

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

<b>JAMES OBERGEFELL, et al.,</b>	:	<b>Case No. 1:13-cv-00501</b>
	:	
<b>Plaintiffs,</b>	:	<b>Judge Timothy S. Black</b>
	:	
<b>vs.</b>	:	<b>EXPERT DECLARATION OF</b>
	:	<b>LETITIA ANNE PEPLAU,</b>
<b>THEODORE E. WYMYSLO, et</b>	:	<b>PH.D. IN SUPPORT OF</b>
<b>al,</b>	:	<b>PLAINTIFFS’ MOTION FOR</b>
	:	<b>DECLARATORY JUDGMENT</b>
<b>Defendants.</b>	:	<b>AND PERMANENT</b>
	:	<b>INJUNCTION</b>

I, Letitia Anne Peplau, Ph.D., pursuant to 28 U.S.C. §1746, declare under the penalty of perjury under the laws of the United States of America that the following are my true and correct opinions:

**PRELIMINARY STATEMENT**

1. My professional background, experience, and publications are detailed in my curriculum vitae, a true and accurate copy which is attached as Exhibit A to this declaration. I have been retained by counsel for Plaintiffs as an expert in connection with the above-captioned litigation (“Obergefell”). I have actual knowledge of the matters stated in this declaration and could and would so testify if called as a witness.

2. I was a Professor of Psychology at the University of California, Los Angeles beginning in 1973, with promotions to tenure in 1978, to full professor in 1982, and to Distinguished Professor in 2010. From 2005-2011, I served as Director of the UCLA Interdisciplinary Relationship Science Program. This program, funded by the National Science Foundation, trained doctoral students in the study of families and other personal relationships. I formally retired from UCLA in June 2011, but am continuing to work at UCLA as Distinguished

Research Professor and as the Psychology Department Vice Chair for Graduate Studies.

3. In broad terms, my research addresses topics concerning personal relationships, gender, and sexual orientation. I have conducted research on heterosexual couples, co-authored a book entitled *Close Relationships*, and published articles comparing empirical findings about men's and women's experiences in close relationships. In the 1970s, I was one of the first researchers to conduct empirical investigations of the intimate relationships of lesbians and gay men, and I have continued this program of research for the past 35 years. In addition, I have written several major reviews of the scientific research on same-sex relationships, including a 2007 article in the *Annual Review of Psychology* and a 2009 article in the *Encyclopedia of Human Relationships*. I have also conducted empirical studies on gay and lesbian identity.

4. I received my B.A. in Honors Psychology from Brown University in 1968 and my Ph.D. in Social Psychology from Harvard University in 1973. As reflected in my curriculum vitae (Exhibit A), I have published more than 120 papers in scholarly journals and scholarly books, primarily in the field of couple relationships. I have co-authored or co-edited over 10 books, and I have frequently presented my research at universities and scientific meetings.

5. My expertise extends beyond the specific areas addressed in my own empirical research program to include other theory and empirical research related to sexual orientation and same-sex relationships. A broad knowledge of this area has been necessary not only for my own scholarship, but also for successfully completing my professional duties as a teacher, as Director of the UCLA Interdisciplinary Relationship Science Program, and as a reviewer of academic journals and book manuscripts.

6. As a result of my research and other accomplishments, I have received several professional awards. I have been elected a fellow of the American Psychological Association and of the Association for Psychological Science. I have received lifetime achievement awards from the American Psychological Association, the International Association for Relationship Research, and the Society for the Scientific Study of Sexuality. I also had the honor of being elected president of the International Society for the Study of Personal Relationships (an

organization since renamed the International Association for Relationship Research).

7. In preparing this report, I reviewed the materials listed in the attached Bibliography (Exhibit B). I may rely on those documents, in addition to the documents specifically cited as supportive examples in particular sections of this report, as additional support for my opinions. For the documents from websites that I have cited, I have listed the true and complete web address and the date I last accessed those documents in my report. I have also relied on my years of experience in this field, as set out in my curriculum vitae (Exhibit A), and on the materials listed therein. The materials I have relied upon in preparing this report are the same types of materials that experts in my field of study regularly rely upon when forming opinions on the subject.

8. In the past four years, I have testified as an expert – either at trial or through declaration – or been deposed as an expert in *In the Matter of the Adoption of X.X.G. and N.R.G.* in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida, Case No. 06-43881 FC 04, *Cole v. The Arkansas Department of Human Services* in the Circuit Court of Pulaski County, Arkansas, Case No. CV2008-14284, *Perry v. Schwarzenegger*, 704 F. Supp.2d 921 (N.D. Cal. 2010), *Golinski v. Office of Personnel Management*, 824 F.Supp.2d 968 (N.D. Cal. 2012), *Windsor v. U.S.*, 833 F. Supp.2d 394 (S.D.N.Y. 2011), *Pedersen v. Office of Personnel Management*, 881 F. Supp. 2d 294, 2012 WL 3113883 (D. Conn. 2012), *Dragovich v. U.S. Dep't of the Treasury*, 872 F. Supp. 2d 944, 2012 WL 1909603 (N.D. Cal. 2012), *Donaldson and Guggenheim v. Montana* in the Montana First Judicial District Court, Lewis and Clark County, Case No. BDV-2010-702, *Sevcik v. Sandoval*, No. 2:12-CV-00578-RCJ-PAL (D. Nev. 2012), and *Darby v. Orr, Lazaro v. Orr*, Nos. 12 CH 19718 & 19719 (Circuit Ct., Cook Cty).

9. I am being compensated an hourly rate for actual time devoted, at the rate of \$300.00 per hour for preparation of reports and for testimony. My compensation does not depend on the outcome of this litigation, the opinions I express, or the testimony I provide.

### **SUMMARY OF OPINIONS**

10. Sexual orientation refers to an enduring pattern of emotional, romantic, and/or sexual attractions to men, women, or both sexes. Most adults are attracted to and form relationships with members of only one sex. Efforts to change a person's sexual orientation through religious or psychotherapy interventions have not been shown to be effective.

11. It is well-established that homosexuality is a normal expression of human sexuality. It is not a mental illness, and being gay or lesbian has no inherent association with a person's ability to lead a happy, healthy, and productive life or to contribute to society.

12. Research shows that same-sex couples closely resemble heterosexual couples. Like their heterosexual counterparts, many lesbian, gay, and bisexual individuals form loving, long lasting relationships with a partner.

13. Marriage provides a range of social and other benefits and protections to spouses. These contribute to enhanced psychological well-being, physical health, and longevity among married individuals. Same-sex couples are therefore harmed by being excluded from marriage.

14. In the United States, lesbian, gay, and bisexual individuals experience pervasive social stigma and the added stress that results from prejudice and discrimination. Stigma is reflected both in acts of individuals and in the institutions of society, including its laws, that legitimate and perpetuate the second-class status of gay men, lesbians, and bisexuals. By denying recognition to legally married same-sex couples, Ohio Revised Code Sections 3101.01 and 3101.05 and the 2004 amendment to the Ohio Constitution (Article XV, §11), both reflect and perpetuate stigma against lesbians, gay men, and same-sex couples. The stigma and discrimination perpetuated by these statutory and constitutional amendments harms not only same-sex couples, but gay men, lesbians, and bisexuals as a group.

15. There is no scientific support for the notion that allowing same-sex couples to marry would harm different-sex relationships or marriages. The factors that affect the quality, stability, and longevity of different-sex relationships would not be affected by marriages of same-sex couples.

## OPINIONS

### I. Understanding Sexual Orientation

#### A. What Is Sexual Orientation?

16. The American Psychological Association provides a widely accepted definition of sexual orientation: “Sexual orientation refers to an enduring pattern of emotional, romantic, and/or sexual attractions to men, women, or both sexes. Sexual orientation also refers to a person's sense of identity based on those attractions, related behaviors, and membership in a community of others who share those attractions.”<sup>1</sup>

17. Beginning with the research of Alfred Kinsey in the 1940s, researchers have recognized that sexual orientation can range along a continuum from exclusively heterosexual to exclusively homosexual. Nonetheless, it is most often discussed in terms of three categories: heterosexual (having emotional, romantic, or sexual attractions to members of the other sex), gay/lesbian (having attractions to members of one's own sex), and bisexual (having attractions to both men and women). Most adults in the United States can readily categorize themselves as heterosexual, gay/lesbian, or bisexual.<sup>2</sup> The specific category name that an individual prefers (e.g., homosexual, gay) may vary,<sup>3</sup> but in national surveys in the U.S., nearly all participants are able to indicate their sexual orientation category.

18. For clarity, it is important to distinguish sexual orientation from other aspects of sex and gender. These include biological sex (the anatomical, physiological, and genetic characteristics associated with being male or female), gender identity (an individual's psychological sense of being male or female), and gender-role orientation (the extent to which an individual conforms to cultural norms defining feminine and masculine behavior).

19. Social scientists view sexual orientation as a multi-faceted phenomenon involving attractions, related behaviors, and identity. In research studies, the particular component of

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<sup>1</sup> American Psychological Association, 2008; Herek, 2000.

<sup>2</sup> See, e.g., Chandra, Mosher, Copen & Sionean, 2011, pp 29-30; Laumann, Gagnon, Michael & Michaels, 1994, p. 293.

<sup>3</sup> See, e.g., Herek, Norton, Allen & Sims, 2010.

sexual orientation that researchers assess will differ depending on the purpose of the research. For example, a study about the experiences of individuals in same-sex marriages would recruit participants based on their behavior of marrying a person of the same sex. A study of personal experiences of social stigma and discrimination among openly gay and lesbian individuals would most likely recruit individuals who self-identify as gay or lesbian.

20. Sexual orientation is inherently linked to social relationships. Sexual orientation is a characteristic of an individual, like his or her biological sex, age, or race, and it is also about relationships — whether an individual is attracted sexually or romantically to partners of the same sex or different sex.<sup>4</sup> Just as heterosexual individuals often express their sexual orientation through relationships including marriage with a different-sex partner, so gay and lesbian individuals express their sexual orientation through relationships including marriage (where possible) with a same-sex partner. Further, sexual orientation is not merely about sexual behavior but also about building enduring intimate relationships. In other words, sexual orientation is centrally linked to the most important personal relationships that adults form with other adults in order to meet their basic human needs for love, attachment, and intimacy. These relationships, whether with a same-sex or different-sex partner, are an essential part of an individual's personal identity.

### **B. Can Sexual Orientation Be Changed?**

21. Currently, the precise factors that cause an individual to be heterosexual, homosexual, or bisexual are still being researched. Much research has examined possible genetic, prenatal hormonal, developmental, and social influences on sexual orientation, and many scientists view sexual orientation as resulting from the interplay of those factors.<sup>5</sup>

22. A consistent finding across many studies, beginning with the work of Alfred Kinsey in the 1940s and 1950s and continuing through current research, is that most adults report

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<sup>4</sup> Peplau & Cochran, 1990; Peplau & Fingerhut, 2007.

<sup>5</sup> American Psychological Association, 2008.

having sexual attractions to and experiences with members of only one sex.<sup>6</sup> As adults, the majority of these individuals have had exclusively heterosexual experiences and attraction, and a minority have had exclusively same-sex experiences and attraction. A small percentage of adults report sexual attractions and experiences with both sexes.<sup>7</sup>

23. The significant majority of adults exhibit a consistent and enduring sexual orientation.<sup>8</sup> The fact that many lesbian and gay adults form long-term intimate relationships with a partner of the same sex,<sup>9</sup> just as heterosexual adults do with a partner of the other sex, provides evidence of the stability of sexual orientation over time. Nonetheless, a small minority of individuals are exceptions to this majority pattern. For example, while in prison, some men who identify as heterosexual may nonetheless engage in sexual activities with men since female partners are unavailable. Some individuals have reported changes in their sexual orientation in midlife, perhaps as a result of meeting a particular person. Understanding these kinds of exceptions to the general pattern of stable sexual orientation described above is of theoretical interest to scholars. Researchers have used terms like “sexual fluidity” or “sexual plasticity” to refer to changes in sexual behavior, attractions, and identity over time or across situations. Importantly, observations about fluidity in a small minority of people should not obscure the big picture of stability for the majority of adults. In a discussion of women's sexual fluidity, Peplau and Garnets<sup>10</sup> noted: “Claims about the potential erotic plasticity of women do not mean that most women will actually exhibit change over time. At a young age, many women adopt patterns of heterosexuality that are stable across their lifetime. Some women adopt enduring patterns of

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<sup>6</sup> Kinsey, Pomeroy & Martin, 1948; Kinsey, Pomeroy, Martin & Gebhard, 1953; Laumann, et al., 1994; Chandra, et al., 2011.

<sup>7</sup> Some individuals are very clear about their sexual orientation at an early age. In contrast, because of the social prejudice and discrimination against gay men and lesbians, some adolescents and young adults go through a prolonged period of trying to understand their own sexual identity and coming to terms with being lesbian, gay, or bisexual.

<sup>8</sup> Based on large-scale survey data, Chandra et al. (2011, p. 1) conclude that “Sexual attraction and identity correlate closely but not completely with reports of sexual behavior.” Thus, most heterosexual individuals do not engage in sexual activity with same-sex partners, and most gay and lesbian individuals similarly do not engage in heterosexual behavior.

<sup>9</sup> Carpenter & Gates, 2008; see also Peplau & Fingerhut, 2007.

<sup>10</sup> Peplau & Garnets, 2000, p. 333.

same-sex attractions and relationships.” Nor does the fact that a small minority of people may experience some change in their sexual orientation over their lifetime suggest that such change is within their power to effect, let alone that individuals outside this small minority have the power to change voluntarily their sexual orientation. This is why standard definitions of sexual orientation characterize it as stable.

24. Before the emergence of gay communities in the United States, it was fairly common for lesbians and gay men to marry a person of the other sex.<sup>11</sup> They entered these ostensibly “heterosexual” marriages for diverse reasons: to avoid social stigma, in response to pressure from family and friends, from a belief that marriage was the only way to have children, and/or to participate in a fundamental social institution. In some cases, these individuals only recognized or acknowledged their sexual orientation after marriage. It is psychologically harmful to ask lesbians and gay men to deny a core part of who they are by ignoring their attraction to same-sex partners and instead marrying a different-sex partner. Moreover, the disclosure that a spouse is gay or lesbian is often hurtful to the heterosexual spouse, highly upsetting to their children or other family members, and frequently sets the stage for separation or divorce. Therefore, encouraging gay men and lesbians to enter into a marriage with a heterosexual partner is not in the best interests of the individuals or the interests of society.

25. When gay men and lesbians are asked by researchers about their sexual orientation, the vast majority report that they experienced no choice or very little choice about their sexual orientation. In a national survey conducted with a representative sample of more than 650 self-identified lesbian, gay, and bisexual adults, 95% of the gay men and 83% of the lesbians reported that they experienced “no choice at all” or “very little choice” about their

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<sup>11</sup> Bozett, 1982; Higgins, 2006. Researchers have estimated the percentage of lesbians and gay men who have been married. An analysis of responses to a 2003 survey of adults in California found that about 25% of lesbians and 9% of gay men ages 18-59 reported having ever been married, most of them presumably to a person of the other sex (Carpenter & Gates, 2008, Table 3).



sexual orientation.<sup>12</sup>

26. Sexual orientation is highly resistant to change through psychological or religious interventions. In 2007, the American Psychological Association appointed a task force to conduct a systematic review of the peer-reviewed journal literature on sexual orientation change efforts.<sup>13</sup> The Task Force concluded that “efforts to change sexual orientation are unlikely to be successful and involve some risk of harm” (p. 3). Based on currently available research, there is no credible evidence that these efforts are either effective or safe, and ample reason to believe that these interventions can harm those who participate.<sup>14</sup> The Task Force also found evidence that many individuals who unsuccessfully attempt to change their sexual orientation experience considerable psychological distress including anxiety, depression, thoughts of suicide, and sexual dysfunction.

27. Currently, no major mental health professional organization has approved

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<sup>12</sup> Herek, Norton, Allen & Sims, 2010. In that survey, 88% of gay men reported that they had “no choice,” and 7% reported “very little choice.” Similarly, 68% of lesbians responded that they had “no choice at all,” and 15% reported having “very little choice.” See also results from a California survey by Herek, Gillis & Cogan, 2009, Table 5.

<sup>13</sup> APA Task Force on Appropriate Therapeutic Responses to Sexual Orientation, 2009, *Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation*. Washington, DC: American Psychological Association. This report provides a detailed review and analysis of relevant research. Available at: <http://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf>.

<sup>14</sup> Although some psychotherapists and religious counselors have reported changing their clients’ sexual orientation from homosexual to heterosexual, empirical support for these claims is lacking. After reviewing published empirical research on this topic, the APA Task Force reported that it found “serious methodological problems in this area of research, such that only a few studies met the minimal standards for evaluating whether psychological treatments, such as efforts to change sexual orientation, are effective” (p. 2). Based on its review of the studies that met acceptable standards, the Task Force concluded that “enduring change to an individual’s sexual orientation is uncommon. The participants in this body of research continued to experience same-sex attractions following SOCE [sexual orientation change efforts] and did not report significant change to other-sex attractions that could be empirically validated, though some showed lessened physiological arousal to all sexual stimuli. Compelling evidence of decreased same-sex sexual behavior and of engagement in sexual behavior with the other sex was rare. Few studies provided strong evidence that any changes produced in laboratory conditions translated to daily life. Thus, the results of scientifically valid research indicate that it is unlikely that individuals will be able to reduce same-sex attractions or increase other-sex sexual attractions through SOCE” (pp. 2-3).

interventions to change sexual orientation, and virtually all of them have adopted policy statements cautioning professionals and the public about these treatments.<sup>15</sup> These include the American Psychiatric Association, American Psychological Association, American Counseling Association, and National Association of Social Workers. Further, since adolescents may be subjected to these treatments after disclosing to their families that they are gay, lesbian, or bisexual, the American Academy of Pediatrics has adopted a policy statement advising that therapy directed specifically at attempting to change an adolescent's sexual orientation should be avoided and is unlikely to result in change. The Pan American Health Organization, which is the World Health Organization's regional office for the Americas and the oldest public health organization in the world, has stated that "there is no scientific evidence for the effectiveness" of efforts to change sexual orientation.<sup>16</sup>

28. In summary, there is convergent scientific evidence documenting that sexual orientation reflects an enduring set of attractions and experiences for most people. Efforts to change a person's sexual orientation through religious or psychotherapy interventions have not been shown to be effective.

## **II. Sexual Orientation Does Not Affect a Person's Ability to Function Effectively**

29. The consensus view of scientific researchers and mental health professionals is that homosexuality is a normal expression of human sexuality. Homosexuality is not a mental illness, and being gay or lesbian has no inherent association with a person's ability to participate in or contribute to society.<sup>17</sup> Lesbians and gay men are as capable as heterosexuals of leading a happy, healthy, and productive life. They are also as capable as heterosexuals of doing well in their jobs and of excelling in school.

30. Although homosexuality was once believed to be a mental illness, that mistaken

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<sup>15</sup> These policy statements are compiled in *Just the Facts About Sexual Orientation and Youth: A Primer for Principals, Educators, and School Personnel*, a publication that is available from the Just the Facts Coalition on the American Psychological Association's website: <http://www.apa.org/pi/lgbt/resources/just-the-facts.pdf>.

<sup>16</sup> Pan American Health Organization, 2012.

<sup>17</sup> Herek, 2010; Herek & Garnets, 2007.

view was discredited by scientific research beginning in the 1970s. In 1973, the American Psychiatric Association removed homosexuality from its Diagnostic and Statistical Manual of Mental Disorders, noting that “homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities.”<sup>18</sup> In 1975, the American Psychological Association endorsed this position and urged psychologists to help educate the public and to dispel the stigma of mental illness associated with homosexuality.<sup>19</sup>

31. Gay and lesbian individuals are subject to the same stresses of life as their heterosexual counterparts, including the death of a close relative, loss of a job, or a serious illness. Research consistently demonstrates that high levels of stress are harmful not only to psychological well-being but also to physical health.<sup>20</sup> In addition to the life stresses that can affect everyone, members of stigmatized minority groups, including gay men and lesbians as well as ethnic/racial minorities, may experience additional stress caused by prejudice and discrimination. This has been termed “minority stress.”<sup>21</sup> This excess stress has been associated with an increased risk of psychological problems, especially those like anxiety and depression that are most closely linked to stress.<sup>22</sup> Despite the pervasive social stigma against homosexuality and the resulting unique social stressors lesbians and gay men experience, the vast majority of lesbian and gay individuals cope successfully with these challenges and lead healthy, happy, well-adjusted lives. And there is nothing about sexual orientation itself – whether one is heterosexual or homosexual – that makes a person more or less able to contribute to or participate in society.

32. Social relationships can play an important role in buffering individuals from the stresses of life. Like heterosexuals, lesbians and gay men benefit from having a close intimate

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<sup>18</sup> American Psychiatric Association, 1974. For other resolutions by this organization, see <http://www.healthyminds.org/More-Info-For/GayLesbianBisexuals.aspx>.

<sup>19</sup> Conger, 1975. Also, the American Psychological Association has endorsed several resolutions concerning sexual orientation. These can be found at:

<http://www.apa.org/pi/lgbt/resources/policy/index.aspx> (last accessed February 7, 2013)

<sup>20</sup> Thoits, 2010.

<sup>21</sup> Meyer, 2003, 2007.

<sup>22</sup> Herek & Garnets, 2007; Pascoe & Richman, 2009.

relationship, for example, with a spouse or partner. Further, people benefit from the social, emotional, and material support that can be provided by family, friends, and others. Research also documents that the psychological well-being of lesbians and gay men is enhanced by having positive feelings about being gay, having developed a positive sense of gay identity, and being open about their sexual orientation with important other people, such as family members.<sup>23</sup>

### **III. Scientific Research Into Same-Sex Couples' Relationships Establishes That They Closely Resemble Different-Sex Couples' Relationships**

33. Negative stereotypes about same-sex couples are common in America, leading many people to believe and argue that same-sex relationships are fundamentally different from, and inferior to, heterosexual relationships. But the consensus of the scientific research is that this characterization is inaccurate.

34. Lesbians and gay men are as able to form loving, committed relationships with a same-sex partner as are heterosexuals in committed relationships with a different-sex partner. Empirical research has repeatedly shown that gay men and lesbians have happy, satisfying relationships.<sup>24</sup> Like their heterosexual counterparts, lesbians and gay men form deep emotional bonds and strong commitments to their partners. Research documents striking similarities between same-sex and heterosexual couples on standardized measures of love, relationship satisfaction, and relationship adjustment. The extensive body of research that examines the quality and functioning of same-sex relationships demonstrates that same-sex couples are not inherently different from heterosexual couples. To the contrary, same-sex couples closely resemble heterosexual couples, and the processes that affect both types of relationships are remarkably similar.<sup>25</sup>

35. Lesbians and gay men, like heterosexuals, value committed relationships and a majority would like to marry. In a national survey,<sup>26</sup> 74% of lesbians and gay men said that if

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<sup>23</sup> Herek & Garnets, 2007; Meyer, 2003; Pachankis, 2007; Pascoe & Richman, 2009.

<sup>24</sup> Kurdek, 2004, 2005; Peplau & Fingerhut, 2007.

<sup>25</sup> American Psychological Association, 2004.

<sup>26</sup> Kaiser Family Foundation, 2001.

they could legally marry someone of the same sex, they would like to do so.

36. Scientific research consistently shows that the same factors that contribute to commitment and stability in different-sex couples apply to same-sex couples. One factor is the quality of a couple's relationship as reflected in factors as satisfaction, love and relationship adjustment. As noted above, research shows that, on average, same-sex and different-sex relationships are equally satisfying and well-adjusted. Couples with more satisfying relationships are more likely to stay together than other couples, regardless of sexual orientation. A second factor that contributes to commitment and stability within different-sex and same-sex couples alike are barriers that make it difficult for a person to leave a relationship. Couples who decide to own joint property, make personal sacrifices for the sake of the relationship, or choose to begin a family through birth or adoption create important barriers to ending the relationship. The more a couple has invested in a relationship in terms of time, energy and resources, the more they stand to lose if the relationship ends. Research demonstrates that, as with their heterosexual counterparts, lesbians and gay men who perceive more barriers to terminating a relationship are more likely to remain together. In addition, certain demographic characteristics of different-sex couples are consistently correlated with breakup rates (e.g. their age at marriage, race, level of education, and religious affiliation). It is likely that the same demographic characteristics that predict stability and instability in different-sex couples also apply to same-sex couples.

37. In 2004, based on a review of research on marriage and same-sex relationships, the American Psychological Association passed a Resolution on Sexual Orientation and Marriage,<sup>27</sup> in which it concluded that “many lesbians and gay men have formed durable relationships” and “the factors that predict relationship satisfaction, relationship commitment, and relationship stability are remarkably similar for both same-sex cohabiting couples and heterosexual married couples.”

#### **IV. Barring Same-Sex Couples from Marriage Causes Them Harm**

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<sup>27</sup> American Psychological Association, 2004.

38. There is widespread consensus among social science researchers that marriage generally provides many benefits to both spouses. A large body of scientific research comparing heterosexuals who are currently married to those who are not married establishes that marriage fosters psychological well-being, physical health, and longevity.<sup>28</sup> Of course, marriages that are unhappy, conflict-ridden, or violent do not provide the same benefits as the average marriage.

39. Studies consistently associate marriage with better health and greater longevity; marriage also has a moderating effect on individual risk-taking behavior.<sup>29</sup> Illustrative data come from a report by the U.S. Center for Disease Control.<sup>30</sup> Using a large national database, CDC researchers found that regardless of age, sex, race, ethnicity, education, or income, married adults were on average healthier than cohabiting, divorced, widowed, or never married adults. Married individuals reported lower rates of smoking, drinking heavily, or being physically inactive (although married men were more likely to be overweight than other men). Married adults also reported lower rates of being limited in their daily activities of living, being in poor health, or suffering from headaches or serious psychological distress. Other research using national data reliably demonstrates that, on average, married individuals live longer than unmarried individuals.

40. Marriage is also associated with enhanced psychological well-being. On average, married individuals report less anxiety and depression and greater happiness and satisfaction with life than do unmarried individuals.<sup>31</sup> The legal status of marriage enables spouses to exert greater control over their lives when stressful situations arise and to avoid some types of stressors entirely. In Ohio, these can include, for example, the right to consent to after-death examinations of one's spouse, the right to claim marital communications privilege or spousal

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<sup>28</sup> E.g., Cherlin, 2009; Johnson, et al., 2000; Kim & McKenry, 2002; Lamb, Lee, & DeMaris, 2003; Nock, 1995; Proulx, et al., 2007; Schoenborn, 2004; Umberson, 1992; Waite, 1995.

<sup>29</sup> Hu & Goldman, 1990; Johnson et al., 2000; Waite, 1995; Waldron, Hughes, & Brook, 1996.

<sup>30</sup> Schoenborn, 2004. Marital status and health: United States, 1999-2002. *Advance Data from Vital and Health Statistics, Number 351*, December 15, 2004. Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

<sup>31</sup> Kim & McKenry, 2002; Lamb, Lee, & DeMaris, 2003; Proulx, et al., 2007; Waite, 1995.

immunity from testifying in court, and the right to pursue a divorce, legal separation, or dissolution of marriage.<sup>32</sup>

41. There are two explanations for the clear differences observed between married and unmarried individuals.<sup>33</sup> One explanation is known as the selection effect: to some extent, individuals with better mental and physical health are more likely to choose to marry and/or better able to attract a partner and maintain a relationship over time. Using a variety of research methods, researchers have demonstrated that the selection effect only partially accounts for the physical and psychological differences found between married and unmarried individuals. These research methods include longitudinal studies of the effects of marriage over time, longitudinal studies of transitions into or out of marriage, and studies that statistically control for factors such as income that are known to be associated with health. For example, one longitudinal study found that individuals who married between the first and second assessment were less depressed at the time of the second assessment than those who remained unpartnered. This suggests that getting married on average led to a reduction in depression.<sup>34</sup>

42. The second explanation for the positive physical and psychological benefits of marriage is known as the protection effect.<sup>35</sup> There are many ways in which marriage can provide protective benefits that contribute to the health and well-being of spouses. The marriage relationship is a social union and a legal contract that creates a well-recognized and valued kinship relationship. Marriage binds spouses not only to each other but can also bind individuals to the broader community, which understands, appreciates, and values the significance of the marriage relationship. Marriage often “provides individuals with a sense of obligation to others, which gives life meaning beyond oneself.”<sup>36</sup> For many people, marriage has great symbolic

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<sup>32</sup> Ohio Rev. Code Ann. § 2108.50 and § 2108.81 (B)(1); Ohio Rev. Code Ann. § 2317.02 (D) and Ohio Evid. R. 601; Ohio Rev. Code Ann. § 3105.01, § 3105.17, § 3105.61.

<sup>33</sup> Gove, Hughes, & Style, 1990; Kim & McKenry, 2002; Lamb, Lee, & DeMaris, 2003; Waldron, Hughes, & Brook, 1996.

<sup>34</sup> Lamb, Lee, & DeMaris, 2003.

<sup>35</sup> Cherlin, 2009; Gove, Hughes, & Style, 1984; Kim & McKenry, 2002; Lamb, Lee, & DeMaris, 2003; Waldron, Hughes, & Brook, 1996.

<sup>36</sup> Waite, 1995.

significance, establishing that the individual has a new social identity and is part of a valued and respected social institution.

43. In addition, marriage often entails a moral commitment by spouses to support each other “in sickness and in health.” Spouses often help each other to adopt more healthful lifestyles, cope with the stress and uncertainty of life, and recuperate from illness and injury.

44. The security of marriage often enables spouses to adopt a long-term perspective, putting off immediate rewards to build a future life together and encouraging mutual sacrifice. This has been referred to as “enforceable trust.”<sup>37</sup>

45. One way that couples express the symbolic significance of their marriage is through a wedding ceremony. Although cultures have differing traditions and individual couples may choose to depart from certain customs and traditions, the celebration of a wedding is a ritual that is important to the couple, their respective families, and the larger community. Wedding ceremonies are typically state-sanctioned public rituals that signify not only the joining together of the spouses, but the creation of new extended families and in-laws with shared interests and mutual obligations. The formation of a marriage transforms biological strangers into kin. Wedding ceremonies usually also involve members of the broader community – friends, co-workers, neighbors – who come together to recognize the new status of the couple and their changed position in their community.

46. Marriage is widely regarded as one of the most important rites of passage for adulthood, and it marks a major transition in a person’s life. For many, marriage signifies entry into full adulthood, with expectations that the individual will act in more mature ways. The sense of being a responsible adult may be one reason why married individuals engage in less risky behavior than their unmarried peers. The marriage relationship itself is associated with certain duties and responsibilities – for example, that spouses should care for each other and build a life together.

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<sup>37</sup> Cherlin, 2009.



47. When a couple marries, they may bring with them separate networks of family, friends, and others who can support them in time of need. Marriage often merges these support networks, expanding the circle of valued confidants, help givers, and others who are available to the couple. Marriage typically involves spouses in new sets of social obligations: the new responsibilities of each spouse toward their in-laws are complemented by the obligations of the extended family to support the married couple.

48. Social support is central to the institution of marriage. Compared to unmarried individuals, married adults tend to receive more social support from other people, especially from their parents, and this support contributes to individual well-being. The public aspect of marriage can increase each spouse's sense of security that the relationship will be long-lasting.

49. Although these conclusions are derived from studies of heterosexual couples, it is reasonable to infer that same-sex couples will generally benefit from marriage as do their heterosexual counterparts given the many well-established similarities in the nature and quality of same-sex and heterosexual couples' relationships.<sup>38</sup> And, indeed, this was the finding of a recent study of a representative sample of California adults-- gay people who were legally married had significantly better psychological well-being than their peers who were not in a legally recognized relationship.<sup>39</sup>

50. As it does for many different-sex couples, marriage for many same-sex couples creates bonds between the spouses and a social network of in-laws, friends, and others who can provide emotional support and tangible assistance. As with different-sex couples, marriage binds same-sex couples together in a well-understood and highly valued social union and legal contract.

51. Marriage embodies many cultural values and expectations, often reflected in marriage vows by which spouses pledge to love and care for each other, to be faithful to each other, and to stay together through good times and bad until separated by death. These cultural

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<sup>38</sup> Kurdek, 2004, 2005; Peplau & Fingerhut, 2007.

<sup>39</sup> Wight, LeBlanc & Badgett, 2013.

expectations provide a framework that individuals can draw upon to understand and build a relationship together. These cultural expectations also provide guidelines that relatives and society can draw on.

52. Data from same-sex spouses in Massachusetts offer additional insights on the experience of married lesbian and gay American couples.<sup>40</sup> Most lesbians and gay men reported that marriage had improved their social relationships: 62% said their family was more accepting of their partner and 41% said their family was more accepting of their sexual orientation. In addition, 69% felt more accepted in their community. Most respondents said that their parents reacted positively to their marriage (82%) as did their siblings (91%). Lesbians and gay men were also asked about ways that marriage had improved their relationship. A majority (72%) agreed that they felt more committed to their partner. Many reported that they now worry less about legal problems (48%) and nearly a third said that one of the spouses receives health benefits from an employer as a result of marriage. Other benefits mentioned included feeling more accepted by society (38%) and feeling more financially stable (14%). One in four of the same-sex couples surveyed were raising children, and 93% of these respondents agreed that their children were happier or better off as a result of their marriage; 2% disagreed, and 4% were unsure.

53. Leading organizations of mental health professionals recognize the benefits of marriage for same-sex couples and the harm created by denying access to civil marriage to same-sex couples. As one example, in 2005 the American Psychiatric Association, the leading organization representing physicians in the field of mental health, adopted a policy statement on this issue. Their resolution stated: “In the interest of maintaining and promoting mental health, the American Psychiatric Association supports the legal recognition of same-sex civil marriage with all rights, benefits, and responsibilities conferred by civil marriage, and opposes restrictions to those same rights, benefits, and responsibilities.”<sup>41</sup> Further, in its Resolution on Sexual

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<sup>40</sup> Ramos, Goldberg & Badgett, 2009.

<sup>41</sup> American Psychiatric Association, 2005.

Orientation and Marriage,<sup>42</sup> the American Psychological Association resolved “[t]hat APA believes that it is unfair and discriminatory to deny same-sex couples legal access to civil marriage and all its attendant benefits, rights, and privileges.”

**V. Barring Same-Sex Couples from Marriage Reflects and Perpetuates Stigma Against Lesbians, Gay Men, and Same-Sex Couples**

54. Lesbian, gay, and bisexual individuals are the targets of prejudice and discrimination in the United States.<sup>43</sup> National opinion surveys document that many Americans have negative attitudes toward this group of people and toward marriage for same-sex couples. Research has also documented that heterosexuals often view same-sex couples more negatively than heterosexual couples.<sup>44</sup> Gay, lesbian, and bisexual individuals experience discrimination at work and in their communities,<sup>45</sup> and most states provide no legal protection against discrimination based on sexual orientation. Significant numbers of gay, lesbian, and bisexual individuals are targets of harassment and violence.<sup>46</sup> These facts demonstrate that gay, lesbian, and bisexual individuals experience pervasive social stigma.

55. Social stigma refers to severe social disapproval of a class of people perceived as being different, deviant, or in violation of cultural norms.<sup>47</sup> In American society today, gay men, lesbians, and bisexuals continue to be a highly stigmatized minority group. Many heterosexuals, who are the dominant group in society, perceive gay men, lesbians, bisexuals, and same-sex couples, as fundamentally different, hold negative stereotypes about their characteristics, and view discrimination against them as acceptable. Social stigma is reflected both in the acts of individuals and in the institutions of society, including its laws, that legitimate and perpetuate the second-class status of gay men, lesbians, bisexuals, and same-sex couples.

56. By denying state recognition to married same-sex couples, Ohio’s 2004 statutory

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<sup>42</sup> American Psychological Association, 2004.

<sup>43</sup> Herek, 2009a.

<sup>44</sup> Testa, Kinder & Ironson, 1987.

<sup>45</sup> Herek, 2009b.

<sup>46</sup> Herek, 2009b.

<sup>47</sup> Herek, 2009a.

and constitutional amendments both reflect and perpetuate stigma against lesbians, gay men, and same-sex couples. These laws devalue and delegitimize the relationships of legally married same-sex couples. By giving heterosexuals exclusive access to the benefits associated with the institution of marriage, these laws perpetuate power differentials between heterosexual citizens and non-heterosexual citizens. Ohio law signals that in the eyes of the state, the committed relationships of same-sex couples are inferior to different-sex relationships and that partners in same-sex relationships, even those recognized as legal marriages by another state's government, are less deserving of social recognition and government protection. The stigma perpetuated by Ohio law affects not only individuals in committed relationships with a person of the same sex, but all gay, lesbian, and bisexual individuals as a group.

**VI. There Is No Evidence That Heterosexual Relationships Would Be Harmed If Same-Sex Couples Were Permitted To Marry**

57. For many decades, social scientists have studied and analyzed the factors that contribute to rates of divorce.<sup>48</sup> There is a scientific consensus about the key factors that may be responsible. First, increasing employment opportunities for women have led to a dramatic increase in the percentage of married women in the workforce. Paid employment gives wives greater economic independence from their husbands, which in turn makes it more feasible to end an unhappy marriage. Second, since the 1970s, economic opportunities for men without college education have diminished, adding financial stress to the lives of some married couples. Third, there have also been important changes in public attitudes. Public acceptance of divorce has increased, as has the social acceptability of unmarried cohabitation. Some scholars also suggest that a growing emphasis on individualism and personal fulfillment has eroded an earlier emphasis on the importance of obligation and commitment in marriage. Fourth, state “no-fault” divorce laws have made it easier for spouses to end their relationships.

58. In addition, research has identified several demographic characteristics that are

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<sup>48</sup> Cherlin, 2009; Coontz, 2007; Bramlett & Mosher, 2002; Teachman, 2002.

associated with an increased likelihood of divorce.<sup>49</sup> First, age at marriage matters: people who marry as teenagers are more likely to divorce than those who are in their 20s or older. Second, unemployment and low incomes are associated with greater rates of divorce. Third, so too is race or ethnicity; African Americans have significantly higher rates of marital separation, Asian Americans have lower rates, and other groups fall in between. Fourth, individuals whose parents divorced while they were growing up are at greater risk of divorce. Although a correlation exists, there is no scientific evidence that these demographic characteristics in and of themselves cause relationships to end. When spouses are similar to each other with regard to such characteristics as religion and age, the risk of divorce is lower.

59. None of these factors uniquely correlates with same-sex couples or with allowing them to marry. Allowing same-sex couples to marry would not alter state marriage laws, economic opportunities for married heterosexual women or men, public attitudes toward divorce or cohabitation, or personal values of individualism or commitment. Nor would it affect the age at which heterosexuals decide to marry, their personal history of parental divorce, their choice of a similar or dissimilar partner, or their race or ethnicity. Indeed, the fact that lesbians and gay men, a class of citizens denied legal marriage, are seeking to obtain marriage rights could be seen as beneficial, because it broadens the scope of support for the value of marriage as a central social institution in American society.

60. Allowing same-sex couples to marry would not affect the quality or stability of different-sex relationships. The quality of a heterosexual couple's marriage depends on such factors as the spouses' personalities, their communication styles and ways of handling conflict with each other, the stress a couple experiences, and the social support and resources available to the couple. None of these factors is altered if a same-sex couple living down the block gets married. In addition, the stability of marriages between different-sex couples depends on barriers to divorce, including investments the spouses have made in each other and their relationship,

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<sup>49</sup> Amato, 1996; Bramlett & Mosher, 2002; Heaton, 2002; Lehrer & Chiswick, 1993; Raley & Sweeney, 2007.

their moral and personal convictions about marriage, the options they see available outside of marriage, and the many legal, financial, and social obligations that come with a marriage license. These factors are not influenced by the marital status of other couples. In short, there is no scientific basis for the proposition that allowing same-sex couples to marry would affect the underlying processes that foster stability in different-sex marriages.

61. In response to an effort to ban marriage for same-sex couples, the Executive Board of the American Anthropological Association, the world's largest organization of anthropologists, issued the following statement:

The results of more than a century of anthropological research on households, kinship relationships, and families, across cultures and through time, provide no support whatsoever for the view that either civilization or viable social orders depend upon marriage as an exclusively heterosexual institution. Rather, anthropological research supports the conclusion that a vast array of family types, including families built upon same-sex partnerships, can contribute to stable and humane societies.<sup>50</sup>

62. Empirical evidence demonstrates that legalizing marriage for same-sex couples does not affect either marriage or divorce rates for different-sex couples. An examination of statistical data from Massachusetts, where marriage for same-sex couples became available in 2004, indicates that marriage of same-sex couples has not led to a decline in marriage nor to an increase in divorce. In the four years prior to when same-sex couples were permitted to marry (2000-2003), the average marriage rate was 5.9 marriages per 1,000 total population in the state. In the seven years after same-sex couples were permitted to marry (2004-2010), the average marriage rate was also 5.9. In the four years prior to when same-sex couples were permitted to marry (2000-2003), the average divorce rate was 2.5. In the seven years after same-sex couples were permitted to marry (2004-2010), the divorce rate was lower, averaging 2.2.<sup>51</sup> Similarly, a

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<sup>50</sup> American Anthropological Association, 2004.

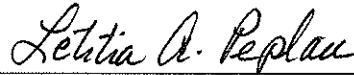
<sup>51</sup> Marriage rates by State: 1990, 1995, and 1999-2010, Division of Vital Statistics, National Center for Health Statistics, CDC. Available at: [http://www.cdc.gov/nchs/data/nvss/marriage\\_rates\\_90\\_95\\_99-10.pdf](http://www.cdc.gov/nchs/data/nvss/marriage_rates_90_95_99-10.pdf). Divorce rates by State: 1990, 1995, and 1999-2010, Division of Vital Statistics, National Center for Health Statistics, CDC. Available at: [http://www.cdc.gov/nchs/data/nvss/divorce\\_rates\\_90\\_95\\_99-10.pdf](http://www.cdc.gov/nchs/data/nvss/divorce_rates_90_95_99-10.pdf). (last accessed February 7, 2013).

recent study that examined the rates of different-sex marriage in each state and the District of Columbia from 1988 to 2009 found that the availability of marriage for same-sex couples did not affect different-sex couples' rates of marrying.<sup>52</sup>

63. The finding that the availability of marriage for same-sex couples lacks a correlation with the rates of marriage or divorce among different-sex couples is entirely consistent with our scientific knowledge about why people choose to marry and the factors associated with divorce.

64. In short, empirical data demonstrate that marriage by same-sex couples does not harm marriage for different-sex couples. Marriage by same-sex couples does not deter different-sex couples from marrying nor pose a threat to the stability of marriage for different-sex couples.

Signed under penalty of perjury this 10 day of October, 2013.



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Letitia Anne Peplau, Ph.D.

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<sup>52</sup> Dinno & Whitney, 2013.