

IN THE  
*Supreme Court of the United States*

SHARONELL FULTON, ET AL.,

*Petitioners,*

v.

CITY OF PHILADELPHIA, ET AL.,

*Respondents.*

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On Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit

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**BRIEF OF THE AMERICAN PSYCHOLOGICAL  
ASSOCIATION, AMERICAN ACADEMY OF PEDIATRICS,  
AMERICAN MEDICAL ASSOCIATION, AND AMERICAN  
PSYCHIATRIC ASSOCIATION AS *AMICI CURIAE* IN  
SUPPORT OF RESPONDENTS**

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Deanne M. Ottaviano  
Nathalie F.P. Gilfoyle  
AMERICAN PSYCHOLOGICAL  
ASSOCIATION  
750 First Street, NE  
Washington, DC 20002  
*Counsel for American  
Psychological Association*

Aaron M. Panner  
KELLOGG HANSEN TODD FIGEL &  
FREDERICK PLLC  
1615 M St. NW  
Suite 400  
Washington, DC 20036  
*Counsel for American  
Psychiatric Association*

Jessica Ring Amunson  
*Counsel of Record*  
Emily L. Chapuis  
Tassity S. Johnson  
JENNER & BLOCK LLP  
1099 New York Avenue, NW  
Suite 900  
Washington, DC 20001  
(202) 639-6000  
JAmunson@jenner.com  
*Counsel for Amici Curiae*

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**INTEREST OF *AMICI CURIAE***<sup>1</sup>

*Amici* are leading associations of psychologists, physicians, and mental health professionals.

The American Psychological Association is a scientific and educational organization dedicated to increasing and disseminating psychological knowledge; it is the world's largest professional association of psychologists. The American Psychological Association has adopted multiple research-based policy statements supporting the rights of gay and lesbian people, including a 1975 policy statement denouncing discrimination against gay and lesbian people in employment, housing, public accommodation, and licensing, and a 2020 policy statement supporting parental rights for lesbian, gay, and bisexual people.<sup>2</sup>

The American Academy of Pediatrics (“AAP”) represents 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the attainment of optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. In its dedication to the

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<sup>1</sup> All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part, and no person other than *amici* contributed money that was intended to fund preparing or submitting this brief.

<sup>2</sup> American Psychological Ass'n, *Resolution on Sexual Orientation, Gender Identity (SOGI), Parents and their Children* (2020) [hereinafter “*SOGI Resolution*”]; J.J. Conger, *Proceedings of the American Psychological Association, Incorporated, for the Year 1974: Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychol. 620 (1975) [hereinafter “*Minutes of the 1974 Annual Meeting of the Council of Representatives*”].

health of all children, the AAP strives to improve health care access and eliminate disparities for children and teenagers who identify as lesbian, gay, bisexual, transgender, or questioning of their sexual or gender identity. The AAP works to ensure that public policies help all parents, regardless of sexual orientation and other characteristics, to build and maintain strong, stable, and healthy families that are able to meet the needs of their children.

The American Medical Association (“AMA”) is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA’s policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state, including Pennsylvania. The AMA supports reducing the health disparities suffered because of unequal treatment of minor children and same-sex parents in same-sex households by supporting equality in laws affecting health care of members in same-sex partner households and their dependent children.

The American Psychiatric Association, with more than 38,500 members, is the Nation’s leading organization of physicians who specialize in psychiatry. The American Psychiatric Association has participated in numerous cases in this Court. It joins

this brief for the reasons expressed in its 2013 Position Statement: “The American Psychiatric Association opposes discrimination against individuals with same-sex attraction . . . and supports legal recognition of the right for same-sex couples to marry, adopt and co-parent.”<sup>3</sup>

### SUMMARY OF ARGUMENT

*Amici* present this brief to provide the Court with a review of the pertinent scientific and professional literature<sup>4</sup> regarding the need for laws like Philadelphia’s Fair Practices Ordinance that protect sexual minorities in the public child welfare system from stigma-based discrimination. *Amici* further present the pertinent scientific and professional literature demonstrating that sexual minority parents are as fit and capable as heterosexual parents, and that children raised by sexual minority parents are as psychologically healthy and well-adjusted as those raised by

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<sup>3</sup> American Psychiatric Ass’n, *Position Statement on Issues Related to Homosexuality* (2013).

<sup>4</sup> This brief presents an accurate summary of the current state of scientific and professional knowledge concerning sexual orientation and families relevant to this case. *Amici* have made a good faith effort to account for the findings of all reliable and valid empirical research available in these areas. Most of the empirical studies and literature reviews cited herein have been published in reputable, peer-reviewed academic journals. *Amici* have also cited sources not subject to the same peer-review standards as journal articles, provided that they employ rigorous methods, are authored by established researchers, and accurately reflect professional consensus about the current state of knowledge.

heterosexual parents.<sup>5</sup>

## ARGUMENT

### I. The Scientific Evidence Regarding the City of Philadelphia’s Interest in Eliminating Discrimination Based on Sexual Orientation

#### A. Sexual minorities experience stigma-based discrimination that is associated with physical and psychological health problems.

Although *stigma* has been defined in a variety of ways,<sup>6</sup> social scientists generally agree that a stigmatized condition or status is one that is negatively valued by society, fundamentally defines a person’s social identity, and disadvantages and disempowers those who have it.<sup>7</sup> Stigma is manifested in the attitudes and actions of individuals—such as ostracism, harassment, discrimination, and physical attacks (sometimes referred to as *enacted stigma*)—as well as in

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<sup>5</sup> “Sexual minorities” include gay, lesbian, and bisexual people, who may be referred to collectively in shorthand, as “LGB” people. Alternatively, the shorthand “LGBT” or “LGBTQ” may be used to also refer to transgender people, or transgender and queer people, respectively.

<sup>6</sup> See, for example, Erving Goffman’s classic treatment, which characterized stigma as “an undesired differentness.” E. Goffman, *Stigma* 5 (1963).

<sup>7</sup> See, e.g., *id.*; B.G. Link & J.C. Phelan, *Conceptualizing Stigma*, 27 *Ann. Rev. Soc.* 363 (2001); J. Crocker et al., *Social Stigma*, in 2 *The Handbook of Social Psychology* 504 (D.T. Gilbert et al. eds., 4th ed. 1998).



social institutions, including the law (referred to as *institutional* or *structural stigma*).<sup>8</sup> Laws that accord majority groups preferred status highlight the perceived “differentness” of the minority and thereby tend to legitimize prejudicial attitudes and individual enactments of stigma against the disfavored group.<sup>9</sup>

Despite recent changes in aggregate public opinion<sup>10</sup> and the law,<sup>11</sup> sexual minority status remains stigmatized in the United States. A substantial portion of sexual minorities experience enactments of stigma in the form of discrimination and other negative treatment because of their sexual orientation.<sup>12</sup>

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<sup>8</sup> See, e.g., G.M Herek, *Confronting Sexual Stigma and Prejudice: Theory and Practice*, 63 J. Soc. Issues 905 (2007); P.W. Corrigan et al., *Structural Stigma in State Legislation*, 56 Psychiatric Serv. 557 (2005).

<sup>9</sup> See, e.g., Herek, *supra* note 8.

<sup>10</sup> See, e.g., G.M. Herek, *Beyond “Homophobia”: Thinking More Clearly About Stigma, Prejudice, and Sexual Orientation*, 85 Am J. Orthopsychiatry S29 (2015) (noting changes in law and public opinion). While some areas of the United States can be characterized as relatively more supportive of sexual minorities, others are less accepting. See, e.g., Pew Research Center, *Public Remains Supportive of Same-Sex Marriage; Wide Partisan Gap Persists* (2019); M. Stange & E. Kazyak, *Examining the Nuance in Public Opinion of Pro-LGB Policies in a “Red State”*, 13 Sexuality Rsch. & Soc. Pol’y 142 (2016) (discussing nuances in attitude differences across regions within a single state).

<sup>11</sup> See, e.g., *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1743 (2020); *Obergefell v. Hodges*, 135 S. Ct. 2584, 2607 (2015); *United States v. Windsor*, 133 S. Ct. 2675, 2695-96 (2013); *Lawrence v. Texas*, 539 U.S. 558, 578 (2003).

<sup>12</sup> Harvard T.H. Chan Sch. of Pub. Health et al., *Discrimination in*

Sexual minorities remain disproportionately vulnerable to physical violence and hate crimes.<sup>13</sup> The negative effects of criminal victimization of gay and lesbian people are often compounded by hostile or

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*America: Experiences and Views of LGBTQ Americans* (2017) [hereinafter “Harvard, *Discrimination in America*”] (in probability sample, reporting that 51% of LGBTQ respondents had, or had an LGBTQ friend or family member who had, experienced violence because of their sexuality or gender identity; that 20% had been discriminated against because of their sexuality or gender when applying for jobs, 21% when being paid equally or considered for a promotion, and 22% when trying to rent a room or apartment or buy a house; and that 26% of respondents had been, or had an LGBTQ friend or family member who had been, unfairly stopped or treated by the police or unfairly treated by the courts because of their sexuality or gender identity); *see also* Pew Research Center, *A Survey of LGBT Americans: Attitudes, Experiences and Values in Changing Times* (2013) [hereinafter “2013 Survey of LGBT Americans”] (in nationally-representative sample of lesbian, gay, bisexual, and transgender adults, two-thirds (66%) reported experiencing some form of discrimination or negative treatment because of their respective sexual orientation and gender identity).

<sup>13</sup> Surveys using national probability samples of LGBT people indicate that a substantial proportion of this population has been the target of violence or other crimes based on their sexual orientation. *See, e.g.*, Harvard, *Discrimination in America*, *supra* note 12; Pew 2013 Survey of LGBT Americans, *supra* note 12 (30% of lesbian, gay, bisexual, and transgender respondents reported being threatened or physically attacked because of their sexual orientation or gender identity). Data provided by the Federal Bureau of Investigation on hate crimes are widely assumed to provide a lower-bound estimate of the actual number of hate crimes against sexual minorities, because other data sources indicate that the majority of such crimes go unreported. G.M. Herek, *Documenting Hate Crimes in the United States: Some Considerations on Data Sources*, 4 Psychol. Sexual Orientation & Gender Diversity 143 (2017).

indifferent reactions from law enforcement personnel.<sup>14</sup> Sexual minority youth are also at heightened risk of violence, threats, and bullying.<sup>15</sup> And sexual minorities continue to face discrimination in housing<sup>16</sup> and employment.<sup>17</sup>

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<sup>14</sup> In victim surveys conducted by a national coalition of community-based groups, 35% of sexual and gender minority respondents who had interacted with police reported that officers were indifferent to them and 31% reported that officers were hostile; 12% reported being subjected to police misconduct, including excessive force and unjustified arrest. National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2016* 34, 41 (2017).

<sup>15</sup> Based on their Youth Risk Behavior Survey, the Centers for Disease Control and Prevention (“CDC”) found that LGB high school students were twice as likely as their heterosexual counterparts to have been threatened or injured with a weapon on school property during the previous 12 months, and nearly three times as likely to say they had not attended school on at least one day during the previous month because they feared they would be unsafe while at or while on their way to or from school. L. Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9-12 – United States and Selected Sites, 2015*, 65 *Morbidity and Mortality Weekly Report: Surveillance Summaries* (2016).

<sup>16</sup> A U.S. Department of Housing and Urban Development field experiment found that housing providers favored heterosexual couples over otherwise identical same-sex couples in approximately 15% of cases. S. Friedman et al., U.S. Dep’t of Housing & Urban Development, *An Estimate of Housing Discrimination Against Same-Sex Couples* vi (2013); see also D.K. Levy et al., *Research Report: A Paired-Tested Pilot Study of Housing Discrimination Against Same-Sex Couples and Transgender Individuals*, Urban Institute (2017).

<sup>17</sup> See Harvard, *Discrimination in America*, *supra* note 12; Pew

For sexual minorities, being the target of stigma is associated with adverse physical and psychological health outcomes. The link between experiencing stress and manifesting symptoms of psychological or physical illness is well established.<sup>18</sup> To the extent that the sexual minority population is routinely subjected to additional

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Research Center, *2013 Survey of LGBT Americans*, *supra* note 12 (finding that more than 1 in 5 gay, lesbian, and bisexual respondents reported that they had been treated unfairly in the workplace). A limitation of the data from such surveys is that respondents can only report discrimination of which they are aware. However, discrimination can also occur without an individual's knowledge, such as during the hiring process. In field experiments, researchers have found evidence of ongoing discrimination in hiring, in the form of indications that potential employers' perception of an applicants' sexual orientation impacts their response to job applications. *See, e.g.*, E. Mishel, *Discrimination Against Queer Women in the U.S. Workforce: A Resumé Audit Study*, 2 *Socius* 1 (2016).

<sup>18</sup> *See, e.g.*, P.A. Thoits, *Stress and Health: Major Findings and Policy Implications*, 51 *J. Health & Soc. Behav.* S41 (2010); L. Pearlin et al., *The Stress Process*, 22 *J. Health & Soc. Behav.* 337 (1981). Psychological distress is linked to enactments of stigma ranging from hate crime victimization to daily "hassles" related to one's sexual orientation. *See, e.g.*, G.M. Herek et al., *Psychological Sequelae of Hate-Crime Victimization Among Lesbian, Gay, and Bisexual Adults*, 67 *J. Consulting & Clinical Psychol.* 945 (1999) (finding higher levels of psychological distress in gay and lesbian hate crime victims, compared to gay and lesbian victims of other crimes against their person); J.K. Swim et al., *Daily Experiences with Heterosexism: Relations Between Heterosexist Hassles and Psychological Well-Being*, 28 *J. Sol. & Clinical Psychol.* 597 (2009) (finding that "hassles" based on minority status [such as hearing derogatory comments, being excluded from an activity, and receiving poor service in a commercial establishment] are more associated with negative affect compared to experiences with daily hassles that were unrelated to sexual orientation).

stress beyond what is experienced by the heterosexual population, sexual minorities can be expected to manifest higher levels of illness and psychological distress.<sup>19</sup> And indeed, although most LGB people are healthy and well-functioning,<sup>20</sup> as a population they manifest more overall psychological and physical health problems than heterosexual people.<sup>21</sup> These health disparities are also observed in sexual minority youth, who experience higher rates of suicidality and

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<sup>19</sup> The stress that stigma creates for sexual minorities is often referred to as *minority stress*. I.H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 *Psychol. Bull.* 674 (2003).

<sup>20</sup> In 2011, the Institute of Medicine (IOM) issued a comprehensive report that examined the state of current knowledge about the health status of sexual and gender minorities, based on a year of study, input from numerous experts, and its review of hundreds of scientific studies. Institute of Medicine, *Report: The Health of Lesbian, Gay, Bisexual, and Transgender People* (2011) [hereinafter “2011 IOM Report”]. This IOM report stated that “LGBT adults are typically well adjusted and mentally healthy,” *id.* at 189, and that “[s]tudies based on probability samples of LGB populations indicate that the majority of LGB adults do not report mental health problems,” *id.*; similarly, the report noted that sexual minority youth “are typically well adjusted and mentally healthy,” *id.* at 146-147.

<sup>21</sup> S.D. Cochran et al., *Sexual Orientation Differences in Functional Limitations, Disability, and Mental Health Services Use: Results from the 2013–2014 National Health Interview Survey*, 85 *J. Consulting & Clinical Psychol.* 1111 (2017); S.D. Cochran et al., *Sexual Orientation and All-Cause Mortality Among US Adults Aged 18 to 59 Years, 2001–2011*, 106 *Am. J. Pub. Health* 918 (2016); Meyer, *supra* note 19.

depression than heterosexual youth.<sup>22</sup> Societal stigma based on sexual orientation is widely considered by researchers and professionals to play a central role in creating and perpetuating these disparities.<sup>23</sup>

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<sup>22</sup> See, e.g., J.R. Blosnich et al., *Suicidality and Sexual Orientation: Characteristics of Symptom Severity, Disclosure, and Timing Across the Life Course*, 86 *Am. J. Orthopsychiatry* 69 (2016); 2011 IOM Report, *supra* note 20, at 147; B. Mustanski et al., *Identifying Sexual Orientation Health Disparities in Adolescents: Analysis of Pooled Data from the Youth Risk Behavior Survey, 2005 and 2007*, 104 *Am. J. Pub. Health* 211 (2014); A.P Haas et al., *Suicide and Suicide Risk in Lesbian, Gay, Bisexual, and Transgender Populations: Review and Recommendations*, 58 *J. Homosex.* 10 (2011); E.M. Saewyc, *Research on Adolescent Sexual Orientation: Development, Health Disparities, Stigma and Resilience*, 21 *J. Rsch. Adolescence* 256 (2011).

<sup>23</sup> 2011 IOM Report, *supra* note 20, at 13, 295 (noting that “[c]ontemporary health disparities based on sexual orientation and gender identity are rooted in and reflect the historical stigmatization of LGBT people,” and that “stigma and its attendant prejudice, discrimination, and violence . . . underlie society’s general lack of attention to [sexual minorities’] health needs and many of the health disparities discussed in this report,” and summarizing studies revealing correlations between experiences of stigma and health problems in sexual minority populations); see also J.J. Muehlenkamp et al., *Nonsuicidal Self-Injury in Sexual Minority College Students: A Test of Theoretical Integration*, 9 *Child & Adolescent Psychiatry & Mental Health* 1 (2015) (using a non-probability sample of sexual minority college students, finding significant correlations between sexual orientation-related minority stress—measured as experiences of past negative treatment and expectations of future negative treatment because of one’s sexual orientation—and suicidal ideation and non-suicidal self-harm); J.E. Pachankis et al., *A Minority Stress-Emotion Regulation Model of Sexual Compulsivity Among Highly Sexually Active Gay and Bisexual Men*, 34 *Health Psychol.* 829 (2015); D.M. Frost & A.W. Fingerhut, *Daily Exposure to Negative Campaign Messages*

**B. Stigma manifests in the public child welfare system against sexual minority prospective parents and children in care.**

Stigma affects sexual minorities in the public child welfare system as well. Sexual minorities face numerous discriminatory obstacles to becoming adoptive or foster care parents: “home studies,” which formally assess whether foster or adoptive parents are suitable for placements, have been biased against sexual minorities;<sup>24</sup> sexual minorities’ applications to foster or adopt have been rejected, delayed, or ignored;<sup>25</sup> and birth families have resisted placing their children with same-sex couples.<sup>26</sup> Eleven states currently allow state-licensed child welfare agencies to refuse to place children with same-sex couples and other sexual

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*Decreases Same-Sex Couples’ Psychological and Relational Well-Being*, 19 Grp. Processes & Intergroup Rel. 477 (2016).

<sup>24</sup> G.P. Mallon, *The Home Study Assessment Process for Gay, Lesbian, Bisexual and Transgender Prospective Foster and Adoptive Parents*, 7 J. GLBT Fam. Stud. 9 (2011); A.E. Goldberg et al., *Choices, Challenges, and Tensions: Perspectives of Prospective Lesbian Adoptive Parents*, 10 Adoption Q. 33 (2007).

<sup>25</sup> See, e.g., A.E. Goldberg et al., *LGBTQ Individuals’ Experiences with Delays and Disruptions in the Foster and Adoption Process*, 106 Child. & Youth Servs. Rev. 1 (2019) [hereinafter “*LGBTQ Individuals’ Experiences with Delays and Disruptions*”]; see also Goldberg et al., *supra* note 24.

<sup>26</sup> Goldberg et al., *LGBTQ Individuals’ Experiences with Delays and Disruptions*, *supra* note 25; S. Ryan & C. Whitlock, *Becoming Parents: Lesbian Mothers’ Adoption Experience*, 19 J. Gay & Lesbian Soc. Servs. 1 (2008).

minority individuals if doing so conflicts with the agencies' religious beliefs, and twenty-one states do not expressly prohibit discrimination in foster care or adoption based on sexual orientation.<sup>27</sup> These laws mean that an agency can refuse to place a child with a lesbian or gay family member, even though family member—or “kinship”—placements may lead to adoption or permanent guardianship at higher rates than non-kinship placements.<sup>28</sup>

Sexual minority youth in foster care are also vulnerable to discrimination. LGBTQ youth who disclose their sexual orientation or gender identity to their families of origin run away from or are kicked out of their homes at higher rates than heterosexual youth.<sup>29</sup>

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<sup>27</sup> Movement Advancement Project, *Foster and Adoption Laws*, [https://www.lgbtmap.org/equality-maps/foster\\_and\\_adoption\\_laws](https://www.lgbtmap.org/equality-maps/foster_and_adoption_laws) (last visited Aug. 6, 2020).

<sup>28</sup> See, e.g., B.A. Akin, *Predictors of Foster Care Exits to Permanency: A Competing Risks Analysis of Reunification, Guardianship, and Adoption*, 33 *Child. & Youth Servs. Rev.* 999 (2011); S.D. Ryan et al., *Kin Adopting Kin: In the Best Interest of the Children?*, 32 *Child. & Youth Servs. Rev.* 1631 (2010).

<sup>29</sup> B.D.M. Wilson et al., *Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles*, The Williams Institute (2014) (reporting that, based on interviews of 786 randomly sampled youth in foster care in Los Angeles County, 3.4% of LGBTQ youth age 12-16 years old, and 12.1% of youth age 17-21 years old, reported being kicked out of their homes or running away due to their sexual orientation or gender identify, compared with 1.4% of non-LGBTQ youth age 12-16 years old, and 2% of youth age 17-21 years old); see also L.E. Durso & G.J. Gates, *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or at Risk of Becoming*



Sexual minority youth have also been mistreated by their foster parents, and group care staff and peers, because of their sexual orientation.<sup>30</sup> And they are less likely than heterosexual youth to find a permanent home, whether through reunification with their families of origin, or adoption.<sup>31</sup>

Stigma in the public child welfare system adversely affects the physical and psychological well-being of sexual minorities looking to adopt or foster, as well as sexual minority youth in the system. Studies have found that lesbian and gay foster parents have expressed heightened anxiety about the security of their placements, and the possibility of other discrimination within the foster care system, due to their sexual orientation.<sup>32</sup> Sexual and gender minority youth in

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*Homeless*, The Williams Institute (2012) (in survey of 381 agencies that worked with homeless youth, 46% attributed their LGBT clients' homelessness to family rejection of their sexual orientation or gender identity that caused them to run away, and 43% to their clients' parents forcing them out for the same reasons).

<sup>30</sup> J.A. Clements & M. Rosenwald, *Foster Parents' Perspectives on LGB Youth in the Child Welfare System*, 19 *J. Gay & Lesbian Soc. Servs.* 57 (2007); H. Craig-Oldsen et al., *Issues of Shared Parenting of LGBTQ Children and Youth in Foster Care: Preparing Foster Parents for New Roles*, 85 *Child Welfare J.* 267 (2006); M. Freundlich & R.J. Avery, *Gay and Lesbian Youth in Foster Care: Meeting Their Placement and Service Needs*, 17 *J. Gay & Lesbian Soc. Servs.* 39 (2004).

<sup>31</sup> Wilson et al., *supra* note 29.

<sup>32</sup> See e.g., D.W. Riggs, *Australian Lesbian and Gay Foster Carers Negotiating the Child Protection System: Strengths and Challenges*, 8 *Sexuality Rsch. & Soc. Pol'y* 215 (2011); see also J.A. Bauermeister, *How Statewide LGB Policies Go From "Under Our*

foster care experience poorer physical or psychological health than heterosexual or cisgender youth in foster care.<sup>33</sup>

Stigma continues to affect gay, lesbian, and bisexual individuals across various sectors of society, including in the public child welfare system, and increases the risk of harm to the mental and physical health of sexual minorities in and out of foster care. Jurisdictions like Philadelphia, which run the public child welfare system and other public services, often bear the costs of these increased mental and physical health risks. As a result, they have an interest in counteracting, rather than perpetuating, stigma, by extending the protections of anti-discrimination laws to sexual minorities. Philadelphia's Fair Practices Ordinance is an effort to counteract the stigma that sexual minorities experience in the public child welfare system and elsewhere, and correspondingly, the health outcomes associated with experiencing stigmatization.

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*Skin” to “Into Our Hearts”: Fatherhood Aspirations and Psychological Well-Being Among Emerging Adult Sexual Minority Men*, 43 J. Youth Adolescence 1295 (2014) (in study of 1,487 sexual minority young men, finding that men with aspirations of fatherhood who lived in states banning adoption by sexual minorities reported higher rates of depression symptoms and lower self-esteem than men who lived in states without bans).

<sup>33</sup> Wilson et al., *supra* note 29 (reporting that, based on interviews of 786 randomly sampled youth in foster care in Los Angeles County, LGBTQ youth surveyed had been hospitalized for emotional, or emotional and physical, reasons at higher rates; had been arrested at higher rates; had been homeless at higher rates; and had been suspended or expelled from school at higher rates than heterosexual or cisgender youth in foster care).

## II. The Scientific Evidence Regarding the City of Philadelphia’s Interest in Ensuring That Children in Foster Care Have Access to All Qualified Families

### A. The factors that affect the adjustment of children are not dependent on parental gender or sexual orientation.

Hundreds of studies over the past 30 years have elucidated the factors that are associated with healthy adjustment among children and adolescents—*i.e.*, the influences that allow children and adolescents to function well in their daily lives. As one noted authority in developmental psychology explained, based on the accumulated empirical evidence, “the same factors explain child adjustment regardless of family structure,” and parents’ sexual orientation and the biological relatedness between parents and children “are of little or no predictive importance” when researchers control for other variables.<sup>34</sup>

#### (1) The qualities of parent-child relationships

Research shows that children’s adjustment is affected by the quality of a parent-child relationship—

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<sup>34</sup> M.E. Lamb, *Mothers, Fathers, Families, and Circumstances*, 16 *Applied Dev. Sci.* 98 (2012); *see also* S. Golombok, *Parenting* (2002); M.E. Lamb & C. Lewis, *The Role of Parent-Child Relationships in Child Development*, in *Developmental Science* 429 (M.H. Bornstein & M.E. Lamb eds., 5th ed. 2005); C.J. Patterson et al., *Socialization in the Context of Family Diversity*, in *Handbook of Socialization* 328 (J.E. Grusec & P.D. Hastings eds., 2d ed. 2015).

including attributes like parental warmth, consistency, and stability. Children whose parents provide them with loving guidance in the context of secure home environments are likely to show more positive adjustment, regardless of their parents' sexual orientation.<sup>35</sup>

**(2) The qualities of relationships between significant adults in children's lives**

Additionally, children are more likely to show positive adjustment when parental relationships are characterized by love, warmth, cooperation, security, and mutual support. In contrast, when parental relationships are conflict-ridden and acrimonious, adjustment tends to be less favorable. Family instability, household disruption, and parental divorce are often associated with poorer adjustment and problems that can last into adulthood.<sup>36</sup> These patterns are observed, regardless of whether children are reared by same-sex couples or heterosexual couples.<sup>37</sup>

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<sup>35</sup> Lamb & Lewis, *supra* note 34; Patterson et al., *supra* note 34; J.Z. Smith et al., *Multilevel Modeling Approaches to the Study of LGBT Parent-Families*, in *LGBT-Parent Families* 307 (A.E. Goldberg & K.A. Allen eds., 2013).

<sup>36</sup> See, e.g., P.R. Amato, *Children of Divorce in the 1990s*, 15 *J. Fam. Psychol.* 355 (2001).

<sup>37</sup> *The Family Context of Parenting in Children's Adaptation to Elementary School* (P.A. Cowan et al. eds., 2005); R.W. Chan et al., *Psychosocial Adjustment Among Children Conceived via Donor Insemination By Lesbian and Heterosexual Mothers*, 69 *Child Dev.* 443 (1998); E.M. Cummings et al., *Children's Responses to Everyday Marital Conflict Tactics in the Home*, 74 *Child Dev.* 1918

Consequently, researchers must take care to avoid conflating the negative consequences of experiencing divorce or household instability with the consequences of simply having a gay or lesbian parent.<sup>38</sup>

**(3) The availability of economic and other resources**

Children with sufficient economic support 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 have social and emotional resources from teammates, coaches, youth leaders, and others. To the extent that children have access to these resources, they are more likely to show positive adjustment, regardless of their parents' sexual orientation.<sup>39</sup>

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(2003); E.M. Cummings et al., *Everyday Marital Conflict and Child Aggression*, 32 *J. Abnormal Child Psychol.* 191 (2004); Golombok (2002), *supra* note 34; D. Potter, *Same-Sex Parent Families and Children's Academic Achievement*, 74 *J. Marriage & Fam.* 556 (2012); M.J. Rosenfeld, *Nontraditional Families & Childhood Progress Through School*, 47 *Demography* 755 (2010).

<sup>38</sup> Several studies that purport to identify differences in the adjustment of children of heterosexual versus same-sex couples exhibit this flaw. See G.M. Herek, *Evaluating the Methodology of Social Science Research on Sexual Orientation and Parenting: A Tale of Three Studies*, 48 *U.C. Davis L. Rev.* 583 (2014) (finding that this and other serious methodological flaws undermine the validity of studies frequently cited by opponents of same-sex marriage); *infra* note 46, 48 (discussing failure to adequately account for the effects of past family instability, and other flaws, in recently published papers).

<sup>39</sup> *Neighborhood Poverty: Context and Consequences for Children*

In short, the same factors are linked to children's positive development, regardless of whether they are raised by heterosexual or sexual minority parents.

**B. There is no scientific basis for concluding that sexual minority parents are any less fit or capable than heterosexual parents, or that their children are any less psychologically healthy and well adjusted.**

For decades, the consensus of mainstream mental health professionals and researchers has been that homosexuality and bisexuality are normal expressions of human sexuality; that they pose no inherent obstacle to leading a healthy and productive life; and that sexual minorities function well in the full array of social institutions and interpersonal relationships,<sup>40</sup> including

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(J. Brooks-Gunn et al. eds., 1997); *Consequences of Growing up Poor* (G.J. Duncan & J. Brooks-Gunn eds., 1997); Patterson et al., *supra* note 34; Potter, *supra* note 37; Rosenfeld, *supra* note 37.

<sup>40</sup> When the American Psychiatric Association published the first Diagnostic and Statistical Manual of Mental Disorders ("DSM") in 1952, "homosexuality" was listed as a mental disorder. However, this classification reflected social stigma rather than empirical research findings. Recognizing the lack of scientific evidence for this classification, the American Psychiatric Association removed homosexuality from the DSM in 1973, stating that "homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." American Psychiatric Ass'n, *Position Statement: Homosexuality and Civil Rights* (1973), *in* 131 *Am. J. Psychiatry* 497 (1974). In 1975, the American Psychological Association adopted a policy reflecting the same conclusion. Conger, *Minutes of the 1974 Annual Meeting of the Council of Representatives*, *supra* note 2, at 633.

parenting.

Assertions that heterosexual couples are better parents than same-sex couples, or that the children of lesbian or gay parents fare worse than children of heterosexual parents, are not supported by the cumulative scientific evidence.<sup>41</sup> Rather, the vast

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<sup>41</sup> The research on gay, lesbian, and bisexual parents—including foster care and adoptive parents—includes dozens of empirical studies. Their findings are summarized in reviews of empirical literature published in respected, peer-reviewed journals and academic books. Recent reviews include D.W. Riggs, *LGBTQ Foster Parents*, in *LGBTQ-Parent Families* 161 (A.E. Goldberg & K. R. Allen eds., 2020); R.H. Farr, *LGBTQ Adoptive Parents and Their Children*, in *LGBTQ-Parent Families* 45 (A.E. Goldberg & K. R. Allen eds., 2020); J. Kaasbøll & V. Paulsen, *What is known about the LGBTQ perspective in child welfare services? A scoping review protocol*, 9 *BMJ Open* 1 (2019); Patterson et al., *supra* note 34; A.E. Goldberg, *Lesbian and Gay Parents and Their Children* (2010); C.J. Patterson, *Family Lives of Lesbian and Gay Adults*, in *The Handbook of Marriage and Family* 659, 668-71 (G.W. Peterson & K.R. Bush eds., 2013); C.J. Patterson, *Children of Lesbian and Gay Parents*, 64 *Am. Psychologist* 727 (2009). For earlier reviews and related research, see, e.g., E.C. Perrin et al., *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341 (2002); 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); C.J. Patterson, *Lesbian and Gay Parents and Their Children*, in *Contemporary Perspectives on Lesbian, Gay, and Bisexual Identities*, Nebraska Symposium on Motivation 141 (D.A. Hope ed., 2009); 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). See also 2011 IOM Report, *supra* note 20 (concluding that “studies show that [the children of

majority of scientific studies that have directly compared these groups have found that gay and lesbian parents are as fit and capable as heterosexual parents, and that their children are as psychologically healthy and well adjusted. This holds true for foster care and adoptive sexual minority parents as well.<sup>42</sup>

One national probability study<sup>43</sup> used data from the National Longitudinal Study of Adolescent Health to

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lesbian and gay parents] are well adjusted and developmentally similar to the children of different-sex parents”).

<sup>42</sup> See, e.g., A.L. McConnachie et al., *Father-Child Attachment in Adoptive Gay Father Families*, 22 *Attachment & Hum. Dev.* 110 (2020); E.A. Feugé, *Adoptive gay fathers' sensitivity and child attachment and behavior problems*, 22 *Attachment & Hum. Develop.* 247 (2020); R.H. Farr et al., *Longitudinal Associations Between Coparenting and Child Adjustment Among Lesbian, Gay, and Heterosexual Adoptive Parent Families*, 55 *Developmental Psychol.* 2547 (2019); R.H. Farr, *Does parental sexual orientation matter? A longitudinal follow-up of adoptive families with school-age children*, 53 *Developmental Psychol.* 252 (2017); S. Golombok et al., *Adoptive gay fathers: Parent-child relationships and children's psychological adjustment*, 85 *Child Dev.* 456 (2014); A.E. Goldberg & J.Z. Smith, *Predictors of Psychological Adjustment in Early Placed Adopted Children with Lesbian, Gay, and Heterosexual Parents*, 27 *J. Fam. Psych.* 431 (2013); J.A. Lavner et al., *Can Gay and Lesbian Parents Promote Healthy Development in High-Risk Children Adopted from Foster Care?*, 82 *Am. J. Orthopsychiatry* 465 (2012); S. Erich et al., *Gay and Lesbian Adoptive Families*, 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).

<sup>43</sup> Early research in this area employed nonprobability samples, which may not reflect the population from which they are drawn. Probability studies like this one are not limited in this way.



compare adolescents parented by female couples with adolescents parented by heterosexual couples. The researchers found no differences between the two groups on measures of a large number of key variables, including psychosocial adjustment, school outcomes, substance use, delinquency, victimization experiences, and relationships with peers.<sup>44</sup>

Another study used data from the Early Childhood Longitudinal Study – Kindergarten Cohort (ECLS-K) to compare the academic achievement of children growing up in various family structures. When the effects of significant family transitions (e.g., parental divorce, separation, or death) were taken into account, children in same-sex family structures showed slightly higher achievement levels than children living with their biological mother and father, although this difference was not statistically significant.<sup>45</sup>

Two other studies, each using the same data source, demonstrate the pitfalls of conflating parent sexual orientation with other variables relevant to children’s development. Both used U.S. Census data to compare

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<sup>44</sup> J.L. Wainright & C.J. Patterson, *Peer Relations Among Adolescents with Female Same-Sex Parents*, 44 *Developmental Psychol.* 117 (2008); J.L. Wainright & C.J. Patterson, *Delinquency, Victimization, and Substance Use Among Adolescents with Female Same-Sex Parents*, 20 *J. Fam. Psychol.* 526 (2006); Wainright et al., *supra* note 41.

<sup>45</sup> Potter, *supra* note 37; *see also* A.L. Fedewa & T.P. Clark, *Parent Practices and Home-School Partnerships*, 5 *J. GLBT Fam. Stud.* 312 (2009). In the ECLS-K, parental sexual orientation and relationship status were inferred from a series of questions about the household composition and caretakers.

educational outcomes among children residing in homes with various family structures. One reported that children in households with same-sex cohabiting couples had significantly lower levels of school progress than children of married heterosexual couples.<sup>46</sup> The other study, however, concluded that the observed differences were due to parents' socioeconomic status and differences across family types in children's experiences with household disruptions and instability. When these factors were taken into consideration, school progress did not significantly differ between children of married heterosexual couples and children of same-sex cohabiting couples.<sup>47</sup>

*Amici* emphasize that there is *no* credible scientific dispute about the parenting abilities of gay men and lesbians—and the positive outcomes for their children, whether foster, adoptive, or biological.<sup>48</sup> Thus, after

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<sup>46</sup> D.W. Allen et al., *Nontraditional Families and Childhood Progress Through School*, 50 *Demography* 955 (2013). Another recent paper by the same author compared across family structures high school graduation rates among young adults (age 17-22) in Canada still residing with their parents. D.W. Allen, *High School Graduation Rates Among Children of Same-Sex Households*, 11 *Rev. Econ. Household* 635 (2013). This study is irrelevant to questions about parenting because, as the author acknowledged: “this paper does not study the effect of growing up in a same-sex household.” *Id.* (emphasis added).

<sup>47</sup> Rosenfeld, *supra* note 37.

<sup>48</sup> The handful of sources that suggest that same-sex parenting may have negative effects on children suffer from serious methodological flaws and do not reflect the current state of scientific knowledge. *See, e.g., supra* notes 38, 46. Specifically, the conclusions of researchers frequently cited by opponents of same-sex marriage—including Mark Regnerus and Donald Paul Sullins, whom *amici* in

careful scrutiny of decades of research, the American Psychological Association concluded in 2004, and reaffirmed this year, that there is no scientific evidence that parental ineffectiveness is related to parental sexual orientation; that sexual minority parents are as likely as heterosexual parents to provide supportive and healthy environments for their children; that no evidence that the adjustment, development, and psychological well-being of children is related to parental sexual orientation exists; that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish; and thus that the American Psychological Association opposes any discrimination based on sexual orientation in adoption or foster care.<sup>49</sup>

Similarly, the AAP has concluded that “[t]here is

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support of Petitioners cite, *see* Br. of *Amici Curiae* Concerned Women for American et al., at 18 n. 46—have been resoundingly rejected by the mainstream scientific community.

For critiques of Regnerus, *see, e.g.*, D.E. Sherkat, *The Editorial Process and Politicized Scholarship: Monday Morning Editorial Quarterbacking and a Call for Scientific Vigilance*, 41 Soc. Sci. Res. 1346 (2012) (independent auditor appointed by the journal that published Regnerus’s article, describing article as “a non-scientific study” and concluding it should not have been published); M.J. Rosenfeld, *Reply to Allen et al.*, 50 Demography 963 (2013).

Recently published papers by Sullins—all reporting secondary analyses of data from the National Health Interview Survey (NHIS)—have similar methodological flaws. Moreover, none of the journals in which Sullins’ papers were published are indexed in major, reputable social science databases.

<sup>49</sup> *SOGI* Resolution, *supra* note 2; Am. Psychol. Ass’n, *Resolution on Sexual Orientation, Parents, and Children* (2004).

extensive research documenting that there is no causal relationship between parents' sexual orientation and children's emotional, psychosocial, and behavioral development. Many studies attest to the normal development of children of same-gender couples when the child is wanted, the parents have a commitment to shared parenting, and the parents have strong social and economic supports."<sup>50</sup> The AAP thus supports "willing and capable foster and adoptive parents, regardless of the parents' sexual orientation."<sup>51</sup>

The American Psychiatric Association has also 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>52</sup>

Finally, the AMA has adopted a policy supporting legislative and other reforms to allow adoption by same-sex partners.<sup>53</sup>

### **C. Many sexual minority parents raise foster and adopted children.**

Around 114,000 households in the United States are headed by same-sex partners with children under age

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<sup>50</sup> AAP, *Policy Statement: Promoting the Well-Being of Children Whose Parents Are Gay or Lesbian*, 131 *Pediatrics* 827, 828 (2013).

<sup>51</sup> *Id.* at 827.

<sup>52</sup> Am. Psychiatric Ass'n, *Position Statement: Support of Legal Recognition of Same-Sex Civil Marriage* (2005); see also Am. Psychiatric Ass'n, *supra* note 3.

<sup>53</sup> AMA, Policy H-60.940, *Partner Co-Adoption*, <https://policysearch.ama-assn.org/policyfinder/detail/Policy%20H-60.940?uri=%2FAMADoc%2FHOD.xml-0-5034.xml>.

18; approximately 3,600 of these households are in Pennsylvania.<sup>54</sup> These figures are widely assumed to underestimate the actual number of same-sex couples who are raising children.<sup>55</sup>

Same-sex couples with children are roughly seven times more likely than different-sex couples with children to have an adopted or foster child: in a study of coupled households raising an adopted or foster child between 2014 and 2016, 21.4% of same-sex couples were raising an adopted child, compared to just 3% of different-sex couples, and 2.9% of same-sex couples were

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<sup>54</sup> S.K. Goldberg & K.J. Conron, *How Many Same-Sex Couples in the U.S. Are Raising Children?*, The Williams Institute (2018); The Williams Institute, *Same-sex Couple Data & Demographics – Population Density of Same-sex Couples: Pennsylvania*, <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=SS&area=42#density> (last accessed Aug. 6, 2020) (drawing from Gallup Daily Tracking Survey and Census Bureau data).

<sup>55</sup> This is because the Census does not directly assess participants' sexual orientation; it reflects only households headed by cohabiting same-sex partners who voluntarily reported their relationship status. Other studies indicate that a substantial portion of lesbian, gay, and bisexual adults have had one or more children. See, e.g., Pew Research Center, *2013 Survey of LGBT Americans*, *supra* note 12; G.M. Herek et al., *Demographic, Psychological, and Social Characteristics of Self-Identified Lesbian, Gay, and Bisexual Adults in a U.S. Probability Sample*, 7 Sex Res. Soc. Policy 176 (2010) (based on national probability sample of lesbian, gay, and bisexual adults, finding that approximately 34% reported having one or more biological, adopted or step children). Analyses of 2012 American Community Survey data also indicate that same-sex couples are approximately 4.5 times more likely than opposite-sex couples to be rearing adopted children. A.E. Goldberg et al., *Research Report on LGB-Parent Families*, The Williams Institute (2014).

fostering a child, compared to just 0.4% of different-sex couples.<sup>56</sup> Furthermore, sexual minorities are more interested in adoption than heterosexuals.<sup>57</sup>

Foster care and adoption advocates thus recommend that foster care agencies recruit and support LGBTQ-affirming and competent caregivers, including LGBTQ foster families.<sup>58</sup> Sexual minorities may “bring particular strengths to parenting” sexual or gender minority, as well as heterosexual or cisgender, children

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<sup>56</sup> Goldberg & Conron, *supra* note 54.

<sup>57</sup> See G.J. Gates et al., *Adoption and Foster Care by Gay and Lesbian Parents in the United States*, The Williams Institute et al., 1, 6 (2007); see also Goldberg et al., *LGBTQ Individuals’ Experiences with Delays and Disruptions*, *supra* note 25, at 2 (noting that “LGBTQ individuals are more likely than heterosexual individuals to be elective or preferential adopters: that is, adoption is more often their ‘first choice’ route to parenthood.”).

<sup>58</sup> See e.g., National Resource Center for Adoption et al., *Strategies for Recruiting Lesbian, Gay, Bisexual and Transgender Foster, Adoptive, and Kinship Families 1-3* (2012) [hereinafter “*Strategies for Recruiting LGBT Families*”] (“For jurisdictions that continue to face challenges in recruiting and retaining enough qualified foster and adoptive parents, looking to previously untapped or underutilized groups of prospective parents—including lesbian, gay, bisexual, and transgender (LGBT) adults—may be a key step in providing placement stability and permanency to children in foster care.”); J. Jacobs & M. Freundlich, *Achieving Permanency for LGBTQ Youth*, 85 *Child Welfare* 299 (2006); S. Wilber et al., *The Model Standards Project: Creating Inclusive Systems for LGBT Youth in Out-of-Home Care*, 85 *Child Welfare* 133 (2006); R. Woronoff et al., *Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth in Care*, *Child Welfare League of America* et al. (2006).

in foster care.<sup>59</sup> in one study, children adopted by lesbian and gay parents reported that their parents' sexual orientation made them more accepting and understanding of, and compassionate toward, other people.<sup>60</sup>

#### **D. The need for foster parents is great.**

The demand for foster parents throughout the United States is substantial. In 2018, 437,000 children were in foster care in the United States, an increase of over 11% since 2012.<sup>61</sup> Around 17,000 of these children were in foster care in Pennsylvania alone.<sup>62</sup> 114,000 of children in foster care in the United States, and nearly 3,800 in Pennsylvania, are awaiting adoption.<sup>63</sup>

Children in foster care may experience frequent

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<sup>59</sup> *Strategies for Recruiting LGBT Families*, *supra* note 54, at 3.

<sup>60</sup> P.A. Cody et al., *Youth Perspectives on Being Adopted from Foster Care by Lesbian and Gay Parents: Implications for Families and Adoption Professionals*, 20 *Adoption Q.* 98, 98, 107-08, 112 (2017).

<sup>61</sup> Admin. on Child., Youth & Fam., Children's Bureau, Admin. for Child. & Fam., United States Dep't of Health & Hum. Servs., *Trends in Foster Care and Adoption: FY 2009 – FY 2018* (2019), [hereinafter *2009-18 Trends in Foster Care and Adoption*].

<sup>62</sup> Admin. on Child., Youth & Fam., Children's Bureau, Admin. for Child. & Fam., United States Dep't of Health & Hum. Servs., *AFCARS State Data Tables 2009 through 2018 – In Care on September 30* (2019) [hereinafter "*AFCARS State Data Tables 2009 through 2018*"].

<sup>63</sup> *2009-18 Trends in Foster Care and Adoption*, *supra* note 61; *AFCARS State Data Tables 2009 through 2018 – Waiting for Adoption*, *supra* note 62.

disruptions to their living arrangements. Among children who have been in foster care for two years or longer, almost two-thirds have had two or more placements.<sup>64</sup> Placement instability adversely affects the physical and mental health of the children who experience it.<sup>65</sup>

Conversely, the earlier a child finds a stable placement, the better the child's physical and mental

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<sup>64</sup> Admin. on Child., Youth & Fam., Children's Bureau, Admin. for Child. & Fam., United States Dep't of Health & Hum. Servs., *Child Welfare Outcomes 2016: Report to Congress* iii, 47 (2016), <https://www.acf.hhs.gov/sites/default/files/cb/cwo2016.pdf>.

<sup>65</sup> M.T. Villodas et al., *Long-Term Placement Trajectories of Children Who Were Maltreated and Entered the Child Welfare System at an Early Age: Consequences for Physical and Behavioral Well-Being*, 41 *J. Pediatric Psychol.* 46, 51-52 (2015) (in study of 330 children in foster care, following report of child abuse or neglect during early childhood, finding that children in unstable foster care, *inter alia*, reported significantly poorer physical and behavioral well-being than children in unstable foster care); C.S. Zorc, et al., *The relationship of placement experience to school absenteeism and changing schools in young, school-aged children in foster care*, 35 *Child Youth Serv. Rev.* 826 (2013) (in study of 209 children in foster care, finding that children in unstable placements were 37% more likely to be absent from school than those with early stable placements); D.M. Rubin et al., *The Impact of Placement Stability on Behavioral Well-Being for Children in Foster Care*, 119 *Pediatrics* 336 (2007) (in study of 729 children in foster care, finding that placement stability was "an important predictor of well-being," and that behavior problems due to instability alone increased by 63% for children in unstable placements, when compared to children in stable placements); R.R. Newton et al., *Children and Youth in Foster Care: Disentangling the Relationship Between Problem Behaviors and Number of Placements*, 24 *Child Abuse & Neglect* 1363, 1372 (2000).



health outcomes.<sup>66</sup> The quality of foster parenting is associated with placement stability: one study of 302 children in foster care found that “children in stable homes receive more attention, acceptance, affection, and overall better care from their foster parents.”<sup>67</sup>

Sexual and gender minority youth are overrepresented in the foster care system in the United States. In a nationally-representative sample, drawn from a 2013-15 survey of youth ages ten to eighteen, 30.4% of those living in foster care identified as LGBTQ.<sup>68</sup> By comparison, just 11.2% of youth in the overall sample identified as LGBTQ.<sup>69</sup>

Sexual and gender minority youth in foster care experience higher levels of placement instability than heterosexual or cisgender youth,<sup>70</sup> and poorer physical,

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<sup>66</sup> See *supra* note 42.

<sup>67</sup> M.A. Hartnett et al., *Placement Stability Study 2*, 13, 28-29, 32-35, Child. & Fam. Rsch. Center, Sch. of Soc. Work, Univ. of Illinois at Urbana-Champaign (1999); see also R.E. Redding, et al., *Predictors of Placement Outcomes in Treatment Foster Care: Implications for Foster Parent Selection and Service Delivery*, 9 J. Child & Fam. Stud. 425 (2000); S. Butler & M. Charles, “*The Past, the Present, but Never the Future*”: *Thematic Representations of Fostering Disruption*, 4 Child & Fam. Soc. Work 9 (1999).

<sup>68</sup> L. Baams et al., *LGBT Youth in Unstable Housing and Foster Care*, 143 Pediatrics 1 (2019). Another study found that LGB youth were nearly 2.5 times more likely than non-LGB youth to be placed in foster care. J.N. Fish et al., *Are Sexual Minority Youth Overrepresented in Foster Care, Child Welfare, and Out-of-Home Placement? Findings from Nationally Representative Data*, 89 Child Abuse & Neglect 203 (2019).

<sup>69</sup> Baams, *supra* note 68.

<sup>70</sup> See, e.g., M. Martin et al., *Out of the Shadows: Supporting LGBTQ*

mental, and behavioral outcomes than their heterosexual or cisgender peers.<sup>71</sup> The placement stability and well-being of sexual and gender minority youth in foster care, however, benefit from foster caregivers who provide them with acceptance, support, and safety.<sup>72</sup>

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*Youth in Child Welfare through Cross-System Collaboration*, Center for the Study of Social Policy (2016); Wilson, *supra* note 29.

<sup>71</sup> See, e.g., Wilson, *supra* note 29.

<sup>72</sup> See A.M. Salazar et al., *Developing Relationship-Building Tools for Foster Families Caring for Teens Who Are LGBTQ2S*, 96 *Child Welfare* 75 (2018).

## CONCLUSION

The pertinent scientific and professional literature supports the need for laws like Philadelphia's Fair Practices Ordinance that prohibit discrimination against sexual minorities in the child welfare system. For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

Deanne M. Ottaviano  
 Nathalie F.P. Gilfoyle  
 AMERICAN  
 PSYCHOLOGICAL  
 ASSOCIATION  
 750 First Street NE  
 Washington, DC 20002  
 (202) 336-6186  
*Counsel for American  
 Psychological Association*

Aaron M. Panner  
 KELLOGG HANSEN TODD  
 FIGEL & FREDERICK PLLC  
 1615 M St. NW  
 Suite 400  
 Washington, DC 20036  
*Counsel for American  
 Psychiatric Association*

Jessica Ring Amunson  
*Counsel of Record*  
 Emily L. Chapuis  
 Tassity S. Johnson  
 JENNER & BLOCK LLP  
 1099 New York Ave. NW  
 Suite 900  
 Washington, DC 20001  
 (202) 639-6000  
 JAmunson@jenner.com  
*Counsel for Amici Curiae*