

IN THE SUPREME COURT OF THE STATE OF OREGON

MARY LI and REBECCA KENNEDY;  
STEPHEN KNOX, M.D., and ERIC  
WARSHAW, M.D.; KELLY BURKE and  
DOLORES DOYLE; DONNA POTTER  
and PAMELA MOEN; DOMINICK  
VETRI and DOUGLAS DEWITT;  
SALLY SHEKLOW and ENID LEFTON;  
IRENE FARRERA and NINA  
KORICAN; WALTER FRANKEL and  
CURTIS KIEFER; JULIE WILLIAMS  
and COLEEN BELISLE; BASIC RIGHTS  
OREGON; and AMERICAN CIVIL  
LIBERTIES UNION OF OREGON,

Plaintiff-Respondents, Cross-  
Appellants,

and

MULTNOMAH COUNTY,

Intervenor-Plaintiff-  
Respondent, Cross-  
Appellant,

v.

STATE OF OREGON; THEODORE  
KULONGOSKI, in his official capacity as  
Governor of the State of Oregon; HARDY  
MYERS, in his official capacity as  
Attorney General of the State of Oregon;  
GARY WEEKS, in his official capacity as  
Director of the Department of Human  
Services of the State of Oregon; and  
JENNIFER WOODWARD, in her official  
capacity as State Registrar of the State of  
Oregon,

Defendants-Appellants,  
Cross-Respondents,

v.

DEFENSE OF MARRIAGE  
COALITION; CECIL MICHAEL  
THOMAS; NANCY JO THOMAS; DAN  
MATES; and DICK JORDAN  
OSBORNE,

Intervenors-Defendants-  
Appellants, Cross-  
Respondents.

SC No. S51612

CA No. 124877

Multnomah County Circuit Court  
No. 0403-03057

BRIEF OF AMICI CURIAE THE  
JUVENILE RIGHTS PROJECT, INC.;  
THE NATIONAL ASSOCIATION OF  
SOCIAL WORKERS; THE OREGON  
CHAPTER OF THE NATIONAL  
ASSOCIATION OF SOCIAL  
WORKERS; OPEN ADOPTION &  
FAMILY SERVICES, INC.; THE  
OREGON PSYCHIATRIC  
ASSOCIATION; AND THE OREGON  
PSYCHOLOGICAL ASSOCIATION  
IN SUPPORT OF PLAINTIFFS-  
RESPONDENTS, CROSS-  
APPELLANTS

October 2004

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Brief of Amici Curiae re the Judgment of the Circuit Court for  
Multnomah County  
The Honorable Frank Bearden, Judge

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Amici curiae the Juvenile Rights Project, Inc.; the National Association of Social Workers; the Oregon chapter of the National Association of Social Workers; Open Adoption & Family Services, Inc.; and the Oregon Psychological Association present this brief in support of plaintiffs' claim that Oregon's marriage statutes violate Article I, section 20, of the Oregon Constitution, by extending unequal privileges and immunities based on sex and sexual orientation.

## **I. INTEREST OF AMICI CURIAE**

### **A. The Juvenile Rights Project, Inc.**

The Juvenile Rights Project, Inc. ("JRP") is a nonprofit law firm that represents thousands of Oregon children each year. JRP lawyers advocate on behalf of children who are involved in the child welfare and juvenile justice systems. Among its clients are many children who are members of gay and lesbian biological, foster, and adoptive families. JRP also represents gay and lesbian teenagers. It is JRP's practice, as it is the practice of the juvenile court and the Oregon Department of Human Services, not to discriminate against gay and lesbian families. Marriage has long been recognized as a factor that stabilizes families and provides them with essential legal recognition and respect.

### **B. The National Association of Social Workers; The Oregon Chapter of the National Association of Social Workers.**

The National Association of Social Workers ("NASW"), is the world's largest association of professional social workers, with more than 153,000 members in 56 chapters throughout the United States and abroad. Founded in 1955 from a merger of seven predecessor social work organizations, NASW is devoted to promoting the quality and effectiveness of social work practice, advancing the knowledge base of the social work profession, and improving the quality of life through utilization of social work knowledge and skills. The Oregon chapter of NASW has more than 1,700 members. NASW and its Oregon chapter affirm its commitment to work toward full social and legal acceptance and recognition of lesbian, gay, and bisexual people as stated in NASW's policy statement, Lesbian, Gay, and Bisexual Issues: "To this end, NASW

supports legislation, regulation, policies, judicial review, political action \*\*\* and any other means necessary to establish and protect the equal rights of all people without regard to sexual orientation. NASW is committed to working toward the elimination of prejudice and discrimination both inside and outside the profession.”

**C. Open Adoption & Family Services, Inc.**

Open Adoption & Family Services, Inc. (“OA&FS”) is a private, nonprofit adoption agency with a progressive approach to building healthy families. It supports birth parents in making decisions about parenthood in an atmosphere of dignity and respect. When the choice is adoption, OA&FS facilitates child-centered open adoptions. OA&FS assists birth parents and adoptive parents as they create healthy, long-term relationships that address the ongoing needs of the child.

**D. The Oregon Psychiatric Association.**

The Oregon Psychiatric Association (“OPA”) is a nonprofit professional association existing to foster the science and progress of psychology and to encourage the maintenance of high professional standards. Representing physicians in Oregon who specialize in psychiatry, the OPA has an interest in conveying to the court information within its professional expertise that is relevant to undermining discriminatory laws that are harmful to our members and the patients we serve.

**E. The Oregon Psychological Association.**

The Oregon Psychological Association is a professional association whose purpose is to advance psychology as a science and a profession in order to promote human knowledge and welfare, to foster and maintain high standards of practice, and to make information available about psychology.

## **II. STATEMENT OF THE CASE**

**A. Relevant Facts.**

This matter is being addressed on stipulated facts, declarations of fact, and cross-motions for partial summary judgment. Plaintiff couples Mary Li and Rebecca Kennedy; Stephen Knox,

M.D., and Eric Warshaw, M.D.; Kelly Burke and Dolores Doyle; and Donna Potter and Pamela Moen each have children whom they are raising (“plaintiff couples”). Throughout their relationships, each member of the plaintiff couples has jointly supported his or her partner and their children through work inside and outside of the home, has nurtured and cared for his or her partner and their children, has fostered and created family traditions and legacies, and has planned for the future of his or her family.

**B. Summary of Argument.**

Plaintiff couples, like millions of other gay and lesbian citizens nationwide, are in committed, long-term relationships in which they are raising children. Despite these facts, plaintiff couples are denied the benefits and protections of the marriage law, because they have no access to the civil institution of marriage.

The justifications advanced by opponents of marriage equality do not bear up to scientific examination. On the contrary, research demonstrates that gay and lesbian couples form relationships that are similar in kind and quality to those of heterosexual couples. Similarly, the child-rearing outcomes in families headed by gay and lesbian couples are indistinguishable from those of their heterosexual counterparts.

Ironically, the denial of civil marriage protections to gay and lesbian couples is more likely to lead to negative outcomes than to positive ones. Marriage provides social and economic support and stability to relationships. Family stability—unlike parental sexual orientation—correlates with child-rearing success. Children raised in homes headed by an unmarried couple are denied access to all the social benefits, economic benefits, and other civil protections of marriage.

### **III. ARGUMENT**

**A. Introduction.**

An estimated six million to 14 million children are being raised in the United States by gay or lesbian parents. *Baker v. State*, 744 A2d 864, 881 (Vt 1999). Gay and lesbian couples “choose to become parents for many of the same reasons heterosexual adults do. The desire for

children is a basic human instinct and \* \* \* may satisfy people’s desire to provide and accept love and nurturing from others \* \* \*.” Ellen C. Perrin et al., “Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents,” 109 *Pediatrics* 341, 343 (2002) (“*Pediatric Report*”);<sup>1</sup> *see also Goodridge v. Department of Public Health*, 798 NE2d 941, 963 (Mass 2003) (“These couples \* \* \* have children for the reasons others do—to love them, to care for them, to nurture them.”). To that end, gay and lesbian couples, like many opposite-sex couples, pursue having children and raise their children in a variety of ways, such as through adoption, artificial insemination or *in vitro* fertilization, foster care, or custody of a child from a previous relationship. (*See* Croteau Decl. ¶ 4; Johnson Decl. ¶ 6.)

Research consistently demonstrates that family stability is far more important to the well-being of children than is the sexual orientation of their parents. Permitting same-sex couples to marry will foster and encourage stability in their relationships. According to the American Academy of Pediatrics, the actual keys to positive child-rearing outcomes are the quality of the parent-child relationship and the quality of the parents’ own relationship.

“Children in all family constellations have been described by parents and teachers to have more behavioral problems when parents report more personal distress and more dysfunctional parent-child interactions. In contrast, children are rated as better adjusted when their parents report greater relationship satisfaction, higher levels of love, and lower interparental conflict regardless of their parents’ sexual orientation. Children apparently are more powerfully influenced by family processes and relationships than by family structure.” *Pediatric Report, supra*, at 343.

However, “the task of child rearing for same-sex couples is made infinitely harder by their status as outliers to the marriage laws.” *Goodridge*, 798 NE2d at 963.

Plaintiff couples are parents raising children. These children have absolutely no access to the benefits and family stability civil marriage engenders, because plaintiff couples are forbidden to wed. To the extent that marriage as an institution serves the state’s interest in the protection of

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<sup>1</sup> Available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;109/2/341>.

children, that interest can be fully realized only by allowing committed same-sex couples to marry, and not by excluding them and their children from the benefits and obligations of the marriage law.

**B. Gays and Lesbians Enter into Stable Relationships Similar to Those of Heterosexual Couples.**

Despite the prohibitions against same-sex marriage, and despite long-standing opprobrium endured by gays and lesbians, the majority of gays and lesbians enter into long-term relationships. See Lawrence A. Kurdek, “Lesbian and Gay Couples” in *Lesbian, Gay, Bisexual Identities over the Lifespan: Psychological Perspectives* 243, 243 (A.R. D’Augelli & C.J. Patterson eds., 1995). A recent study by University of Virginia psychology professor Charlotte Patterson reports that “many if not most” gays and lesbians live in stable, committed, long-term relationships, because they “desire for an enduring love relationship with a partner of the same gender.” Charlotte J. Patterson, “Family Relationships of Lesbians and Gay Men,” 62 *J Marriage & Fam* 1052, 1053 (2000) (“*Family Relationships*”).

One study found that 88 percent of gay male couples and 78 percent of lesbian couples remained together over a four-year period. See Lawrence A. Kurdek, “Relationship Stability and Relationship Satisfaction in Cohabiting Gay and Lesbian Couples: A Prospective Longitudinal Test of the Contextual and Interdependence Models,” 9 *J Soc & Pers Relationships* 125, 132 (1992). Another study found that 86 percent of gay male couples and 84 percent of lesbian couples remained together over the five-year course of the study. Lawrence A. Kurdek & J. Patrick Schmitt, “Relationship Quality of Partners in Heterosexual Married, Heterosexual Cohabiting, and Gay and Lesbian Relationships,” 51 *J Personality & Soc Psychol* 711, 718 (1986) (“*Relationship Quality*”).

In another study, among couples that had been together for less than two years, it was revealed that 17 percent of unmarried heterosexual couples had separated. Among gay and lesbian couples, all unmarried, of course, 16 percent of gay male couples and 22 percent of lesbian couples had separated. Philip Blumstein & Pepper Schwartz, *American Couples* 307-08

(1983). Even these modest distinctions disappeared among couples that had been together for 10 years: among those couples, the breakup rates were only 4 percent of gay men, 6 percent of lesbians, and 4 percent of married couples. *Id.* In effect, there was no difference in durability between same-sex and opposite-sex relationships.

The duration of the relationships of the plaintiff couples in this action mirrors the research on the stability of the relationships of same-sex couples. Dominick Vetri and Douglas DeWitt have been in a committed, loving relationship since 1978; Walter Frankel and Curtis Kiefer since 1981; Kelly Burke and Dolores Doyle since 1987; Sally Sheklow and Enid Lefton since 1987; Irene Farrera and Nina Korican since 1992; Donna Potter and Pamela Moen since 1990; Stephen Knox, M.D., and Eric Warshaw, M.D., since 1993; Julie Williams and Coleen Belisle since 1999; and Mary Li and Rebecca Kennedy since 2000.

Not only are gay and lesbian relationships stable in terms of duration, but social scientists also find “no differences as a function of sexual orientation on any of the measures of relationship quality.”<sup>2</sup> *Family Relationships, supra*, at 1053 (surveying literature). For example, a leading expert on relationships recently concluded a five-year study of 236 married heterosexual couples, 66 gay male couples and 51 lesbian couples. Lawrence A. Kurdek, “Relationship Outcomes and Their Predictors: Longitudinal Evidence from Heterosexual Married, Gay Cohabiting, and Lesbian Cohabiting Couples,” 60 *J Marriage & Fam* 553 (1998). Kurdek’s findings demonstrated a remarkable degree of consistency across all relationships, regardless of sexual orientation. *Id.* at 564. In other words, each of the three groups enjoyed

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<sup>2</sup> Opponents have claimed that there is increased violence in same-sex relationships. To the contrary, the most recent Department of Justice statistics reveal that significantly fewer women who had lived with another woman as part of a couple (11 percent) experienced rape, physical assault, or stalking by their partner than did women who had married or lived with a man (21.7 percent). See P. Tjaden & N. Thonnes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey*, U.S. Department of Justice, National Institute of Justice and Centers for Disease Control and Prevention (July 2000). The same study concluded that gay men are no more likely than heterosexual men to perpetrate domestic violence.

comparable levels of relationship satisfaction at the beginning of the study and reported similar changes in relationship quality during the five-year period.<sup>3</sup> *Id.*; see also *Relationship Quality*, *supra*, at 718 (in study of married couples, unmarried heterosexual couples, and gay and lesbian couples, authors found that “[t]he most striking finding regarding the correlates of relationship quality was the consistency obtained across the four types of partners”); Sally M. Duffy & Caryl E. Rusbult, “Satisfaction and Commitment in Homosexual and Heterosexual Relationships,” 12 *J Homosexuality* 1, 21 (winter 1985/86) (“The close relationships of lesbians, gay men, and heterosexual women and men are really quite similar, driven by similar general forces”); L. A. Peplau & Susan D. Cochran, “A Relationship Perspective on Homosexuality” in *Homosexuality/Heterosexuality* 321, 333-34 (David P. McWhirter et al. eds., 1990) (no differences with respect to love of partner, liking of partner, and relationship satisfaction).

**C. Allowing Same-Sex Marriage Will Increase the Stability of Same-Sex Couples’ Relationships.**

The observed resilience of gay and lesbian couples’ relationships is particularly striking in light of the fact that they are not permitted to marry and in light of the other disadvantages imposed upon the formation of such relationships in our society. Social scientists have found that institutional forces that promote the stability of a relationship further its barriers to ending a relationship. See, e.g., *Relationship Quality*, *supra*, at 717. These barriers are a significant factor affecting the level of commitment of people in relationships. *Id.* Married partners report the most barriers to leaving their relationships. *Id.*

Gay and lesbian couples encounter few legal, religious, or social barriers to leaving their relationships. *Id.* Gay and lesbian couples generally report less social support for their

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<sup>3</sup> A recent study of gay and lesbian couples conducted by the Gottman Institute of the University of Washington replicated Kurdek’s research, again finding that relationship satisfaction and quality are the same across gay, lesbian, and heterosexual couples. See The Gottman Institute, “12-Year Study of Gay & Lesbian Couples” (2002) (summary abstract of research findings to be published in *The Journal of Homosexuality*), available at <http://www.gottman.com/research/projects/gaylesbian/index.php>.

relationships from family and society than do heterosexual couples. *See, e.g., id.* at 718. Unfortunately, stigma based on sexual orientation has persisted in our social history. *See* Gregory M. Herek, “The Psychology of Sexual Prejudice,” 9 *Current Directions in Psychol Sci* 19, 21 (2000); Stephen F. Morin & Esther Rothblum, “Removing the Stigma,” 46 *Am Psychologist* 947, 948 (1991). The denial of the legitimacy of same-sex couples’ relationships—for example, by excluding them from social institutions such as marriage—is “perhaps the most pervasive, persistent, and profound stressor for lesbian and gay partnerships.” Janis S. Bohan, *Psychology and Sexual Orientation—Coming to Terms* 196 (1996). One commentator observed that “[t]he message to these individuals was that marital-type commitments were not expected, \* \* \* recognized or protected.” Michael S. Wald, “Same-Sex Couples: Marriage, Families, and Children,” Stanford Law School, Public Law and Legal Theory Working Paper No. 6, at 10 (Dec. 1999) (“*Same-Sex Couples*”).

Same-sex partners who are married will be more likely to receive the type of social support that is given by parents, grandparents, friends, and neighbors to married couples. *See id.* at 9-10. Indeed, married people are reportedly healthier, live longer, and experience less poverty than their nonmarried counterparts. *See* Leatha Lamison-White, “Poverty in the United States: 1996,” Bureau of the Census, Current Population Reports, Series P60-198, at viii (Sept. 1997). No recognized body of social science predicts that any negative consequences to individuals or society would result from same-sex marriage.<sup>4</sup> Amici are not aware of any research to suggest that the many benefits of marriage would not accrue to same-sex couples to the same extent that

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<sup>4</sup> Some opponents of marriage for same-sex couples argue that because same-sex relationships resemble “cohabiting” relationships, they are less stable than marital relationships. Given the current unavailability of legal marriage to gay and lesbian couples, there is no logical basis on which to compare heterosexual couples who can marry, but choose not to, with same-sex couples who live in committed relationships and seek to marry, but cannot. In any event, the vague term “cohabitation” is not useful in any scientific inquiry, because it embraces a wide range of dissimilar relationships and living-together arrangements, including people who ultimately plan to marry their partners, committed gay and lesbian couples who do not have the option to marry, roommates, people who have been previously married and divorced, and people who plan to live together indefinitely but not marry.



such benefits have accrued to heterosexual couples. In sum, the underlying social structure of marriage that benefits heterosexual couples would benefit same-sex couples in the same way.

**D. Not Permitting Same-Sex Couples to Marry Deprives Children of the Protections of Marriage.**

To the extent that the state's interest in child rearing favors parents in the kind of durable, committed relationships traditionally defined by marriage, exclusion of same-sex parents from marriage undermines such a purpose. Marriage, by virtue of benefits conferred and obligations imposed, reinforces parents' commitment to each other and supports their relationship. The withholding of these supports harms both same-sex parents and their children. Marriage is at the core of our health care, pension, and other social safety net systems. As the court in *Baker* observed, "[t]he laudable governmental goal of promoting a commitment between married couples to promote the security of their children and the community as a whole provides no reasonable basis for denying the legal benefits and protections of marriage to same-sex couples, who are no differently situated with respect to *this goal* than their opposite-sex counterparts." 744 A2d at 884 (emphasis in original).

The American Academy of Pediatrics has advised that children of gays and lesbians need and deserve the same permanence and security in parental relationships as do the children of opposite-sex parents. *Pediatric Report, supra*, at 339. The fact that parental breakup can be a difficult, and often destructive, experience for children is not seriously disputed. Marriage will fortify committed relationships between parents of the same sex and thereby enhance the stable caretaking, permanence, and security that come from having two available parents. The Supreme Judicial Court of Massachusetts recognized the legitimacy of this line of reasoning:

“While the enhanced income provided by marital benefits is an important source of security and stability for married couples and their children, those benefits are denied to families headed by same-sex couples. \* \* \* While the laws of divorce provide clear and reasonably predictable guidelines for child support, child custody, and property division on dissolution of a marriage, same-sex couples who dissolve their relationships find themselves and their children in the highly unpredictable terrain of equity jurisdiction.” *Goodridge*, 798 NE2d at 963.

The court further cautioned that “[e]xcluding same-sex couples from civil marriage will not make children of opposite-sex marriages more secure, but it does prevent children of same-sex couples from enjoying the immeasurable advantages that flow from the assurance of ‘a stable family structure in which children will be reared, educated, and socialized.’” *Id.* at 964 (quoting Cordy, J., dissenting, 798 NE2d at 995). To the extent that the legal protections and obligations of civil marriage are designed, at least in part, to support and fortify committed relationships, same-sex partners, and ultimately the children of their relationships, will benefit similarly from the same protections.<sup>5</sup>

**E. Not Permitting Same-Sex Couples to Marry Continues to Impose a Damaging Social Stigma on Their Children as “Illegitimate.”**

Although indifferent to the question of whether married people procreated, traditional marriage law did demonstrate a state concern that procreating people should marry. To a large extent, the penalties for procreating out of wedlock were visited on the resulting children rather than on the parents. The English common law, and early American law, distinguished children born in wedlock (lawful heirs) from children born out of wedlock (“filius nullius”—the son of no one). *State v. McDonald*, 59 Or 520, 526, 117 P 281 (1911) (citing Blackstone (Lewis’ ed) 455, 459).

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<sup>5</sup> The court in *Goodridge* recognized this effect:

“Where a married couple has children, their children are also directly or indirectly, but no less auspiciously, the recipients of the special legal and economic protections obtained by civil marriage. Notwithstanding the \* \* \* strong public policy to abolish legal distinctions between marital and nonmarital children in providing for the support and care of minors, the fact remains that marital children reap a measure of family stability and economic security based on their parents’ legally privileged status that is largely inaccessible, or not as readily accessible, to nonmarital children. Some of these benefits are social, such as the enhanced approval that still attends the status of being a marital child. Others are material, such as the greater ease of access to family-based State and Federal benefits that attend the presumption of one’s parentage.” *Id.* at 956-57 (citations omitted).

Not surprisingly, then, Oregon has a history of treating illegitimate children as being less worthy of the state's protection. An illegitimate child was regarded as "a child of nobody" and could not be the heir of anyone. *Thom v. Bailey*, 257 Or 572, 580, 481 P2d 355 (1971) (citing *McDonald*, 59 Or at 526). Illegitimate children were barred from inheriting from their fathers until 1957. *Id.*

This invidious distinction among children was derived from premodern times, when "the honor of a line, the integrity of an inheritance, or the age and permanence of a name were more important than parents' private relationships with their children." Tamara K. Hareven, *Families, History and Social Change* 5 (2000) (quoting Philippe Aries, *Centuries of Childhood* 364 (1962)). It has no vitality today.<sup>6</sup> In 1976, the U.S. Supreme Court declared unconstitutional an Illinois statute discriminating against illegitimate children's claims to intestate inheritance from their fathers. *Trimble v. Gordon*, 430 US 762, 776, 97 S Ct 1459, 52 L Ed 2d 31 (1977).

Oregon has led the way in removing from children the burdens of illegitimacy. In interpreting the state constitution, this Court has observed that all children are entitled to equal privileges and immunities before the law, regardless of the circumstances of their births. *See* Or Const, Art I, § 20; *State ex rel Adult & Fam. Ser. v. Bradley*, 295 Or 216, 219-20, 666 P2d 249 (1983). "Our laws have made steady progress toward eliminating the legal disabilities under which illegitimate children have labored." *Bradley*, 295 Or at 223. Our state has a continuing interest in removing from children the potential stigma of illegitimacy. That interest is undermined by the application of marriage laws to exclude same-sex parents from wedlock.

As the court said in *Baker*, 744 A2d at 882:

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<sup>6</sup> The exclusion from marriage of same-sex couples, whose sexual relations, by definition, do not lead to procreation, could not have been designed in any event to control extramarital procreation. "[T]he State cannot explain how the failure of *opposite-sex* couples to accept responsibility for the children they create relates at all to the exclusion of same-sex couples from the benefits of marriage." *Baker*, 744 A2d at 911 (Johnson, J., concurring in part and dissenting in part) (emphasis in original).

“[T]o the extent that the state’s purpose in licensing civil marriage was, and is, to legitimize children and provide for their security, the statutes plainly exclude many same-sex couples who are no different from opposite-sex couples with respect to these objectives. If anything, the exclusion of same-sex couples from the legal protections incident to marriage exposes *their* children to the precise risks that the State argues the marriage laws are designed to secure against.”

The traditional preference for legitimate children, now obsolete, and the contemporary interest in the welfare of nonmarital children are consistent only with removing the impediments to marriage of same-sex parents. Plaintiff couples, along with thousands of other gay and lesbian parents, cannot raise their children in wedlock. Serial divorcees, prisoners, and even registered sex offenders are not denied this civil right. Oregon’s current application of the marriage law compels gay and lesbian parents to raise their children under the residual stigma associated with illegitimacy. Just as plaintiffs seek to marry to avoid having their relationships treated as substandard by their government, their children have an “‘identifiable interest in not being treated by [their] government as \* \* \* second-class person[s].’” *Lowell v. Kowalski*, 405 NE2d 135, 139 (Mass 1980) (citation omitted).

**F. Children Raised by Gay and Lesbian Parents Fare as Well on All Measures of Well-Being, Development, and Adjustment as Children Raised by Heterosexual Parents.**

Despite the lack of economic protections and social support that the children of lesbian and gay couples endure, these children fare as well as children raised by heterosexual parents in terms of their general health and well-being. Like the courts in *Goodridge* and *Baker*, this court should not entertain any notion that children are better off with different-sex parents than with same-sex parents. *Goodridge*, 798 NE2d at 963; *Baker*, 744 A2d at 884-85. There is no valid scientific basis for such a conclusion. Every medical, psychological, and child-welfare organization to have addressed the topic has concluded what plaintiff couples know from their own family experiences: children of same-sex parents are as healthy, happy, and well adjusted as their peers. These experts have meticulously examined the social science—more than 50 peer-reviewed studies conducted over 25 years—to reach a (rare) consensus that there is no relationship between the sex or sexual orientation of parents and the well-being of their children.

The American Academy of Pediatrics, the nation's preeminent pediatric authority (with 57,000 pediatrician members), has adopted a formal policy declaring that "children who grow up with 1 or 2 gay and/or lesbian parents fare as well in emotional, cognitive, social, and sexual functioning as do children whose parents are heterosexual. \* \* \* No data have pointed to any risk to children as a result of growing up in a family with 1 or more gay parents." *Pediatric Report, supra*, at 341-42; *see also* Ellen C. Perrin et al., "Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents," 109 *Pediatrics* 339, 339 (2002) (policy statement accompanying *Pediatric Report*).

The American Psychological Association, representing more than 155,000 psychologists, concluded in a thorough research review in 1995 that "[n]ot a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence to date suggests that home environments provided by gay and lesbian parents are as likely as those provided by heterosexual parents to support and enable children's psychosocial growth." American Psychological Association, *Lesbian and Gay Parenting: A Resource for Psychologists* 8 (1995).<sup>7</sup>

Similarly, NASW (with more than 155,000 members) has determined that "[t]he most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings. The second most striking feature is how similar the groups of gay and lesbian parents and their children are to heterosexual parents and their children that were included in the studies." National Association of Social Workers, "Policy Statement: Lesbian, Gay, and Bisexual Issues" in *Social Work Speaks* 193, 194 (1997) .

The American Psychoanalytic Association has also been unequivocal: gay and lesbian individuals and couples are capable of meeting the best interests of the child and should be afforded the same rights and accept the same responsibilities as heterosexual parents. American

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<sup>7</sup> Available at <http://www.apa.org/pi/parent.html>.

Psychoanalytic Association, “Position Statement on Gay and Lesbian Parenting” (May 16, 2002).<sup>8</sup>

The American Psychiatric Association has commented: “Numerous studies have shown that the children of gay parents are as likely to be healthy and well adjusted as children raised in heterosexual households.” Let Him Stay, “Why It’s Wrong: The Public Policy Case.”<sup>9</sup>

The American Academy of Child & Adolescent Psychiatry, which represents over 6,500 psychiatrists, has concurred. “Outcome studies of children raised by parents with a homosexual or bisexual orientation, when compared to heterosexual parents, show no greater degree of instability in the parental relationship or developmental dysfunction in children.” American Academy of Child & Adolescent Psychiatry, “Policy Statement: Gay, Lesbian, and Bisexual Parents” (June 1999).<sup>10</sup>

The American Medical Association (the “AMA”) also recently resolved to “support legislative and other efforts to allow the adoption of a child by the same-sex partner, or opposite sex non-married partner, who functions as a second parent or co-parent to that child.” American Medical Association House of Delegates, Resolution 204 (A-4) (Apr. 29, 2004). The AMA drew no distinction between the abilities of same-sex and opposite-sex partners as parents, but instead concluded that “[h]aving two fully sanctioned and legally defined parents promotes a safe and nurturing environment for children, including psychological and legal security.” *Id.*

In addition, the North American Council on Adoptable Children has commented: “Everyone with the potential to successfully parent a child in foster care or adoption is entitled to fair and equal consideration regardless of sexual orientation or differing life style or physical

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<sup>8</sup> Available at <http://www.apsa-co.org/ctf/cgli/parenting.htm>.

<sup>9</sup> At [http://www.lethimstay.com/wrong\\_policy\\_positions.html](http://www.lethimstay.com/wrong_policy_positions.html) (last visited Oct. 11, 2004).

<sup>10</sup> Available at <http://www.aacap.org/publications/policy/ps46.htm>.

appearance.”<sup>11</sup> Indeed, amici are unaware of any authoritative child-welfare organization that has taken a contrary position.<sup>12</sup>

Research spanning two decades demonstrates uniformly that children of lesbians and gays are not disadvantaged by their parents’ sexual orientation. There is no relationship between sexual orientation and any recognized measure of a child’s social and psychological adjustment or cognitive abilities. All studies show conclusively, for example, that there is no relationship between parental sexual orientation and children’s cognitive ability or intelligence. *See* Judith Stacey & Timothy J. Biblarz, “(How) Does the Sexual Orientation of Parents Matter?,” 66 *Am Soc Rev* 159, 172 (2001); David K. Flaks et al., “Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Homosexual Parents and Their Children,” 31 *Dev Psychol* 105, 109 (1995); Richard Green et al., “Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children,” 15 *Archives Sexual Behav* 167, 178 (1986).

The research demonstrates beyond dispute that children raised by gay men are not disadvantaged by their fathers’ sexual orientation. Julie Schwartz Gottman, “Children of Gay

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<sup>11</sup> Let Him Stay, “Why It’s Wrong: The Public Policy Case,” *at* [http://www.lethimstay.com/wrong\\_policy\\_positions.html](http://www.lethimstay.com/wrong_policy_positions.html) (quoting North American Council on Adoptable Children, Mar. 14, 1998 policy statement).

<sup>12</sup> Some opponents of same-sex marriage allege that gay men pose a greater risk of child molestation than do heterosexual men. In fact, among pedophiles, many are neither, having no sexual attraction to adults of either gender. *See* D. Finkelhor & S. Araji, “Explanations of Pedophilia: A Four Factor Model,” 22 *J Sex Res* 145, 161 (1986), *cited in* Gregory M. Herek, “Myths About Sexual Orientation: A Lawyer’s Guide to Social Science Research,” 1 *L & Sexuality* 133, 153-54 (1991). Of those offenders against children who also have some sexual attraction to adults, that attraction is more likely to be different-sex attraction. Indeed, a study of 175 men convicted of child sex abuse found that of the 92 who had any attraction to adults, the overwhelming majority were attracted to women, regardless of the gender of the children these men abused. A.N. Groth & H.J. Birnbaum, “Adult Sexual Orientation and Attraction to Underage Persons,” 7 *Archives Sexual Behav* 175, 180 (1978); *see also* Carole Jenny et al., “Are Children at Risk for Sexual Abuse by Homosexuals?,” 94 *Pediatrics* 41, 44 (1994) (study of children seen in one-year period at Denver children’s hospital found that less than 1 percent of adult offenders were “potentially” gay or lesbian).

and Lesbian Parents,” 14 *Marriage & Fam Rev* 177, 186 (1989); Robert L. Barrett & Bryan E. Robinson, “Children of Gay Fathers” in *Gay Fathers* 90-91 (1990). “[N]o reason exists for concern about the development of children living in the custody of gay fathers; on the contrary, there is every reason to believe that gay fathers are as likely as heterosexual fathers to provide home environments in which children grow and flourish.” Charlotte J. Patterson & Raymond W. Chan, “Gay Fathers and Their Children” in *Textbook of Homosexuality and Mental Health* 371, 388 (Robert P. Cabaj & Terry Stein eds., 1996). “There is no evidence of any kind that demonstrates that living with a homosexual parent has any significant negative effects on children”; gay fathers are as effective as “and may be even more so in some ways than non-gay parents.” Jerry J. Bigner & Frederick W. Bozett, “Parenting by Gay Fathers,” 14 *Marriage & Fam Rev* 155, 163 (1990).

Similarly, several recent studies compared children conceived through artificial insemination and born to lesbian mothers or heterosexual mothers. The research found that there were no differences in behavioral adjustment or social or psychological functioning among the children and, in fact, determined that “it was impossible to distinguish” between the children in either group. Raymond W. Chan et al., “Psychosocial Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers,” 69 *Child Dev* 443, 445 (1998); *see also* A. Brewaeys et al., “Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families,” 12 *Human Reproduction* 1349, 1356 (1997); Flaks, *supra*, at 112. There is no difference in the rate of psychiatric difficulty, emotional difficulty, or behavioral difficulty among children of lesbians as compared with children of heterosexual parents. *Pediatric Report, supra*; Susan Golombok et al., “Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal,” 24 *J Child Psychol & Psychiatry* 551, 565-67 (1983); Fiona Tasker & Susan Golombok, *Growing up in a Lesbian Family* 134-44 (1997); Patricia J. Falk, “Lesbian Mothers: Psychosocial Assumptions in Family Law,” 44 *Am Psychologist* 941, 944 (1989); Barbara McCandlish, “Against All Odds: Lesbian Mother and Family Dynamics” in *Gay and Lesbian Parents* 23, 24 (Frederick W. Bozett ed., 1987).



“[C]hildren raised by lesbians have an equally good chance of developing into healthy, happy human beings as do children raised in heterosexual homes.” Cheri A. Pies, “Lesbians and the Choice to Parent,” 14 *Marriage & Fam Rev* 137, 140 (1989).

If anything does hurt children of gays and lesbians, it is not the gay and lesbian parents; it is the fact that the law as written denies those children the benefits and protections that come with marriage. The marriage law discriminates not just against gay and lesbian parents, but also against their children.

The research is also clear that children of lesbians and gays do not suffer adverse effects as a result of social reactions to homosexuality. For example, there are no significant differences in the quality of peer relationships between children of lesbian and heterosexual parents, *see, e.g.,* Golombok, *supra*, at 565-67; *cf.* Tasker & Golombok, *supra*, at 88 (follow-up study found that children of lesbians did not recall more teasing regarding their families than those raised by single heterosexual parents), and studies show strong self-esteem and assessments of popularity among adolescent children of lesbians and gays. Sharon L. Huggins, “A Comparative Study of Self Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers,” 17 *J Homosexuality* 123, 131-32 (1989); Green, *supra*, at 174-79; Mary E. Hotvedt & Jane B. Mandel, “Children of Lesbian Mothers” in *Homosexuality: Social, Psychological and Biological Issues* 275, 282 (1982).

Although children whose parents are lesbian or gay “undoubtedly contend with a degree of social stigma even under the best circumstance,” the similarity seen repeatedly in children’s outcomes suggests the presence of compensatory processes in these families. Ellen C. Perrin, “Children Whose Parent(s) Is/Are Lesbian or Gay” in *Sexual Orientation in Child and Adolescent Healthcare* 105, 129 (2002) (“*Children Whose Parents*”); *cf.* Stacey & Biblarz, *supra*, at 172 (“children in these studies seem to exhibit impressive psychological strength”). Importantly, “if ostracism, isolation, and teasing are problems for those children, neither the problem nor the solution can appropriately be located within these children or their families.” *Children Whose Parents*, *supra*, at 124. The same is true when children are subjected to

ignorance or bias based on race, religion, or other factors. Eliminating the exclusion of same-sex parents from marriage will help eliminate stigma, not augment it.

Opponents of same-sex marriage sometimes claim that children of lesbians and gays are more likely to be lesbian or gay themselves. There is, however, no scientific basis to conclude that same-sex parents somehow “cause” children who do not otherwise feel same-sex attraction to have such feelings, or to enter into romantic relationships with members of the same sex. *See Pediatric Report, supra*, at 342 (“No differences have been found in the \* \* \* sexual orientation of adults who had a divorced homosexual parent (or parents), compared with those who had divorced heterosexual parents.”).

Moreover, the supposed influence of parents’ sexual orientation on that of their children as a reason for concern simply restates a bias against gays and lesbians as a class. The psychiatric, psychological, and social-work professions—including the American Psychiatric Association, the American Psychological Association, the National Mental Health Association, NASW, and others—have long rejected the suggestion that a same-sex sexual orientation is a disorder. *See Morin & Rothblum, supra*, at 948 (1991). Social science research demonstrates that “lesbians and gay men, as a group, do not differ in significant ways from heterosexuals except in terms of their sexual orientation.” Herek, *supra*, at 153. Social science research has also established that same-sex sexual orientation is neither uncommon nor unnatural and has been expressed throughout history and in all cultures. *Id.*

**G. The Opponents of Ending the Exclusion of Same-Sex Couples from Marriage Cannot Overcome 25 Years of Uniform Social Science Research.**

Opponents of same-sex marriage cannot trivialize the conclusions of leading authorities on children (and the large and uniform body of research behind them) by calling into question the methodology of individual studies. Nothing can change the fact that the American Academy of Pediatrics and other experts cited herein are uniquely qualified to assess the findings and methodology of the research in their fields. Having done so, these experts concluded, just as

amici conclude, that lesbian and gay parents fare as well as their heterosexual counterparts, by every measure.

Perrin has observed:

“Critiques of the scientific literature fail to acknowledge the power or the astonishingly similar findings reported over several decades by diverse investigators studying different samples and using different techniques. In contrast, not a single scientific investigation has been published to date that provides primary data demonstrating any adverse effects on children having a gay and/or lesbian parent(s).”<sup>13</sup>

Moreover, the proper research methods and standards in the social sciences are determined through a rigorous peer-review process whereby an academic’s work must satisfy the scrutiny and standards of established scholars and researchers considered to be experts in the field. Virtually all of the studies on lesbian and gay parenting have appeared in peer-reviewed journals. All of these studies found no inherent parental harm to children of lesbians and gays. Indeed, no respectable social scientists conducting and publishing research today claim that there are even reasons to predict harm to children from same-sex parenting, and there is no data to support such a fear.<sup>14</sup>

Accordingly, quibbling with individual studies—whether such quibbles are based on size, sampling method, or some other claim—does not address the accepted scientific analysis underlying the conclusions of the American Academy of Pediatrics and others. Nor can criticism of individual studies obscure the fact that there is *no* research to suggest that children raised in same-sex households are in any way disadvantaged by their parents’ sexual orientation.

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<sup>13</sup> *Children Whose Parents, supra*, at 126.

<sup>14</sup> The only “researcher” who has predicted such harm (Paul Cameron) apparently resigned under pressure from the American Psychological Association to avoid an investigation into charges of unethical conduct as a psychologist, was expelled by the Nebraska Psychological Association, and was officially censured by the American Sociological Association for consistently misrepresenting and misinterpreting research on sexuality and homosexuality. See Stacey & Biblarz, *supra*, at 161; Herek, *supra*, at 155-57; *Baker v. Wade*, 106 FRD 526, 536-37 & n 31 (ND Tex 1985).

#### IV. CONCLUSION

Amici curiae submit that marriages between same-sex partners would provide the children raised by the individuals in those relationships with the same critical benefits and protections that are provided by opposite-sex marriages, thereby benefiting society as a whole. The social science and child-welfare communities are consistent in their conclusion that gay and lesbian parents are just as fit for parenting as are heterosexual parents. Thus the promotion of child welfare favors permitting same-sex marriage, not prohibiting it.

Dated this 14th day of October, 2004.

STOEL RIVES LLP

By \_\_\_\_\_  
Edward J. Reeves, OSB No. 83304  
Of Attorneys for Amici Curiae

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that I filed the original and 15 copies of the BRIEF OF AMICI CURIAE THE JUVENILE RIGHTS PROJECT, INC.; THE NATIONAL ASSOCIATION OF SOCIAL WORKERS; THE OREGON CHAPTER OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS; OPEN ADOPTION & FAMILY SERVICES, INC.; THE OREGON PSYCHIATRIC ASSOCIATION; AND THE OREGON PSYCHOLOGICAL ASSOCIATION IN SUPPORT OF PLAINTIFFS-RESPONDENTS, CROSS-APPELLANTS by regular first-class mail on the following:

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by mailing in a sealed, first-class postage-prepaid envelope, addressed to said persons' addresses as shown above and deposited in the U.S. mail at Portland, Oregon on the date set forth below.

Dated this 14th day of October, 2004.

STOEL RIVES LLP

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