Nos. 14-556, 14-562, 14-571 and 14-574

IN THE

Supreme Court of the United States

JAMES OBERGEFELL, ET AL., AND BRITTANI HENRY, ET AL., PETITIONERS,

v.

RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, ET AL., RESPONDENTS.

VALERIA TANCO, ET AL., PETITIONERS,

v.

WILLIAM EDWARD "BILL" HASLAM, GOVERNOR OF TENNESSEE, ET AL., RESPONDENTS.

APRIL DEBOER, ET AL., PETITIONERS,

v.

RICK SNYDER, GOVERNOR OF MICHIGAN, ET AL., RESPONDENTS.

GREGORY BOURKE, ET AL., AND TIMOTHY LOVE, ET AL., PETITIONERS,

v.

STEVE BESHEAR, GOVERNOR OF KENTUCKY, ET AL., RESPONDENTS.

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF *AMICI CURIAE* AMERICAN PUBLIC HEALTH ASSOCIATION AND WHITMAN-WALKER HEALTH IN SUPPORT OF PETITIONERS

SHEREE R. KANNER
KENNETH Y. CHOE
MARGIA K. CORNER
ELIZABETH C. LOCKWOOD
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004

BORIS BERSHTEYN
Counsel of Record
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
4 Times Square
New York, NY 10036
(212) 735-3834
Boris.Bershteyn@skadden.com

Counsel for Amici Curiae
[Additional Counsel Listed on Inside Cover]

DAVID W. SKAAR
HOGAN LOVELLS US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067

THOMAS CUMMINS
HOGAN LOVELLS US LLP
7930 Jones Branch Drive
Ninth Floor
McLean, VA 22102

DANIEL BRUNER
WHITMAN-WALKER
HEALTH
1701 Fourteenth Street, NW
Washington, DC 20009

ROMÁN J. RODRIGUEZ
MICHAEL SPRINGER
SAM AULD
AUDREY FELDMAN
KEVIN C. HU
STEFANIE E. NEALE
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
4 Times Square
New York, NY 10036

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*[1]

The American Public Health Association ("APHA") champions the health of all people and all communities. APHA strengthens the profession of public health, shares the latest research and information, promotes best practices, and advocates for public health issues and policies grounded in research. APHA is the only organization that combines a 140-plus-year perspective, a broad-based member community, and the ability to influence federal policy to improve the public's health. APHA's 25,000 members represent a broad array of health officials, educators, and health care providers. The APHA has played a leading role in both illuminating health disparities among different segments of the U.S. population and suggesting methods to reduce these disparities.

Whitman-Walker Clinic, Inc., d/b/a Whitman-Walker Health ("Whitman-Walker"), is a nonprofit, community-based Federally Qualified Health Center

---

[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Timely notice under Supreme Court Rule 37.2(a) of intent to file this brief was provided to the Petitioners and the Respondents, and both have consented in writing to the filing of this brief.

serving the Washington, D.C. metropolitan area's diverse urban community. With specialties in HIV and lesbian, gay, bisexual, and transgender health care, Whitman-Walker provides health and health-enabling services to more than 13,000 individuals and families annually, including primary and HIV specialty care; mental health and substance abuse treatment; dental care; medical adherence case management; legal services; and HIV and sexually transmitted infection testing, counseling, and prevention services. Time and again, Whitman-Walker health care professionals and lawyers have seen how lack of full legal recognition of gay and lesbian relationships has harmed the health, dignity, and well-being of its patients and their partners.

SUMMARY OF ARGUMENT

Marriage equality is a civil rights issue—but it is a public health issue, too. And a growing body of research links bans on same-sex marriage with adverse health effects on lesbian, gay, and bisexual (LGB) individuals.

Discriminatory marriage policies are a form of structural stigma against LGB individuals and thereby contribute to poor health outcomes. As this Court recognized two terms ago when striking down a federal law on the subject, these policies impose "a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages." *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013).

Researchers have long recognized the close correlation between such stigma and poor health outcomes—outcomes often linked to the profound stress that stigmatized minorities experience.

Even as LGB individuals face poorer health than heterosexuals that is linked to stigma and minority stress, those living in states with discriminatory marriage policies are also denied the health benefits associated with marriage. A robust body of research demonstrates that married people enjoy better health and longer lives in part because of marriage's protective effects. Importantly, these same benefits do not appear to accrue to unmarried cohabiting couples.

Of course, observational studies of health outcomes across populations demonstrate only correlation—not causation. Yet many of the studies discussed below control for other relevant variables: age, education, income, location, children, and more. In addition, many of these studies have used quasi-experimental designs, which is the strongest evidence for causal inference when it is not possible or ethical to conduct randomized experiments, as in the case at hand. Based on this robust body of research, the scientific consensus is that marriage contributes to better health and longevity. And that fact is another compelling reason to reject the judgment of the Court of Appeals.

ARGUMENT

I. Stigma, Including Same-Sex Marriage Bans, Is Linked to Negative Health Outcomes in LGB Individuals.

A. The Health of LGB Individuals Suffers Due to Stigma.

The stigma and stress imposed by discriminatory laws, including same-sex marriage bans, take a significant toll on the mental and physical well-being of LGB individuals. Stigma refers to the negative associations attributed to a subset of the population and to the imposition of "inferior" status on people who are perceived to fall within that subset. Bruce G. Link & Jo C. Phelan, *Conceptualizing Stigma*, 27 Ann. Rev. Sociology 363, 367 (2001). Stigma against the LGB population, or "sexual stigma," has been described as "the negative regard, inferior status, and relative powerlessness that society collectively accords any nonheterosexual behavior, identity, relationship, or community." Gregory 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, 590 (2014).

Same-sex marriage bans present a paradigmatic example of stigma reinforced and perpetuated: They exclude LGB individuals from one of the most fundamental institutions established by law—and do so under the color of law. *See* Herek (2014), *supra*, at

590. At the same time, the bans convey that discriminatory treatment of LGB individuals is not only acceptable, but sanctioned or even compelled by law.

Research across a broad range of disciplines has drawn a strong correlation between such exclusionary policies and negative health effects on members of the stigmatized group—even when the group's members have not personally been denied access to a benefit or otherwise individually discriminated against. *See* Laura S. Richman & Mark L. Hatzenbuehler, *A Multilevel Analysis of Stigma and Health: Implications for Research and Policy*, 1 PIBBS 213, 217 (2014).

These negative health outcomes have been identified as by-products of "minority stress": "the excess stress to which individuals from stigmatized social categories are exposed as a result of their social . . . position." Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 Psychol. Bull. 674, 677 (2003); *see also* John R. Blosnich et al., *Health Inequalities Among Sexual Minority Adults: Evidence from Ten U.S. States, 2010*, 46 Am. J. Prev. Med. 337, 347 (2014) ("[N]egative experiences (e.g., stigma) projected onto minority groups negatively influence[] their health by causing elevated distress."). For LGB individuals, minority stress "is a chronic psychological strain resulting from

experiences and expectations of prejudice, decisions about disclosure of sexual identity, and the internalization of homophobia or homonegativity." Ellen D. B. Riggle et al., *The Marriage Debate and Minority Stress*, 38 Pol. Sci. & Pol. 221, 222 (2005).

This stress "arises not only from negative events, but from the totality of the minority person's experience in dominant society." Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. Health & Social Behavior 38, 39 (1995). Internalized homophobia, perceived stigma, and actual experiences of prejudice all contribute to minority stress. *Id.*

Stigma increases this minority stress. LGB people "learn to anticipate—indeed expect—negative regard from members of the dominant culture," and they "must maintain vigilance" at all times. Ilan H. Meyer, *Prejudice and Discrimination as Social Stressors*, *in* The Health of Sexual Minorities 242, 251 (Ilan H. Meyer & Mary E. Northridge eds., 2007). Such vigilance is both chronic, in that it is "repeatedly and continually evoked in the everyday life of the minority person," and exhausting, "in that it requires the exertion of considerable energy and resources in adapting to it." Meyer (1995), *supra*, at 41. Discriminatory policies also increase the risk that external stressors will become internalized, leading to feelings of prejudice and rejection. Glenda M. Russell & Jeffrey A. Richards, *Stressor and Resilience Factors for Lesbians, Gay Men, and*

Bisexuals Confronting Antigay Politics, 31 Am. J. Community Psychol. 313, 322 (2003).

Minority stress, like all forms of chronic stress, can contribute to "serious health problems, such as heart disease, high blood pressure, diabetes, depression, anxiety disorders, and other illnesses." *Fact Sheet on Stress*, National Institute of Mental Health,http://www.nimh.nih.gov/health/publications/stress/index.shtml (last visited March 4, 2015). Chronic stress may also accelerate cellular aging. Elissa S. Epel et al., *Cell Aging in Relation to Stress Arousal and Cardiovascular Disease Risk Factors*, 31 Psychoneuroendocrinology 277, 278 (2006). For this reason, "stressors including discrimination can play a role in the onset, progression, and severity of illness." David R. Williams & Selina A. Mohammed, *Discrimination and Racial Disparities in Health: Evidence and Needed Research*, 32 J. Behav. Med. 20, 38 (2008).

It is therefore not surprising that, a formidable body of research links the stigma affecting LGB individuals—and the attendant stress that it causes—to adverse health outcomes. *See* William C. Buffie, *Public Health Implications of Same-Sex Marriage*, 101 Am. J. Pub. Health 986, 987 (2011) ("[T]he association and prevalence of [psychiatric] disorders suggest that institutionalized stigma and its attendant internalized prejudice (i.e., minority stress) stand at the forefront of this cycle, begetting higher rates of sexually transmitted diseases,

depression, suicide, and drug use—all of which, when combined with suboptimal access to healthcare and fractured family-support systems, eventually contribute to higher overall mortality as well as morbidity from various cancers, cirrhosis, hypertensions and heart disease.").

Studies have observed that as the level of stigma against LGB individuals increases (for example, through the enactment of policies specifically disadvantaging LGB individuals), so does the extent of negative health outcomes. One study found that gay men and lesbians living in states with less inclusive or protective policies were 2.5 times more likely to suffer from psychiatric disorders such as dysthymia (a form of depression) than their counterparts living in states without such policies. Mark L. Hatzenbuehler et al., *State-Level Policies and Psychiatric Morbidity in Lesbian, Gay, and Bisexual Populations*, 99 Am. J. Pub. Health 2275, 2277 (2009). Conversely, a separate study observed that LGB individuals living in communities "with high levels of anti-gay prejudice" experienced life expectancies shortened by, on average, twelve years. Mark L. Hatzenbuehler et al., *Structural Stigma and the Health of LGB Populations*, 23 Current Directions in Psychol. Sci. 127, 129 (2014).

B. Discriminatory Marriage Laws Are Stigmatizing.

This Court, as well as lower courts across the country, have linked discriminatory marriage laws to stigma. *E.g., United States v. Windsor*, 133 S. Ct. 2675, 2681 (2013) ("DOMA . . . impose[d] a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States."); *Baskin v. Bogan*, 766 F.3d 648, 658 (7th Cir. 2014), *cert. denied*, 135 S. Ct. 316, *and cert. denied sub nom*. *Walker v. Wolf*, 135 S. Ct. 316 (2014) ("[T]o exclude a couple from marriage is thus to deny it a coveted status."); *De Leon v. Perry*, 975 F. Supp. 2d 632, 646 (W.D. Tex. 2014) ("[I]t is clear that Plaintiffs suffer humiliation and discriminatory treatment under the law on the basis of their sexual orientation, and this stigmatic harm flows directly from Texas' ban on same-sex marriage."); *cf. Loving v. Virginia*, 388 U.S. 1, 12 (1967) ("Marriage is one of the 'basic civil rights of man'" that cannot be denied on the basis of "classifications so directly subversive of the principle of equality." (citation omitted)).

Researchers agree that discriminatory marriage laws, in particular, have a stigmatizing effect on LGB individuals. Institutional discrimination in marriage contributes to "a status of stigmatized 'second-class citizens,'" who are thus "at risk for minority stress and its health consequences." Riggle et al., *supra*, at 221; *see also* Gregory M. Herek, *Anti-*

equality Marriage Amendments and Sexual Stigma, 67 J. of Social Issues 413, 415–19 (2011) (anti-equality marriage amendments are a source of heightened stress for lesbians, gay men, and bisexuals). This is because the "legal validation or disapproval of one's marriage communicates whether the state and surrounding community accept a same-sex couple's identity. Prohibition of marriage for same-sex couples therefore confers upon gays and lesbians a marginalized status that is imbued with a derogatory social appraisal." Richman & Hatzenbuehler, *supra*, at 230.

Leading groups of medical and psychological professionals have therefore adopted resolutions condemning discriminatory marriage policies as stigmatizing. *Health Care Disparities in Same Sex Partner Households*, American Medical Association, AMA Policy H-65.973 (2012) ("denying civil marriage based on sexual orientation is discriminatory and imposes harmful stigma on gay and lesbian individuals and couples and their families"); *Resolution on Marriage Equality for Same-sex couples*, American Psychological Association (2011) ("[T]he denial of civil marriage, including the creation of legal statuses such as civil unions and domestic partnerships, stigmatizes same-sex relationships, perpetuates the stigma historically attached to homosexuality, and reinforces prejudice against lesbian, gay, and bisexual people."); *Position Statement on Support of Legal Recognition of Same-Sex Civil Marriage*, American Psychiatric

Association, APA Official Actions (2005) ("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.").

C. The Stigma from Discriminatory Marriage Laws Correlates with Negative Health Outcomes in LGB Populations.

Stigma is associated with a marked gap in health outcomes between LGB and heterosexual individuals. Study after study confirms that LGB individuals suffer from higher rates of depression, physical illness, and disability compared to heterosexuals.

Most notably, a higher risk of depression manifests itself early in the life of LGB individuals and follows them throughout their lifetimes. According to an Oregon-focused study, lesbian, gay, and bisexual youth were more than five times as likely to attempt suicide than their heterosexual peers (21.5% versus 4.2%). Mark L. Hatzenbuehler, *The Social Environment and Suicide Attempts in Lesbian, Gay & Bisexual Youth*, 127 Pediatrics 896, 899 (2011). A study in North Carolina found that LGB men and women were more likely than heterosexuals to report experiencing five or more

days of bad mental health in the last thirty days or to have been diagnosed with a depressive disorder. Derrick D. Matthews & Joseph G. L. Lee, *A Profile of North Carolina Lesbian, Gay, and Bisexual Health Disparities, 2011*, 104 Am. J. Pub. Health 98, 102 tbl. 12 (2014). Another study analyzed population data from ten states and found "a pattern of disparities in general health, mental health, activity limitations owing to health, and substance abuse" between LGB and straight individuals. Blosnich et al., *supra* at 4–5. Older LGB adults similarly confronted elevated risk of poor mental health compared to older heterosexual adults. Karen I. Fredriksen-Goldsen et al., *Health Disparities Among Lesbian, Gay, and Bisexual Older Adults: Results From a Population-Based Study*, 103 Am. J. Pub. Health 1802 (2013).

Studies also show higher rates of physical illness among LGB individuals. For instance, survival time after receiving a cancer diagnosis may be shorter for gay men than heterosexual men. Laura Dean et al., *Lesbian, Gay, Bisexual, and Transgender Health: Findings and Concern*, 4 J. Gay & Lesbian Med. Assoc. 101, 112 (2000). LGB individuals also exhibit a higher prevalence of physical disabilities that restrict their mobility than do heterosexuals. Fredriksen-Goldsen, *supra*, at 1802.

And emerging research points to discriminatory marriage laws in particular as being correlated with poorer mental and physical health in LGB

populations. According to one recent study, LGB individuals experienced markedly increased rates of psychiatric disorders in states that erected constitutional amendments banning same-sex marriage during the 2004–2005 elections. Mark L. Hatzenbuehler et al., *The Impact of Institutional Discrimination on Psychiatric Disorders in LGB Populations*, 100 Am. J. Pub. Health 452, 454–55 (2010). Among LGB individuals living in states enacting such bans, the prevalence of general anxiety disorder increased by more than 248%, psychiatric comorbidity by over 36%, and alcohol abuse by 42%. *Id.* LGB individuals living in states without such bans did not experience any of these spikes in adverse health outcomes. *Id.* As the American Psychological Association's resolution on marriage equality notes, "emerging evidence suggests that statewide campaigns to deny same-sex couples legal access to civil marriage are a significant source of stress to the lesbian, gay, and bisexual residents of those states and may have negative effects on their psychological well-being." *Resolution on Marriage Equality for Same-Sex Couples*, American Psychological Association (2011).

Conversely, removing barriers to same-sex marriage is associated with mental and physical health improvements for LGB individuals. In the year after Massachusetts became the first state to legalize same-sex marriage, health outcomes for LGB individuals within the state improved markedly. Mark L. Hatzenbuehler et al., *Effect of*

Same-Sex Marriage Laws on Health Care Use and Expenditures in Sexual Minority Men: A Quasi-Natural Experiment, 102 Am. J. Pub. Health 285, 289 (2012). During that time, the 1,211 gay and bisexual men surveyed experienced a 13% reduction in health care visits and a 10% reduction in health care costs. *Id.* In contrast, the health care costs of the overall Massachusetts populace increased during this same time period. *Id.*

A recent study from California compared married LGB individuals to those who were in registered domestic partnerships (RDPs) and those who were not in a legally recognized same-sex relationship. It found that respondents who were legally married or in an RDP with a same-sex partner had significantly less psychological distress than those who were not in a legally recognized same-sex relationship. Richard G. Wight et al., *Same-Sex Legal Marriage and Psychological Well-Being*, 103 Am. J. Pub. Health 339, 343–44 (2013). Perhaps most importantly, marriage was a better predictor of psychological well-being among same-sex couples than domestic partnership, leading to the conclusion that "there might be a unique positive mental health association specifically conferred by legal marriage, particularly compared with not being in any type of legally recognized relationship at all." *Id.* at 343.

In short, same-sex marriage bans impose a well-documented burden on the health of LGB individuals. The sum of peer-reviewed research on

the subject spotlights the toll these discriminatory bans take on the mental and physical well-being of the community.

II. The Significant Health Benefits of Marriage

Eliminating same-sex marriage bans would not only help mitigate the negative health effects of discrimination and stigma, but also allow individuals in same-sex relationships to avail themselves of the mental and physical health benefits that have long been associated with marriage. The results of studies conducted since the legalization of same-sex marriage in certain states are consistent with a positive association between marriage and health. Legal recognition of same-sex marriage "appeared to have the potential to offset mental health disparities between heterosexuals and LGB persons." Wight et al., *supra*, at 344. And these health benefits are yet another reason LGB individuals should not be denied the right to marry.

A. Married People Enjoy Significantly Better Health.

The right to marry confers "a dignity and status of immense import." *Windsor*, 133 S. Ct. at 2692. It also confers immense health benefits. Indeed, researchers have long recognized that "married persons are healthier than unmarried persons." Charlotte Schoenborn, U.S. Dep't of Health & Human Servs., Centers for Disease Control & Prevention, Advance Data No. 351, *Marital Status*

and Health: United States 1999–2002, at 1 (Dec. 5, 2004) ("CDC Report") (collecting sources and observing that "[m]arital status and health has been a topic of research interest for over a century"); *see also, e.g.*, U.S. Dep't Health & Human Servs., Office of Assistant Secretary for Planning & Evaluation, *The Effects of Marriage on Health: A Synthesis of Recent Research Evidence*, at 1 (2007) *available at* http://aspe.hhs.gov/hsp/07/marriageonhealth /rb.htm ("ASPE Report").

Married people enjoy better mental and physical health—and live longer—than their unmarried counterparts. Drawing on years of National Health Interview Surveys, for example, the Centers for Disease Control and Prevention concluded that married adults were healthier than unmarried adults regardless of "population subgroup (age, sex, race, Hispanic origin, education, income, or nativity) or health indicator (fair or poor health, limitations in activities, low back pain, headaches, serious psychological distress, smoking, [etc.])." CDC Report, *supra*, at 1.

Although there is some evidence that healthier people may "self-select" into marriage, the positive relationship between health and marriage can at least in part be explained by the protective effects of marriage: the fact that, for example, spouses monitor each other's health behaviors, care for each other when ill, and offer each other emotional support in times of personal hardship. Susan Averett et al., *In*

Sickness and in Health: An Examination of Relationship Status and Health Using Data from the Canadian National Public Health Survey, 11 Rev. Econ. Household 599, 601 (2012).

Today, there is an emerging consensus that married people enjoy significantly better health in part because marriage makes them healthier. *E.g.*, ASPE Report, *supra*, at 2 ("Most researchers conclude that the association between marriage and health represents a combination of the selection of healthier people into marriage and true health benefits from marriage."). Put differently, there are tangible health benefits from marriage that do not accrue to unmarried people.

i. Married people enjoy better mental health.

It is generally accepted that marriage contributes to better mental health. The evidence "consistently shows that being married reduces depression," even after controlling for baseline mental health. ASPE Report, *supra*, at 4 (collecting sources). Married people also experience smaller increases in depressive symptoms as they grow older when compared to unmarried people. *Id.*

Likewise, a wealth of empirical research has "demonstrate[d] that married individuals are better adjusted psychologically" than unmarried individuals. Erin E. Horn et al., *Accounting for the*

Physical and Mental Health Benefits of Entry Into Marriage: A Genetically Informed Study of Selection and Causation, 27 J. Fam. Psych. 30, 30 (2013).

Three recent longitudinal studies illustrate this consensus.[2] In the first study, after controlling for relevant variables, people who were continuously married throughout a six-year observation period had "a higher level of psychological well-being" than people belonging to other marital status groups. Hyoun Kim & Patrick C. McKenry, *The Relationship Between Marriage and Psychological Well-Being: A Longitudinal Analysis*, 23 J. Fam. Issues 885, 898–99, 905 (2002). Similarly, while participants who had never been married at the study's outset initially reported similar levels of depression, those who were married for the first time during the study period ultimately reported significantly lower levels of depression compared to those who had still never married six years later—even if they had begun cohabiting with a partner. *Id.* at 898–99.

---

[2] The most reliable evidence for the protective effect comes from studies using longitudinal data (i.e., researching the same subjects over time). This is because participants in longitudinal studies "serve as their own control group, and the effect of marriage is measured by comparing their outcomes before and after marriage." ASPE Report, *supra*, at 3 (describing benefits of longitudinal studies); *see also* James Robards et al., *Marital Status, Health and Mortality*, 73 Maturitas 295 (2012).

The second study found that marriage was associated with marked improvements in mental health for women in particular. Averett et al., *supra*, at 624. Even after controlling for age, education, income, health insurance, the presence of children, location, and personality, married people exhibited a "reduction in depressive symptoms, and improved health behaviors related to alcohol use." *Id*.

The third study examined the mental health of adult twin and sibling pairs throughout an eight-year period in order to control for genetic and environmental selection effects. Horn et al., *supra*, at 30–31 (describing benefits of genetically-informed research designs). The study observed that married participants had lower depression scores, drank less alcohol, and were four times less likely to report suicidal ideation than their unmarried counterparts. *Id.* at 35.

These studies and others indicate that marriage is not merely associated with better mental health—at least in part, marriage seems to be causing it.

ii. Married people enjoy better physical health.

Numerous studies have found that married people experience better physical health than their unmarried counterparts. *See generally* ASPE Report, *supra*, at 5 (observing that "[m]any studies have documented that people who marry live longer and

enjoy better physical health than those who do not marry"). Drawing on years of National Health Interview Surveys, for example, the Centers for Disease Control and Prevention observed: "Married persons [a]re healthier for nearly every measure of health—the one important exception being body weight status." CDC Report, *supra*, at 11. The measures of health on which married persons outperform unmarried persons include low back pain, headaches, physical activity limitations, self-assessed health conditions, and health-related behaviors (e.g., alcohol consumption, smoking, leisure-time physical inactivity). There appear to be at least two reasons why.

First, marriage is associated with a reduction in several leading health risk behaviors, including alcohol consumption, smoking, and illicit drug use. *See* Averett et al., *supra*, at 616; *see also* Jeremy Uecker, *Marriage and Mental Health Among Young Adults*, 53 J. Health Soc. Behavior 67, 77–80 (2012) (finding that marriage is associated with lower levels of alcohol consumption and smoking); *but see* ASPE Report, *supra*, at 3 (observing that, although "[s]tudies consistently indicate that marriage reduces heavy drinking and overall alcohol consumption," "[s]tudies of marriage and smoking reveal no consistent pattern of results"). A recent longitudinal study likewise observed that marriage is associated with consistent reductions in illicit drug use and binge drinking, particularly for young men. Greg Duncan et al., *Cleaning Up Their Act: The*

Effects of Marriage and Cohabitation on Licit and Illicit Drug Use, 43 Demography 691 (2006); *see also* ASPE Report, *supra*, at 3 (collecting sources and noting that "marriage is also associated with reduced marijuana use for young men").

Second, beyond reducing risky behavior, marriage also is associated with increased likelihood of certain health-promoting behaviors. For example, regardless of age, married insured men are more likely than non-married men with health insurance to have had a health care visit in the last year. Centers for Disease Control and Prevention, National Center for Health Statistics, *Marriage, Cohabitation and Men's Use of Preventive Health Care Services*, NCHS Data Brief No. 154, June 2014, at 2–3. Married men are also more likely to have received recommended clinical preventative services in the past year, such as blood pressure and cholesterol checks. *Id.* at 4.

Marriage is also associated with improvements in specific health outcomes. Surviving cancer is one example. Ayal Aizer et al., *Marital Status and Survival in Patients With Cancer*, 31 J. Clinical Oncology 3869, 3869 (2013) (finding that, after controlling for such relevant factors as age, sex, race, income, education, and cancer stage, married patients are less likely to die from cancer than unmarried patients). Cardiovascular disease is another: One study found that married people are less likely to suffer from it. Gerard John Molloy et

al., *Marital Status, Gender and Cardiovascular Mortality: Behavioural, Psychological Distress and Metabolic Explanations*, 69 Soc. Sci. & Med. 223, 225–26 (2009).

In sum, marriage is associated with better health generally, as well as better specific outcomes. As noted above, there are exceptions to the general correlation between marriage and better physical health, the principal one being bodyweight. Averett et al., *supra*, at 604. On balance, however, the positive associations between marriage and physical health far outweigh the negative associations.

iii. Married people enjoy longer lives.

Married people tend to live longer. That much has been documented for more than 150 years. *See, e.g.,* William Farr, *Influence of Marriage on the Mortality of French People*, *in* Transactions of the National Association for the Promotion of Social Science 1858, 504–20 (1859), *cited in* Morten Frisch & Jacob Simonsen, *Marriage, Cohabitation and Mortality in Denmark: National Cohort Study of 6.5 Million Persons Followed for Up to Three Decades (1982–2011)*, 2013 Int'l J. Epidemiology 1, 13 & n.1 (2013); *see also* Norman Johnson et al., *Marital Status and Mortality: The National Longitudinal Mortality Study*, 10 Ann. Epidemiology 224 (2000) (using data gathered from 1978 through 1985).

Longitudinal data collection studies have begun to provide an explanation for this phenomenon: Married people live longer in part because they are married. *E.g.*, Frisch & Simonsen, *supra*, at 1–20; Robert M. Kaplan & Richard G. Kronick, *Marital Status and Longevity in the United States Population*, 60 J. Epidemiology & Comm. Health 760, 760–65 (2006).

Three recent studies illustrate this emerging consensus. The first examined marital status and mortality using the U.S. National Health Interview Survey and National Death Index. Kaplan & Kronick, *supra*, at 760–61. This study found that married people had a much lower risk of death. Specifically, "[u]sing married as the reference group, those who were widowed had a 39% greater risk of mortality and those who were divorced or separated had a 27% greater chance of mortality." *Id.* at 761. But, perhaps most striking, those at greatest risk of death were individuals who never got married; they had a 158% greater risk of mortality than their married counterparts. *Id.*

The second study examined mortality in 6.5 million subjects in Denmark over thirty years using continuously updated individual-level information. Frisch & Simonsen, *supra*, at 2–3. The study found that opposite-sex married persons had consistently

lower mortality rates than unmarried, divorced, or widowed people. *Id.* at 4. [3]

The third study addressed the question of whether income or marriage has the greater impact on lifespans. Jonathan Gardner & Andrew Oswald, *How Is Mortality Affected by Money, Marriage, and Stress*, 23 J. of Health Econ. 1181 (2004). The results would be surprising to many: "[M]arriage has a more important effect on longevity than income does." *Id.* at 1204. In particular, the data show "only minor effects from economics, with income playing little role once we enter suitable controls for initial health status." *Id.* at 1182. Marriage, in contrast, has a large effect on mortality risk. As the study's authors bluntly put it, the evidence is that marriage "keeps you alive, and the effect is large." *Id.* at 1191.

In summary, married people enjoy better physical health, better mental health, and longer lives than unmarried people. The emerging conclusion is that this is because they are married. All Americans, regardless of sexual orientation, should have an equal opportunity to enjoy the many health benefits of marriage.

---

[3] Because same-sex marriage became legal in Denmark in only June 2012, limited data exist regarding mortality for same-sex married persons. Those data do not yet consistently show the same lower mortality rates as those for opposite-sex married individuals. Frisch & Simonsen, *supra*, at 17–18.

B. Cohabitation Does Not Provide Health Benefits Equal to Those of Marriage.

It is unlikely that same-sex couples who are simply cohabiting, or who have some lesser level of legal recognition than married couples (such as domestic partnerships or civil unions), can fully enjoy the health benefits of marriage, as cohabitation is not associated with the health benefits of marriage. *See, e.g.*, Averett et al., *supra*, at 604 ("While the majority of the studies . . . have focused on marriage, a few studies have also begun to examine whether similar benefits accrue to those who cohabit. . . . [I]n the U.S., cohabitors behave more like singles than married individuals."). Cohabitation does not present marriage's positive physical or mental health impacts, nor does it provide the same increase in access to health care. In short, in terms of health benefits, cohabitation and marriage are decidedly unequal.

i. Cohabitation does not provide equal mental health benefits.

Across all adult age ranges, cohabiting people exhibit more depressive symptoms than their married counterparts. *See* Susan L. Brown et al., *The Significance of Nonmarital Cohabitation: Marital Status and Mental Health Benefits Among Middle-Aged and Older Adults*, 60B J. Gerontology 1, S21-S29 (2005) (finding that cohabiting men exhibited significantly higher depression scores than

married men); Susan L. Brown, *The Effect of Union Type on Psychological Well-Being: Depression Among Cohabitors versus Marrieds*, 41 J. Health and Soc. Behav. 241, 247–51 (2000) (finding that cohabiting adults were more likely to suffer from depression than their married counterparts).

The evidence indicates that, at least in part, this difference is caused by being unmarried. For example, researchers observed that, over a six-year period, married individuals experienced significantly lower levels of depression than those who began cohabiting with a partner, "clearly indicat[ing] the advantageous effects of marriage over cohabitation in terms of psychological well-being."[4] Kim & McKenry, *supra*, at 906; *see also* Kathleen Lamb et al., *Union Formation and Depression: Selection and Relationship Effects*, 65 J. Marriage & Family 953, 960 (2003) (finding that entering into cohabitation did not reduce depression scores compared to being unpartnered); Kelly Musick & Larry Bumpass, *Re-Examining the Case for Marriage: Union Formation and Changes in Well-Being*, 74 J. Marriage Family 1, 10 (2012) (finding that moving into any union (marriage or cohabitation) increased global happiness and reduced depressive symptoms relative to remaining single, but that entering into marriage

[4] These observations held true even after controlling for age, education, number of children in the household, and level of depression at the outset of the observation period.

increased perceptions of health relative to cohabitation).

The same study also found that, while marriage was related to a *decrease* in depressive symptoms, cohabitation was not, "suggesting that the protection effects of marriage are not as applicable to cohabitation." Kim & McKenry, *supra*, at 905; *see also* Averett et al., *supra*, at 616 (finding that, unlike marriage, cohabitation was not associated with a statistically significant decrease in depression scores, and that "cohabiting women are rarely statistically distinguishable from their never-married counterparts").

Provocatively, evidence suggests that marriage causes not only better mental health but also better behavior. In the study of siblings described above, cohabiting subjects were 67% more likely than their married siblings to have exhibited "antisocial behaviors"—that is, to have committed one of ten enumerated crimes—within the past year. Horn et al., *supra*, at 35.[5] Further, "cohabiting men and women are more likely to drink and smoke regularly compared to their never-married or married counterparts." Averett et al., *supra*, at 616.

---

[5] Those ten criminal behaviors were described as "damage property, petty theft, burglary, threaten another with a weapon, sell drugs, grand theft, gang fighting, buy/sell stolen goods, and write a bad check." Horn et al., *supra*, at 33.

ii. Cohabitation does not provide equal physical health benefits.

Cohabiting adults also tend to have worse physical health than their married counterparts. *See* CDC Report, *supra*, at 6–7.[6] The Centers for Disease Control and Prevention, for example, has found that the health status and behaviors of adults living with a partner most closely resemble those of divorced or separated adults. CDC Report, *supra*, at 6–7. Cohabiting partners are more likely than their married counterparts to be in fair or poor health (rather than excellent, very good, or good health); to have low back pain; to experience headaches; or to have some type of health-related limitation on activity. *Id.* at 7.

Not only is cohabitation not equal to marriage in terms of observed health benefits, this observation holds true regardless of whether the relationship is same-sex or opposite-sex. Justin Denney et al., *Families, Resources, and Adult Health: Where Do*

---

[6] Married and cohabiting people do share one physical health characteristic: unhealthy weight outcomes. "[D]uring marriage and cohabitation men and women consistently have higher [body mass indices]" than unmarried men and women. Averett et al., *supra*, at 616. These effects are smaller for cohabiting people than their married counterparts, but still significant in comparison to their unmarried, unpartnered peers. *Id.* In terms of physical health, then, cohabitation could be said to share in the least advantageous aspects of both married and unmarried life.

Sexual Minorities Fit?, 54 J. Health & Soc. Behav. 46 (2013). For example, after adjusting for socioeconomic status: "Men and women in same- and different-sex cohabitations have higher odds of poor health than married persons." *Id.* at 57; *see also* Hui Liu et al., *Same-Sex Cohabitors and Health: The Role of Race-Ethnicity, Gender, and Socioeconomic Status*, 54 J. Health & Soc. Behav. 25, 41 (2013).

iii. Cohabitation does not provide equal access to health care.

In the United States, married adults are significantly more likely than adults in other marital status categories to have health insurance. And health insurance is the most important factor in Americans' receipt of timely, appropriate health care. Institute of Medicine, Committee on the Consequences of Uninsurance, *Coverage Matters: Insurance and Health Care* 5 (2001).

The relationship of marriage and access to health insurance is hardly surprising: "[B]y offering access to coverage through a spouse's policy[,] marriage increases the likelihood of having insurance and reduces the likelihood of becoming uninsured after a job loss or other major life event." ASPE Report, *supra*, at 4.

Yet the magnitude of the relationship is striking: In the first half of 2014, the uninsured rate for married adults was 12.6%. Michael E. Martinez &

Robin A. Cohen, *Health Insurance Coverage: Early Release of Estimates from the National Health Interview Survey, January-June 2014*, National Health Interview Survey Early Release Program 18 tbl. 9 (2014). For widowed, divorced, and never-married adults, the uninsured rate clustered around 20%. *Id.* But, for people cohabitating, it approached 30%. *Id.*

Historically, this disparity has been particularly stark for women in same-sex relationships. Julia E. Heck et al., *Health Care Access Among Individuals Involved in Same-Sex Relationships*, 96 Am. J. Pub. Health 1111, 1113 (2006). Women in same-sex relationships are 60% less likely to have health insurance, and 85% more likely to have unmet medical needs because of cost. *Id.* at 1112.

Health insurance coverage, of course, is not the equivalent of good health itself. *See* Stephen Shortell, *Bridging the Divide Between Health and Health Care*, 309 J. Am. Med. Assoc. 1121, 1121 (2013). But it is distinctly better than the alternative.

C. Same-Sex Couples Would Equally Enjoy the Health Benefits of Marriage.

Same-sex couples have the same loving, committed relationships as other couples. *See, e.g.*, Lawrence Kurdek, *What Do We Know About Gay and Lesbian Couples?*, 14 Current Directions in

Psychol. Sci. 251, 253 (2005); *see generally* Michael J. Rosenfeld, *Couple Longevity in the Era of Same-Sex Marriage in the United States*, 76 J. Marriage & Family 905 (2014). It is therefore not surprising that the available evidence indicates that same-sex couples enjoy marriage's health benefits to the same extent as opposite-sex couples. *See* Wight et al., *supra*, at 343.

"[T]he relationships of gay and lesbian partners appear to work in much the same way as the relationships of heterosexual partners do." Kurdek, *supra*, at 253. In general, the principal predictors of relationship quality are: (1) what personality traits each partner brings to the relationship; (2) how much trust each partner has in the other; (3) how partners behave toward each other (e.g., communication and conflict-resolution styles); and (4) how much support for the relationship the partners perceive from family members and friends. *Id.*

The current evidence indicates that "the extent to which relationship quality is predicted by these four kinds of variables tends to be as strong for gay and lesbian couples as it is for heterosexual couples." Kurdek, *supra*, at 253. For example, although same-sex couples often face challenges regarding perceived support from family members, the available data suggest that same-sex couples generally "resolve conflict more positively than spouses from married couples do: They argue more effectively, are less

likely to use a style of conflict resolution in which one partner demands and the other partner withdraws, and are more likely to suggest possible solutions and compromises." *Id.* (citing John Mordechai Gottman et al., *Observing Gay, Lesbian, and Heterosexual Couples' Relationships: Mathematical Modeling of Conflict Interaction*, 45 J. Homosexuality 65, 84–88 (2003)). This evidence supports the expectation that same-sex couples would equally enjoy the benefits of marriage.

* * *

The right to marry confers "a dignity and status of immense import." *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013). "This status is a far-reaching legal acknowledgment of the intimate relationship between two people." *Id.*; *cf. Lawrence v. Texas*, 539 U.S. 558, 574 (2003) ("These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment." (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992)). A fundamental freedom, the right to marry "has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness." *Loving*, 388 U.S. at 12. For same-sex couples who wish to marry, the recognition of their fundamental right will "give their lawful conduct a lawful status." *Windsor*, 133 S. Ct. at 2692. It will

also give them access to immensely important health benefits.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge this Court to reverse the judgment of the Court of Appeals.

Respectfully submitted,

SHEREE R. KANNER
KENNETH Y. CHOE
MARGIA K. CORNER
ELIZABETH C. LOCKWOOD
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004

DAVID W. SKAAR
HOGAN LOVELLS US LLP
1999 Avenue of the Stars
Suite 1400
Los Angeles, CA 90067

THOMAS CUMMINS
HOGAN LOVELLS US LLP
7930 Jones Branch Drive
Ninth Floor
McLean, VA 22102

BORIS BERSHTEYN
Counsel of Record
ROMÁN J. RODRIGUEZ
MICHAEL SPRINGER
SAM AULD
AUDREY FELDMAN
KEVIN C. HU
STEFANIE E. NEALE
SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP
4 Times Square
New York, NY, 10036
(212) 735-3000
Boris.Bershteyn@skadden.com

DANIEL BRUNER
WHITMAN-WALKER
HEALTH
1701 Fourteenth Street, NW
Washington, DC 20009

Attorneys for Amici Curiae

March 6, 2015