

NO. 75934-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

HEATHER ANDERSEN and LESLIE CHRISTIAN, et al.,

Respondents,
v.

KING COUNTY, et al.,

Appellants,
v.

STATE OF WASHINGTON,
Appellant,

And

SENATOR VAL STEVENS, et al.,

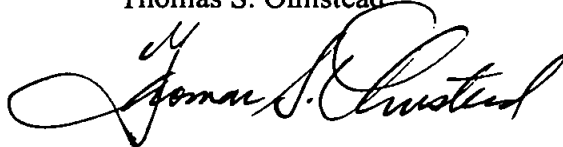
Appellants-Intervenors.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT
IN AND FOR KING COUNTY
THE HONORABLE WILLIAM L. DOWING

BRIEF OF *AMICUS CURIAE* ALLIANCE FOR MARRIAGE, INC.,
IN SUPPORT OF APPELLANTS-INTERVENORS

Thomas S. Olmstead



Attorney for *Amicus Curiae*
Alliance for Marriage

ORIGINAL

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INTEREST OF THE *AMICUS*

The Alliance for Marriage (AFM), a national non-profit 501(c)(3) organization, is dedicated to research and education to promote marriage and address the epidemic of family disintegration in the United States. AFM believes that children are best raised in marriages with both a mother and a father who are married to each other.

AFM's Board of Directors represent a highly diverse group of worldviews,¹ but all share a common belief in the fundamental truth that marriage is the union of one man and one woman. While AFM is inclusive of all viewpoints (including religious viewpoints), AFM strongly believes that human rationality and common sense are more than sufficient for understanding the importance of marriage, defined as the union of one man and one woman for both society in general and children in particular. Indeed, AFM's work is supported by a vast body of social science research that confirms that the union of a man and a woman in marriage provides a uniquely beneficial environment for raising children. AFM is thus concerned about, and interested in responding to, legal challenges to the ideal of marriage and family life, such as the present lawsuits.

¹ AFM's Board includes leaders from the Congress of Racial Equality, African Methodist Episcopal Church, National Black Leadership Roundtable, National Hispanic Christian Leadership Conference, Christian Latin Business Assoc., Mosque Cares, Queens Board of Rabbis, Korean Presbyterian Church, American Anglican Council, United Methodist Church, and the Institute For Responsible Fatherhood. (The beliefs of AFM's Board are frequently, although not necessarily, the views of their respective organizations.)

ASSIGNMENT OF ERROR

Amicus curiae adopts Intervenor-Appellants statement of the Assignments of Error, the citation of the record where the error is preserved, and the applicable standard of review.

STATEMENT OF THE CASE

Amicus curiae generally adopts the Statement of the Case submitted by Intervenor-Appellants.

SUMMARY OF THE ARGUMENT

Marriage between one man and one woman provides the optimal setting for raising children. The conclusion of a vast body of recent social science research is clear: families with both a mother and a father achieve the best outcomes in raising children along virtually all relevant measures when compared with alternative family forms. Under almost every conceivable standard—educational achievement, physical and mental health, drug and alcohol abuse, emotional and behavior problems, teenage pregnancy, depression, suicide, and criminal activity—children raised in homes with their biological mother and father who are married do better than various other family arrangements that lack the presence of either a mother, a father, or one of the biological parents. These conclusions provide substantial (indeed, compelling) reasons for the Legislature to define marriage as the union of one man and one woman.

These studies also demonstrate that mothers and fathers each play a unique and significant role in the development of children. The mother-child and father-child relationship are both necessary for optimal development. Mothers and fathers contribute to child outcomes—not just as “adults” in the home but through their unique and complementary parenting roles. It is thus perfectly rational for the state to promote (and thus privilege) marriages which provide this optimal setting for the raising of children, while at the same time allowing alternative family forms (including single parents, gay parents, and lesbian parents).

Courts have consistently recognized this important state interest in promoting marriage as the optimal setting for raising children. This recognition—that children raised in families with both a mother and father do best—in no way disparages the contribution of other family forms.² In extending benefits to a married couple (consisting of a man and woman), but not extending these benefits to a less optimal setting (e.g. a single-parent family or a household lacking either a mother or father), Washington is simply acting in accordance with social scientific evidence, legal precedent, and common sense, which recognize that children do best with both a mother and a father.

² For example, while the state would rather see a child raised by a loving single parent than by no parent at all, even the plaintiffs do not argue that a single parent must receive the same privileges as a mother and father who are married.

ARGUMENT

I. SOCIAL SCIENCE DATA CONFIRMS THE STATE'S INTEREST IN DEFINING MARRIAGE AS THE UNION OF ONE MAN AND ONE WOMAN TO PROMOTE THE OPTIMAL SETTING FOR RAISING CHILDREN

Through its marriage laws,³ Washington joins forty-eight of its sister states in seeking to advance the interest articulated by the courts that our society as a whole has a substantial interest in promoting marriage between one man and one woman as the “appropriate and desirable forum for the procreation and rearing of children.” *Singer v. Hara*, 522 P.2d 1187, 1195-97 (Wash. App. 1974) (holding that “the legal union of one man and one woman” is “clearly related to the public interest in affording a favorable environment for the growth of children”).⁴

Recent decisions from both federal and state courts have confirmed this long-standing principle that children are best raised by both a mother and a father. *See Wilson v. Ake*, 2005 U.S. Dist. LEXIS 755, at *25 (M.D. Fla. Jan. 19, 2005) (upholding federal DOMA against equal protection, due process, and Privileges and Immunities claims because “encouraging the raising of children in homes consisting of a married mother and father

³ See RCW 26.04.010(1) (“Marriage is a civil contract between a male and a female.”); RCW 26.04.020(1)(c) (“Marriages . . . are prohibited: . . . [w]hen the parties are persons other than a male and a female.”).

⁴ See Laws of 1998, ch. 1, § 1 (“It is the intent of the legislature by this act to codify the *Singer* opinion” because “[i]t is a compelling interest of the state of Washington to reaffirm its historical commitment to the institution of marriage as a union between a man and a woman as husband and wife and to protect that institution”).

is a legitimate state interest”) (citing *Lofton v. Sec’y of the Dep’t of Children and Family Servs.*, 358 F.3d 804, 819-20 (11th Cir. 2003), *cert. denied*, 2005 U.S. LEXIS 285 (Jan. 10, 2005) (“[T]he state has a legitimate interest in encouraging this optimal family structure [of] both a mother and father” for “[i]t is hard to conceive an interest more legitimate and more paramount for the state than promoting an optimal structure for educating, socializing, and preparing its future citizens.”)); *In re Kandu*, 315 B.R. 123, 146 (Bankr. W. D. Wash. Aug. 17, 2004) (upholding federal DOMA because “the promotion of marriage to encourage . . . the rearing of children by both of their biological parents is a legitimate congressional concern.”) (citing *Bowen v. Gilliard*, 483 U.S. 587, 614 (1987) (Brennan J., dissenting) (“The optimal situation for the child is to have both an involved mother and an involved father.”)); *Morrison v. Sadler*, 2005 Ind. App. LEXIS 75, at *28 (Ind. Ct. App. Jan. 20, 2005) (upholding state DOMA against Privileges and Immunities claim because “the raising of children is, and has been for a long time, recognized as one of the key purposes of marriage”); *Standhardt v. County of Maricopa*, 77 P.3d 451, 463-64 (Ariz. Ct. App. 2003), *review denied*, 2004 Ariz. LEXIS 62 (May 25, 2004) (upholding state DOMA because “the State has a legitimate interest in encouraging procreation and child-rearing within the

marital relationship, and . . . limiting marriage to opposite-sex couples is rationally related to that interest.”).⁵

As these courts and many others have observed, our society holds a deeply-rooted view that the ideal situation for the upbringing of children is in a marriage with both a father and a mother, where the child is reared by both biological parents who are bound by familial bonds both to the child and to each other. “Although social theorists from Plato to Simone de Beauvoir have proposed alternative child-rearing arrangements, none has proven enduring as the marital family structure, nor has the accumulated wisdom of several millennia of human experience discovered a superior model.” *Lofton*, 358 F.3d at 820 (citations omitted).

Recent social science data now confirms this long-standing and widely-held belief that marriage between a man and a woman is the optimal setting for raising children. These studies demonstrate that families with both a father and a mother achieve the best outcomes in raising children along virtually all relevant measures when compared with alternative family forms. These studies further establish that mothers and fathers each make unique and complimentary contributions to the health

⁵ See also *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“The State, of course, has a duty of the highest order to protect the interests of minor children.”); *Stanley v. Illinois*, 405 U.S. 645, 652 (1972) (“[P]rotect[ing] the moral, emotional, mental, and physical welfare of the minor” is a “legitimate interest[], well within the power of the State to implement.”).

and development of their children. The studies thus confirm that the Legislature has a substantial (indeed, compelling) basis for concluding that marriage between a man and a woman is the optimal setting for raising children and that each child deserves a mother and a father.

A. Children Raised by a Mother and a Father Achieve the Best Outcomes Along Virtually All Relevant Measures in Comparisons of Various Family Forms

Children raised in homes with their married biological mother and father achieve better outcomes along virtually all relevant measures. These children are (1) less likely to abuse alcohol and drugs, (2) less likely to have emotional and behavior problems, (3) less likely to suffer from depression or commit suicide, (4) less likely to engage in premarital sex or have children outside of marriage, (5) less likely to experience serious physical abuse, (6) more likely to be healthy, and (7) more likely to achieve greater educational success.

First, children raised in intact families with both a mother and father are less likely to abuse alcohol and drugs than children raised in any other family form. A 1998 study reports that children living with their biological parents are the least likely to use illicit drugs.⁶ By contrast, children living only with their father (i.e., without a mother) or with their father and stepmother are the most likely to use drugs. Other researchers

⁶ John P. Hoffmann & Robert A. Johnson, *A National Portrait of Family Structure and Adolescent Drug Use*, 60 J. OF MARRIAGE & FAM. (Aug. 1998): 633-45.

report that adolescents from intact families are less likely to abuse alcohol or drugs than adolescents from single-parent families or stepfamilies.⁷

Second, the studies also conclude that children living with their married biological parents not only do better academically but also have fewer emotional and behavioral problems than children in single-parent families, cohabiting families or stepfamilies.⁸ Similar research has found that children in intact families have fewer than half the number of emotional and behavioral problems as children of single-parent families (which lack the presence of either a mother or a father).⁹ The same data shows that children in intact families are less likely to experience developmental delay than children in single-parent families and are more likely to be in the upper half of their class academically.¹⁰

Third, studies show that children in intact families are less likely to suffer from depression or commit suicide. Adolescents who grow up with both parents in an intact marriage are the least likely to report feeling sad “A Lot” or “Most of the Time.”¹¹ A 1998 study reports that children from intact families are less likely to be suicidal than children from broken

⁷ Robert L. Flewelling & Karl E. Bauman, *Family Structure as a Predictor of Initial Substance Use and Sexual Intercourse in Early Adolescence*, J. OF MARRIAGE & FAM. (Feb. 1990): 171-81.

⁸ Elizabeth Thomson et al., *Family Structure and Child Well-Being: Economic Resources vs. Parental Behaviors*, 73 SOCIAL FORCES (September 1994): 221-42.

⁹ Nicholas Zill, *Nat'l Health Interview Survey, Child Health Supplement* (1981).

¹⁰ *Id.*

¹¹ *Nat'l Longitudinal Survey of Adolescent Health, Wave II* (1996).

homes.¹² Whereas only 9 percent of teens in intact families were suicidal, 20 percent of teens in single-parent homes and 38 percent of teens in stepfamilies were suicidal. Another survey finds that children in intact families reported less loneliness, depression, and suicidal thoughts than children raised in families without a mother or father and stepfamilies.¹³

Fourth, research shows that children who grow up in intact families are less likely to engage in premarital sex and less likely to have children outside of marriage. A 1996 national study and a 1998 UCLA study both show that children who live with their biological parents are less likely to have had sexual intercourse and to be sexually active at an earlier age than were adolescents in families without a mother or father and stepfamilies.¹⁴ Moreover, a 1998 study finds that eighth-grade girls who live with their married biological parents are one-third as likely to have a premarital birth by grade 12 than girls living in other family structures.¹⁵ Another national study similarly concludes that girls who

¹² Judith Rubenstein et al., *Suicidal Behavior in Adolescents: Stress and Protection in Different Family Contexts*, 68 AM. J. OF ORTHOPSYCHIATRY (1998): 274-84.

¹³ Nadia Garnefski & Rene F. W. Diekstra, *Adolescents from One Parent, Stepparent and Intact Families: Emotional Problems and Suicidal Attempts*, 20 J. OF ADOLESCENCE (1997): 201-08.

¹⁴ *Nat'l Longitudinal Survey of Adolescent Health, Wave II* (1996); Dawn Upchurch et al., *Gender and Ethnic Differences in the Timing of First Sexual Intercourse*, 30 FAM. PLANNING PERSP. (May/June 1998): 121-27.

¹⁵ Kristin A. Moore et al., *Nonmarital School-Age Motherhood: Family, Individual, and School Characteristics*, 13 J. OF ADOLESCENT RES. (October 1998): 433-57.

lived in intact families at age 14 are at a much lower risk for having a premarital birth than those who do not live in intact families.¹⁶

Fifth, studies also reveal that children raised by their married biological mother and father also suffer significantly less serious physical abuse. One study documents how children living with both married biological parents were fourteen times less likely to suffer serious physical abuse than children living with a single mother.¹⁷ The same study finds that children living with both married biological parents are 33 times less likely to suffer serious physical abuse than children living with their biological mother who cohabits with a man who is not the child's father.¹⁸ Moreover, according to a 1997 review of child abuse studies, children in families with only one biological parent are at higher risk for sexual abuse than those living with both their biological parents.¹⁹

Sixth, research shows that children raised by their married biological parents are healthier than children raised in other family forms. A national study concludes that children raised by both parents in intact marriages have the best health and that children raised in intact married

¹⁶ Lawrence Wu & Brian C. Martinson, *Family Structure and the Risk of a Premarital Birth*, 58 AM. SOC. REV. (April 1993): 210-32.

¹⁷ Robert Whelan, *BROKEN HOMES AND BATTERED CHILDREN* (1994).

¹⁸ *Id.*

¹⁹ Jean Giles-Sims, *Current Knowledge About Child Abuse in Stepfamilies*, 25 MARRIAGE & FAM. REV. (Mar./Apr. 1997): 215-29; see also Jocelyn Brown et al., *A Longitudinal Analysis of Risk Factors for Child Maltreatment: Findings of a 17-Year Prospective Study of Officially Recorded and Self-Reported Child Abuse and Neglect*, 22 CHILD ABUSE & NEGLECT (Nov. 1998): 1065-78.

families are fifty percent less likely to report poor health as are children in other families.²⁰ Another study finds that, when compared to children in stepfamilies and children living without a mother or father, children living with their married biological parents are less likely to suffer from asthma, to show elevated scores on health vulnerability examinations, or to have emotional and behavioral problems.²¹

Seventh, multiple studies show that children raised by their biological mother and father who are married experience greater educational success than children raised in other family forms. A national study shows that children raised by both biological parents in an intact marriage are almost fifty percent less likely to fail in school and repeat a grade when compared with children who lack the presence of either a mother or father or one of their biological parents.²² Another study concludes that children from intact married families are almost fifty percent less likely to be expelled from school as are children who do not live with both biological parents, and seventy-five percent less likely to be expelled than children who lack the presence of either a mother or father.²³

²⁰ *Nat'l Longitudinal Survey of Adolescent Health, Wave I (1995)*.

²¹ Deborah A. Dawson, *Family Structure and Children's Health and Well-Being*, 53 *J. OF MARRIAGE & FAM.* (Aug. 1991): 573-584.

²² *Id.*

²³ *Nat'l Longitudinal Survey of Adolescent Health, Wave II (1996)*.

Any one of the seven conclusions enumerated above provides an independent basis for the Legislature to define marriage as the union of one man and one woman. Taken together, this social scientific data is overwhelming and provides a substantial (indeed, compelling) reason for preserving a definition of marriage in which children have both a mother and a father. *See Morrison*, 2005 Ind. App. LEXIS 75, at *22 n.11 (“[W]e cannot ignore the existence of studies and scholarly commentary indicating . . . higher instances of physical and sexual child abuse, educational failure, and poverty, among other things.”) (citing Lynn D. Wardle, “*Multiply and Replenish*”: *Considering Same-Sex Marriage in Light of State Interests in Marital Procreation*, 24 Har. J.L. & Pub. Pol’y 771, 788-90 (2001)); *see also* George W. Dent, *The Defense of Traditional Marriage*, 15 J.L. & POL. at 594-95 (1999) (“Under every standard—educational achievement, drug use, criminal activity, physical and emotional health, social adjustment and adult earnings—children of intact marriages have fewer problems than children of broken families. . . . Not only do children need two parents; it also seems that ideally a child should have both a mother and a father.”).

B. Mothers and Fathers Perform Unique And Complementary Roles That Are Both Necessary for the Optimal Development of Children

As explained above, a vast amount of research indicates that children achieve the best outcomes on all measures when raised by their biological mother and father. It is not the case, however, that mothers and fathers play undifferentiated roles in the lives of their children. In fact, researchers have found that babies are able to distinguish whether a male or female is interacting with them as early as the age of eight weeks based on differences in style of communication and interaction.²⁴

Studies show that men and women parent differently and that these differences combine to promote optimal growth in children. According to noted child psychology expert Dr. Linda Gunsberg, “the father and the mother offer different and complementary cognitive and emotional organizations of the world to the infant.”²⁵ Indeed, psychological research shows that a child’s identification with the parent of the same sex and acceptance by the parent of the opposite sex are both crucial to the development of a child’s identity. Clinical studies observe that the triad of mother-father-child is necessary and desirable for the growth of a healthy

²⁴ Kyle Pruett, *FATHERNEED: WHY FATHER CARE IS AS ESSENTIAL AS MOTHER CARE FOR YOUR CHILD* (2000): 17-34.

²⁵ Linda Gunsberg, *Selected Critical Review of Psychological Investigations of the Early Father-Infant Relationship*, in *FATHER AND CHILD: DEVELOPMENTAL AND CLINICAL PERSPECTIVES* (Stanley H. Cath et al. eds., 1982): 65, 82. *FATHER AND CHILD* is an award-winning collection of articles by the foremost experts in child psychology, psychiatry, and psychoanalysis. All of the articles in this book share directly or implicitly the conviction that the triad of father-mother-child is necessary for the healthy emotional development of the child.

child.²⁶ Indeed, “[r]esearchers have become more aware of the subtle exchanges of identity taking place and of the mother’s and father’s part in facilitating development.”²⁷

Differences between the mother and father can be very stimulating to the infant, even those that might appear quite superficial to the adult. Even if the father and mother behave in generally similar ways, they provide contrasting images for the infant. . . . The father and mother offer the child two different kinds of persons to learn about as well as providing separate but special sources of love and support. The infant also learns that different people can be expected to fulfill different needs. For example, the infant may prefer the mother when hungry or tired and the father when seeking stimulation or more active play.²⁸

These studies confirm that a mother and father each play unique and complementary roles in a child’s healthy development.

1) The Mother-Child Relationship is Necessary for Optimal Development of Children

Mothers play a unique and significant role in the optimal development of children. Studies show that mothers contribute to child outcomes along a variety of measures not just as “adults” in the home but through a unique parenting style.

In particular, mothers excel in providing children with emotional security and in reading the physical and emotional cues of infants. Dr.

²⁶ See Richard N. Atkins, *Discovering Daddy: The Mother’s Role*, in FATHER AND CHILD, *supra* n. 25: 139, 144 (“‘Early triangulation’ serves especially to consolidate both the self-representation and the parental representation.”).

²⁷ John Munder Ross, “Preface,” in FATHER AND CHILD, *supra* n. 25: xvii, xviii.

²⁸ H. Biller, FATHERS AND FAMILIES: PATERNAL FACTORS IN CHILD DEVELOPMENT (1993): 12.

Eleanor MacCoby, Professor Emerita of Psychology at Stanford University, explains that mothers are more likely than fathers to provide warm, nurturing care for a crying infant.²⁹ Dr. MacCoby also notes that mothers tend to communicate differently with children than do fathers. Mothers tend to simplify their words and speak at a child's level, thereby facilitating immediate communication. Mothers also tend to be more descriptive, personal, and verbally encouraging.³⁰

Additionally, mothers discipline differently than fathers. Educational psychologist Dr. Carol Gilligan finds that mothers tend to emphasize sympathy, care, and help, and focus on relationships as they discipline.³¹ In contrast, fathers emphasize justice, fairness and duty, with a focus on rules. Social scientists note that it is in combination that these different styles of discipline are most effective.³²

2) The Father-Child Relationship is Necessary for Optimal Development of Children

Fathers also play a unique and significant role in the optimal development of children. Social science is clear on the value of fathers:

Fathers are far more than just “second adults” in the home. Involved fathers—especially biological fathers—bring positive benefits to

²⁹ Eleanor MacCoby, *THE TWO SEXES: GROWING UP APART, COMING TOGETHER* (1998).

³⁰ *Id.*

³¹ David Popenoe, *LIFE WITHOUT FATHER: COMPELLING NEW EVIDENCE THAT FATHERHOOD AND MARRIAGE ARE INDISPENSABLE FOR THE GOOD OF CHILDREN AND SOCIETY* (1996): 146 (citing Carol Gilligan).

³² *Id.*

their children that no other person is likely to bring. They provide protection and economic support and male role models. They have a parenting style that is significantly different from that of mothers, and the difference is important in healthy child development. According to the evidence, fathers make important contributions to the children's intellectual competence, prosocial and compassionate behavior, and psychological well-being.³³

The unique contributions of fathers are illustrated most vividly by the devastating consequences associated with fatherless families. Families without fathers are associated with dramatic increases in youth violence, suicide, crime, and sexual abuse.³⁴ One study even concludes that child health is at greater risk when children are raised without a father.³⁵

Significant evidence also exists showing that income alone does not account for the significant differences in outcomes between children of fatherless families and children of intact families. Dr. Sara McLanahan and Dr. Gary Sandefur conclude that poverty accounts for only about half of the differences in child behavior and the other half is explained by not living with both a mother and a father.³⁶ Indeed, when income is held constant, young people in fatherless families are twice as likely to be

³³ David Popenoe, *LIFE WITHOUT FATHER*, *supra* n. 31, 163.

³⁴ David Blankenhorn, *FATHERLESS AMERICA* (1995): 25-48 and empirical sources cited at 240-51; *see also* Steven E. Rhoads, *TAKING SEX DIFFERENCES SERIOUSLY* (2004): 79-85.

³⁵ James Q. Wilson, *THE MARRIAGE PROBLEM: HOW OUR CULTURE HAS WEAKENED FAMILIES* (2002): 9 (citing Nicholas Eberstadt, *PROSPEROUS PAUPERS & OTHER POPULATION PROBLEMS* (2000): 33-50).

³⁶ Sara McLanahan & Gary Sandefur, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS* (1994): 95.

incarcerated as those living with both a mother and a father.³⁷ The same data shows that children with stepfathers do not fare any better.³⁸ These results point to the importance of a child's living not just with any two parental figures, but actually living with his or her biological father, as well as his or her biological mother. *See Lehr v. Robertson*, 463 U.S. 248, 262 (1983) ("significance of the biological connection is that it offers the natural father an opportunity [to] make uniquely valuable contributions to the child's development").

C. Same-sex Parenting Studies Do Not Affect the Legislature's Conclusion

Any alternative studies which plaintiffs may cite to the contrary do not change the conclusion that the Legislature is justified in defining marriage as the union of a man and a woman to promote the optimal setting for raising children. As an initial matter, most (if not all)

³⁷ Cynthia C. Harper & Sara S. McLanahan, "Father Absence and Youth Incarceration," presented to the Am. Soc. Assoc. (Aug. 1998); *see also* Amy Conseur et al., *Maternal and Perinatal Risk Factors for Later Delinquency*, 99 PEDIATRICS (1997): 785-90.

³⁸ *Id.* Indeed, researchers in several studies have found that the rate of violent crime is highly correlated with family structure. *See* Robert J. Sampson, *Neighborhood and Crime: The Structural Determinants of Personal Victimization*, 22 J. OF RES. IN CRIME AND DELINQ. (1985): 7-40; Robert J. Sampson, *Neighborhood Family Structure and the Risk of Criminal Victimization*, in THE SOCIAL ECOLOGY OF CRIME (J. Byrne and Robert Sampson, eds., 1986): 25-46; D.R. Smith & G.R. Jarjoura, *Social Structure and Criminal Victimization*, 25 J. OF RES. IN CRIME AND DELINQ. (1988): 27-52; Steven E. Rhoads, *TAKING SEX DIFFERENCES SERIOUSLY* (Encounter Books 2004): 147. Another study found the proportion of youth charged with juvenile offenses who were not living in a husband-wife family was larger than the comparable proportion of youth charged with juvenile offenses who were living in a husband-wife family. *See* R. Chilton, *Family Disruption, Delinquent Conduct and the Effect of Subclassification*, 37 AM. SOC. REV. (1972): 93, 95.

homosexual parenting studies are flawed because of critical methodological defects. But even if these studies did not have serious methodological flaws (which they do), the Legislature acts within its proper constitutional sphere by examining studies, weighing evidence, and then enacting laws based on its findings. If the enacted law has a rational and substantial justification—e.g., a justification based on social scientific evidence—courts should not “second-guess” the legislative decision.

Critical methodological flaws have been identified in most (if not all) studies advocating the supposed equivalence of homosexual parenting. Even favorable reviews of the same-sex parenting research acknowledge:

There are no studies of child development based on random, representative samples of such families. Most studies rely on small-scale, snowball and convenience samples drawn primarily from personal and community networks or agencies. Most research to date has been conducted on white lesbian mothers who are comparatively educated, mature, and reside in relatively progressive urban centers, most often in California or the Northeastern states.

Judith Stacey & Timothy Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 AM. SOC. REV. 159, 166 (2001) (emphasis added).³⁹

Indeed, there are no studies directly comparing children raised by two gay or lesbian parents with children raised by a mother and father.

³⁹ See also Robert Lerner & Althea Nagai, NO BASIS: WHAT THE STUDIES DON'T TELL US ABOUT SAME-SEX PARENTING 3 (2001) (review of homosexual parenting studies “found at least one fatal research flaw” in each one, and thus, “no generalization can reliably be made based on any of these studies”).

Perhaps the most thorough critique of homosexual parenting studies was prepared by Dr. Steven Nock, a sociologist at the University of Virginia, who was asked to review several hundred studies as an expert for the Attorney General of Canada in *Halpern v. Att'y General of Canada*.⁴⁰ After reviewing the studies, Professor Nock concluded:

Through this analysis I draw my conclusions that 1) all of the articles I reviewed contained at least one fatal flaw of design or execution; and 2) not a single one of those studies was conducted according to general accepted standards of scientific research.⁴¹

The Legislature surely acts within the confines of the Constitution in accepting the vast body of social scientific research supporting marriage between a man and a woman (see Part I.A., *supra*), while rejecting studies that have not been conducted with “random, representative samples” or according to “general accepted standards of scientific research,” and that each contain “at least one fatal research flaw.”

However, even assuming the existence and validity of competing studies, the Legislature is justified in weighing conflicting evidence and relying on one set of studies over another because this is exactly the inquiry for which the Legislature is responsible. See *Turner Broad. Sys., Inc. v. F.C.C.*, 520 U.S. 180, 199 (1997) (plurality opinion) (“The Constitution gives to Congress the role of weighing conflicting evidence

⁴⁰ Case No. 684/00 (Ont. Super. Ct. of Justice 2000).

⁴¹ Nock Aff. ¶ 3, *Halpern*, Case No. 684/00 (Ont. Sup. Ct. of Justice).


in the legislative process.”); *see also Morrison*, 2005 Ind. App. LEXIS 75 107151, at *28 (“[I]t is quintessentially a task for the legislature to consider the weight to be assigned to these various studies, especially in light of the existence of some criticism of them and the relative novelty of the same-sex family structure.”). Indeed, as a Washington federal judge recently stated in upholding the federal DOMA: “It is within the province of Congress, not the courts, to weigh the evidence and legislate on such issues [T]his Court cannot say that DOMA’s limitation of marriage to one man and one woman is wholly irrelevant to the achievement of the government’s interest.” *In re Kandu*, 315 B.R. at 146.

CONCLUSION

For the foregoing reasons, *amicus curiae* Alliance for Marriage respectfully requests that this Court preserve the Legislature’s definition of marriage as the union of one man and one woman.

Respectfully submitted,

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