but most of these studies do not permit conclusions to be drawn about the consequences of having two parents who are of the same versus different genders.²⁶

As for children, the scientific literature provides “no evidence that psychological adjustment among lesbians, gay men, their children, or other family members is impaired in any significant way”;²⁷ rather, “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.”²⁸ A comprehensive survey of peer-reviewed scientific studies

²⁵ E.g., S. McLanahan & G. Sandefur, *Growing Up With a Single Parent: What Hurts, What Helps* 39 (1994)

²⁶ A review of 21 published empirical studies criticizes the practice of “extrapolat[ing] (inappropriately) from research on single-mother families to portray children of lesbians as more vulnerable to everything from delinquency, substance abuse, violence, and crime, to teen pregnancy, school dropout, suicide, and even poverty,” and notes that “the extrapolation is ‘inappropriate’ because lesbian-gay-parent families have never been a comparison group in the family structure literature on which these authors rely.” Stacey & Biblarz, *supra* note 15, at 162 & n.2. One recent study of 2000 U.S. Census data found that, after controlling for socio-economic status and characteristics of the children, differences in the performance of children of cohabiting gay parents and heterosexual married parents, as measured by grade retention, were not statistically significant. M.J. Rosenfeld, *Nontraditional Families and Childhood Progress through School*, 47 *Demography* 755, 770 (2010).

²⁷ Patterson, *Family Relationships*, *supra* note 21, at 1064. G.P. Mallon, *Gay Families and Parenting*, in 2 *Encyclopedia of Social Work* 241-47 (T. Mizrahi & L.E. Davis eds., 20th ed. 2008).

²⁸ Stacey & Biblarz, *supra* note 15, at 176.

reported no differences between children reared by lesbian mothers and those raised by heterosexual parents with respect to crucial factors of self-esteem, anxiety, depression, behavioral problems, performance in social arenas, use of psychological counseling, mothers' and teachers' reports of children's hyperactivity, unsociability, emotional difficulty, or conduct difficulty.²⁹

Nor does empirical research support the misconception that having a homosexual parent affects the development of children's *gender identity* (one's psychological sense of being male or female). Studies concerning the children of lesbian mothers have found no differences from those of heterosexual parents in their patterns of gender identity. A panel of the American Academy of Pediatrics concluded on the basis of its examination of peer-reviewed studies 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."³⁰

Most published studies have found no reliable differences between the children of lesbian and heterosexual mothers in *social gender role conformity* (adherence to cultural norms defining feminine and masculine behavior).³¹ A recent study also found that adoptive children of gay fathers showed typical

²⁹ *Id.* at 169, 171.

³⁰ Perrin & Committee, *supra* note 14, at 342

³¹ See Patterson, *Family Relationships*, *supra* note 22.

gender role development, just as did those of lesbian mothers and those of heterosexual mothers and fathers.³²

No scientific consensus exists about the specific factors underlying the development of sexual orientation.³³ The available evidence indicates, however, that the vast majority of lesbian and gay adults were raised by heterosexual parents and that the vast majority of children raised by lesbian and gay parents grow up to be heterosexual.³⁴

The abilities of gay and lesbian persons as parents and the positive outcomes for their children are *not* areas where credible scientific researchers disagree.³⁵

³² See Farr et al., *supra* note 22.

³³ See 7 Am. Psychol. Ass'n, *Encyclopedia*, *supra* note 1; 2 *The Corsini Encyclopedia of Psychology and Behavioral Science* 683 (W.E. Craighead & C.B. Nemeroff eds., 3d ed. 2001).

³⁴ See Patterson, *Gay Fathers*, *supra* note 23, at 407-09; Patterson, *Family Relationships*, *supra* note 21, at 1059-60.

³⁵ Some commentators claim a single, unreplicated 1996 Australian study demonstrates the existence of deficits in lesbian and gay parents and their children. See S. Sarantakos, *Children in Three Contexts: Family, Education, and Social Development*, 21 *Child. Australia* 23 (1996). But the anomalous Sarantakos results are likely the result of multiple methodological problems, especially confounding effects of parental sexual orientation with effects of parental divorce, because divorce is known to correlate with poor adjustment and academic performance. See, e.g., P.R. Amato, *Children of Divorce in the 1990s: An Update of the Amato and Keith (1991) Meta-Analysis*, 15 *J. Fam. Psychol.* 355 (2001). Some commentators have cited publications by Paul Cameron, but his work has been discredited for bias and inaccuracy. See G.M. Herek, *Bad Science in the Service of Stigma: A Critique of the Cameron Group's Survey Studies*, in *Stigma and Sexual Orientation: Understanding Prejudice Against Lesbians, Gay Men, and Bisexuals* 223 (G.M. Herek ed., 1998); *Baker v. Wade*, 106 F.R.D. 526, 536 (N.D. Tex. 1985) (Cameron made "misrepresentations" to the court).

Thus, after careful scrutiny of decades of research in this area, the American Psychological Association has concluded 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" and that "Research has shown that adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish."³⁶

No credible empirical research suggests otherwise.

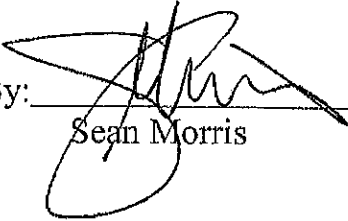
CONCLUSION

There is no scientific basis for denying same-sex couples and their families the rights, benefits and burdens conferred by recognizing their relationships.

³⁶ Am. Psychol. Ass'n, *Resolution on Sexual Orientation, Parents, and Children* (2004), available at <http://www.apa.org/about/governance/council/policy/parenting.pdf> (emphasis added).

DATED this 18th day of November, 2011.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4) of the Montana Rules of Appellate Procedure, I certify that American Psychological Association's Amicus Curiae Brief in Support of Appellants is printed in a proportionally spaced Times New Roman text typeface of 14 points; has left, right, top and bottom margins of 1 inch; is double spaced; and word count calculated by Microsoft Word is 4597 words, excluding the Table of Contents, the Table of Authorities, the Certificate of Service, and this Certificate of Compliance.

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I certify that on November 18, 2011, I served a copy of the preceding document on the following:

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