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Supreme Court 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,

Appeal from the Superior Court of King County
Hon. William L. Downing

CELIA CASTLE and BRENDA BAUER, *et al.*, Respondents,

v.

STATE OF WASHINGTON, Appellant.

Appeal from the Superior Court of Thurston County
Hon. Richard D. Hicks

AMICUS CURIAE BRIEF OF
CHILDREN'S RIGHTS ORGANIZATIONS
IN SUPPORT OF RESPONDENTS

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I. IDENTITY AND INTEREST OF AMICI

Amici are organizations dedicated to ensuring the welfare of children. Individual interest statements are included in Appendix A.

II. ISSUES TO BE ADDRESSED BY AMICI

- A. Who are the children of same-sex couples in Washington?
- B. How does prevailing social science research belie the assertion that the continuation of Washington's marriage inequality is necessary to protect children's best interests?
- C. How are the children of same-sex couples in Washington harmed by the state's refusal to allow their parents to marry?

III. INTRODUCTION

Those who support the State of Washington's denial of marriage equality to same-sex couples clothe their positions in the fabric of children's supposed best interests. Allowing marriage equality, it is argued, will encourage same-sex couples to form families, and encouraging the formation of such families will place children at risk. For several reasons, this argument should be rejected.

First, those who assert that inequality should continue in order to prevent same-sex couples from becoming parents ignore the thousands of children in Washington, and hundreds of thousands of children nationwide, who are already being parented by same-sex couples.

Continuing marriage inequality will not change this reality, nor will it prevent other same-sex couples from forming families.

Second, there is no credible scientific evidence that children raised by same-sex couples fare poorly compared with those raised by married different-sex parents. An increasing body of research supports the parenting abilities of gay and lesbian individuals and same-sex couples and indicates no meaningful difference on measurable outcomes for children. Leading organizations of child welfare and mental health professionals have acknowledged this position and made public their support for the parenting abilities of same-sex parents. As Judge Downing did, this Court should decline to credit “questionable assumptions based on stereotypes” about the parenting abilities of same-sex parents.

Third, allowing the Washington statute to stand will only deprive the children of same-sex couples of the benefits of marriage. As Judge Downing observed, children who join the families of their same-sex parents through assisted reproduction or adoption are no less worthy of value than those conceived by different-sex parents through heterosexual sex. And, as he went on to wisely conclude, “[i]t rationally serves no state interest to harm certain of those children by devaluing the immediate

families they have joined.”¹

Amici submit this brief to underscore the presence of the children who are the subject of this debate. These children deserve to have the Court see them, see their families, and recognize that there is no reason to maintain the statutory scheme that causes them harm. For the reasons set forth below, *amici* urge the Court to affirm the trial court decisions.

IV. ARGUMENT

A. Thousands of children in Washington are being parented by same-sex couples.

*A well-worn anecdote circulates in Park Slope, Brooklyn . . . about two gay men who were concerned when a little boy teased their child for having no mommy – only to discover later that the little boy in question had two mommies.*²

Based on the results of the 2000 Census, the nonpartisan Urban Institute has calculated that 250,000 children nationwide are being raised in same-sex couple households.³ Other estimates, which take into account the much greater number of individuals who identify as gay, lesbian, or

¹ Andersen Memorandum Opinion at 19. *See also Goodridge v. Dept. of Health*, 440 Mass. 309, 335, 798 N.E.2d at 964 (2003) (excluding same-sex couples from civil marriage prevents their children from enjoying “the immeasurable advantages that flow from the assurance of ‘a stable family structure’”), *Baker v. Vermont*, 170 Vt. 194, 219, 744 A.2d 864, 882 (1999) (“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.”)

² S. Dominus, *Growing Up With Mom & Mom*, New York Times, Oct. 24, 2004, at 69.

bisexual, rather than simply the number of same-sex couple households, suggest that as many as 1 million children under the age of 18 nationwide are being raised by gay, lesbian, or bisexual parents.⁴

The Census results indicate that the percentage of same-sex couples raising children in this state is the same as the national percentage – nearly one in four. Out of 16,000 self-identified same-sex couple households in Washington, 3,765 were raising children under 18.⁵

Same-sex couple households with children in Washington are raising an average of 2 children per household.⁶ Using these figures, and employing accepted methodology to account for underreporting,⁷ the number of children being raised by same-sex couples in Washington can be estimated as at least 7,500. This figure includes only children who are biologically related, adopted, or stepchildren of the householder. It does

⁴ See C.J. Patterson & L.V. Friel, *Sexual Orientation and Fertility*, in *Infertility in the Modern World: Biosocial Perspectives* 238 (Bentley & Mascie-Taylor, eds., 2000); E.C. Perrin & Committee on Psychosocial Aspects of Child and Family Health, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341 (2002).

⁵ R. B. Sears and W. B. Rubenstein, The Williams Project on Sexual Orientation Law and Public Policy, UCLA School of Law, *Same Sex Couples and Same Sex Couples Raising Children in Washington: Data from Census 2000* (2005) (www.law.ucla.edu/williamsproject) (hereafter “Williams Project Report”).

⁶ *Id.* at 9.

⁷ In considering any estimate of the number of same-sex couples raising children, it must be taken into account that at least 16-19% did not identify as such on the Census. See L. Badgett and M. Rodgers, Institute of Gay and Lesbian Strategic Studies, *Left Out of the Count: Missing Same-Sex Couples in Census 2000* (2003) (www.iglss.org/media/files/c2k_leftout.pdf).

not include foster children, nor does it include children being raised by single lesbian or gay parents or couples who do not live together. These families are distributed throughout the state, residing in every county.⁸

Children of same-sex couples are twice as likely to have been adopted than are children of married different-sex couples.⁹ They are also more likely than children of married different-sex parents to be under five years old.¹⁰

The children of same-sex couples are racially and ethnically diverse. The 2000 Census indicates that they are more likely than children of different-sex married parents to be of color, Hispanic, or multiracial. Of children raised by same-sex couples in Washington, 61% are white, 16% are of Hispanic origin, 10% are biracial or multiracial, 9% are African-American, and 5% are Asian or Pacific Islander.¹¹

Children of same-sex couples are also more likely than their peers

⁸ Williams Project Report at 9.

⁹ The increasing number of gay and lesbian families who form families through adoption has been documented by leading researchers. One recent study found that 64% of 214 participating adoption agencies nationwide accepted adoption applications from lesbians & gay men. 38% of the participating agencies made at least one adoptive placement with a self-identified gay or lesbian individual during the two-year period studied, and 15% reached out to the lesbian and gay community as a parenting resource for adoptable children. D.M. Brodzinsky, C.J. Patterson, & M. Vaziri, *Adoption Agency Perspectives on Lesbian and Gay Prospective Parents: A National Study*, 5 *Adoption Quarterly* 5 (2002). These findings were replicated and extended in Evan B. Donaldson Adoption Institute, *Adoption by Lesbians and Gays: A National Survey of Adoption Agency Policies, Practices, and Attitudes* (2003) (www.adoptioninstitute.org).

¹⁰ Williams Project Report at 9.

with married different-sex parents to have a parent who stays home to care for them full-time.¹² Significantly, children of same-sex couples are being raised with fewer resources than the children of married different-sex parents. The average household income of same-sex couples in Washington is \$66,400, as compared with \$76,200 for married different-sex parents. Same-sex couples are less likely than married parents to have a college degree (24%, as compared with 31%) or to own a home (58% as compared with 76%).¹³

Examination of the demographic information leads to several conclusions: First, the days when these children and their parents could be dismissed as a fringe minority or a curiosity have passed. As acknowledged by both the trial courts below, these families are firmly within the mainstream. They are our neighbors, our teachers, our pastors, our doctors, our lawyers, our friends, our children's classmates and playmates. Second, with lower average family incomes, less certain access to health care, a greater likelihood of facing discrimination on the basis of race or national origin, and, in some cases, the uncertainty associated with lack of established legal parentage, the children of same-sex couples in Washington may be somewhat more vulnerable than those

¹¹ Williams Project Report at 9.

¹² *Id.* at 10.

¹³ *Id.*

of different-sex parents in the event of a crisis, such as the death or serious illness of a parent, or a breakup of the family.

B. The Court should reject the unsupported contention that children suffer if not raised by two different-sex parents.

This Court has been urged to deny marriage equality on the ground that social scientific research demonstrates poor outcomes for the children of same-sex couples (Br. Intervenors at 39-40) or on the more equivocal ground that the social science research supporting parenting by same-sex couples is not fully developed. (Reply Br. Intervenors at 40.) Both these positions are simply wrong. Research on the children of gay and lesbian parents, which first began to appear in the 1970s, has grown steadily into a sound body of scholarship. Unlike the sources relied upon by opponents of marriage equality, which draw largely from the writings of those who espouse long-discredited “reparative therapy,”¹⁴ this increasing body of

¹⁴ George Dent, whose 1999 article is cited by Intervenors, argues that children of same-sex parents “presumably” will be more likely to experience problems in gender identity development. Dent relies chiefly upon the works of Elizabeth Moberly, PhD, a theologian and reparative therapy advocate without expertise in child development. See Dent, *The Defense of Traditional Marriage*, 15 J. L. & Policy 581 (1999). Lynn Wardle, cited by Intervenors, similarly grounds her conclusion that only heterosexual marriage is an appropriate environment in which to raise children on “assumptions” about the consequences of physiological differences between the sexes. See Wardle, “Multiply and Replenish”: *Considering Same-Sex Marriage in Light of State Interests in Marital Procreation*, 24 Harv. J. L. & Pub. Pol’y 771 (2001).

published research is replete with robust findings which support gay and lesbian parents.

That parental sexual orientation does not adversely affect child development is no longer subject to debate among credible researchers. This is the accepted position of the nation's leading associations of child welfare and mental health professionals, including the American Academy of Pediatrics, American Psychological Association, National Association of Social Workers, Child Welfare League of America, and North American Council on Adoptable Children. These groups, which collectively speak for their hundreds of thousands of members, have uniformly expressed their support for gay and lesbian parents.¹⁵

The formal policy of the American Academy of Pediatrics, which represents 57,000 pediatricians nationwide, states unequivocally that "[n]o data have pointed to any risk to children as a result of growing up in a

¹⁵ J. Stacey, *Legal Recognition of Same-Sex Couples: The Impact on Children and Families*, 23 QLR 529, 532. See also American Academy of Pediatrics Committee on Psychosocial Aspects of Child and Family Health, *Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 339 (2002) (<http://aappolicy/aappublications.org/cgi/reprint/pediatrics;109/2/339.pdf>); American Psychological Ass'n, *Lesbian and Gay Parenting: A Resource for Psychologists* (1995) (www.apa.org/pi/parent.html); *National Association of Social Workers, Policy Statement: Lesbian, Gay and Bisexual Issues* (1993), reprinted in *Social Work Speaks: NASW Policy Statements* 224 (6th ed.2003); Child Welfare League of America, *CWLA Standards of Excellence for Adoption Services* 56 (2000); North American Council on Adoptable Children NACAC Policy Statement, quoted in *Laying the Foundation to Welcome Gay and Lesbian Families* (www.nacac.org).

family with one or more gay parents.”¹⁶ The position statement of the National Association of Social Workers calls attention to a “striking feature” of the research on gay and lesbian parents: “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.”¹⁷ The American Psychological Association, whose members number over 150,000, has concluded “[t]here is *no* evidence that parenting effectiveness is related to parental sexual orientation: Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children.”¹⁸

These positions are well-founded in the scientific literature. In 2004, Charlotte J. Patterson, PhD, conducted an exhaustive review of the decades of research concerning gay and lesbian parents and their children. Patterson’s review found solid support for the conclusion that children of same-sex couples do not suffer poor outcomes.¹⁹ The three major fears

¹⁶ American Academy of Pediatrics Committee on Psychosocial Aspects of Child and Family Health (2002).

¹⁷ Nat’l Ass’n of Social Workers, Policy Statement.

¹⁸ American Psychological Ass’n, Resolution on Sexual Orientation, Parents, and Children (2004) (emphasis added).

¹⁹ C.J. Patterson, American Psychological Association, *Lesbian and Gay Parents and Their Children: Summary of Research Findings* (2004) (hereafter “Patterson Summary”). Only one article appearing in a peer-reviewed journal disagrees with the central proposition that children of gay and lesbian parents do not suffer poor outcomes at a greater rate than children of heterosexual parents. See P. Cameron & K. Cameron, *Homosexual Parents*, 31 *Adolescence* 757 (1996). Co-

voiced by opponents about the influence of lesbian and gay parents on children – impairment of gender identity, gender role behavior, or sexual orientation; increased appearance of adjustment difficulties and behavior problems; and difficulty in social relationships – are not borne out by research findings.

Studies conducted since the 1970s have shown that children of gay and lesbian parents are no more likely to describe themselves as gay or lesbian than are the children of heterosexual parents.²⁰ The majority of

author Paul Cameron was censured by the American Sociological Association for consistently misrepresenting research on sexuality and homosexuality. See G.M. Herek, *Myths about Sexual Orientation: A Lawyer's Guide to Social Science Research*, 1 Law and Sexuality 133, 152 (1991). A federal district court has described Cameron's writings on the effects of parental sexual orientation on child development as "a total distortion" of the data. *Baker v. Wade*, 106 F.R.D. 526, 536 (N.D. Tex. 1985); see also *Gay Student Servs. v. Texas A&M University*, 737 F.2d 1317 (5th Cir. 1984) (holding there "was no historical or empirical basis" for Cameron's "speculative evidence").

²⁰ Patterson Summary at 11 (citing J.M. Bailey, D. Bobrow, M. Wolfe & S. Miekach, *Sexual Orientation of Adult Sons of Gay Fathers*, 31 Developmental Psychology 124 (1995); F.W. Bozett, *Gay Fathers: How and Why They Disclose Their Homosexuality to Their Children*, 29 Family Relations 173 (1980); F.W. Bozett, *Children of Gay Fathers*, in *Gay and Lesbian Parents* 39 (F.W. Bozett, ed., 1987); F.W. Bozett, *Gay Fathers: A Review of the Literature*, in *Homosexuality and the Family* 137 (F.W. Bozett, ed., 1989); J.S. Gottman, *Children of Gay and Lesbian Parents*, in *Homosexuality and Family Relationships* 177 (F.W. Bozett & M.B. Sussman, eds., 1990); S. Golombok & F. Tasker, *Do Parents Influence the Sexual Orientation of Their Children? Findings from a Longitudinal Study of Lesbian Families*, 32 Developmental Psychology 3 (1996); R. Green, *Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents*, 135 Am. J. of Psychiatry 692 (1978); S.L. Huggins, *A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers*, in *Homosexuality and the Family* 123 (F.W. Bozett, ed., 1989); B. Miller, *Gay Fathers and Their Children*, 28 Family Coordinator 544 (1979); J.P. Paul, *Growing up with a Gay Lesbian, or Bisexual Parent: An Exploratory Study of*

children of lesbian mothers and gay fathers identified themselves as heterosexual. Gender-role behavior in children of gay and lesbian parents has also been shown to be typical for conventional sex roles. For example, a recent study comparing 4-8 year old children conceived via donor insemination by lesbian couples with same-aged children conceived via donor insemination by different-sex couples, Brewaeys et al. (1997), found no significant differences in the two groups of children terms of preferences for gendered games, toys, or activities.²¹

Research focusing on other areas of child development, including behavior, has similarly failed to give support to concerns over poor outcomes. Children of gay and lesbian parents are found to be no more likely than children of heterosexual parents to manifest problems with separation or individuation; self-concept; moral judgment; and school adjustment.²² In fact, in one study, children of lesbian mothers were found

Experiences and Perceptions (1986) (unpublished Ph.D. dissertation, University of California at Berkeley); R.L. Rees, *A Comparison of Children of Lesbian and Single Heterosexual Mothers on Three Measures of Socialization* (1979) (unpublished Ph.D. dissertation, California School of Professional Psychology, (Berkeley)); F. Tasker & S. Golombok, *Growing Up in a Lesbian Family* (1997)).

²¹ Patterson Summary at 11 (citing A. Brewaeys & E.V. Van Hall, *Lesbian Motherhood: The Impact on Child Development and Family Functioning*, 18 J. of Psychosomatic Obstetrics and Gynecology 1 (1997)).

²² Patterson Summary at 12 (citing A. Steckel, *Separation-Individuation in Children of Lesbian and Heterosexual Couples* (1985) (unpublished Ph.D. dissertation, The Wright Institute Graduate School (Berkeley, CA)); A. Steckel, *Psychosocial Development of Children of Lesbian Mothers*, in *Gay and Lesbian Parents* 75 (Bozett, ed., 1987); S. Golombok, A. Spencer, & M. Rutter, *Children*

to have a greater overall sense of well-being than children in the

in *Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 *J. of Child Psychology and Psychiatry* 551 (1983); S. Golombok, F.L. Tasker, & C. Murray, *Children Raised in Fatherless Families from Infancy: Family Relationships and the Socioemotional Development of Children of Lesbian and Single Heterosexual Mothers*, 38 *J. of Child Psychology and Psychiatry* 783 (1997); M. Kirkpatrick, C. Smith, & R. Roy, *Lesbian Mothers and Their Children: A Comparative Survey*, 51 *Am. J. of Orthopsychiatry* 545 (1981); Brewaeys et al., *Lesbian Motherhood: The Impact on Child Development and Family Functioning*; R.W. Chan, B. Raboy, & C.J. Patterson, *Psychosocial Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 *Child Development* 443 (1998); D. Flaks, I. Fischer, F. Masterpasqua, & G. Joseph, *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children*, 31 *Developmental Psychology* 104 (1995); C.J. Patterson, *Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex-Role Identity*, in *Contemporary Perspectives on Lesbian and Gay Psychology: Theory, Research, and Application* 156 (B. Greene & G. Herek, eds., 1994); F. Tasker & S. Golombok, *Adults Raised as Children in Lesbian Families*, 65 *Am. J. of Orthopsychiatry* 203 (1995); Tasker & Golombok, *Growing up in a Lesbian Family*; J.L. Wainright, S.T. Russell, & C.J. Patterson, *Psychosocial Adjustment, School Outcomes, and Romantic Attractions of Adolescents with Same-Sex Parents*, Unpublished manuscript, University of Virginia, Charlottesville, VA (2004); J.S. Gottman, *Children of Gay and Lesbian Parents*; Golombok, Tasker & Murray, *Children Raised in Fatherless Families from Infancy*; S.L. Huggins, *A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers*; D. Puryear, *A Comparison Between the Children of Lesbian Mothers and the Children of Heterosexual Mothers* (1983) (unpublished Ph.D. dissertation, California School of Professional Psychology (Berkeley)); Rees, *A Comparison of Children of Lesbian and Single Heterosexual Mothers on Three Measures of Socialization*; R. Green, J.B. Mandel, M.E. Hotvedt, J. Gray, & L. Smith, *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 7 *Archives of Sexual Behavior* 175 (1986); C.J. Patterson, *Children of Lesbian and Gay Parents*, in 19 *Advances in Child Clinical Psychology* 235 (T. Ollendick & R. Prinz, eds., 1997); C.J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 *J. Marr. & Fam.* 1052 (2000); C.A. Parks, *Lesbian Parenthood: A Review of the Literature*, 68 *Am. J. of Orthopsychiatry* 376 (1998); E.C. Perrin, *Children Whose Parents are Lesbian or Gay*, 15 *Contemporary Pediatrics* 113 (1998); E.C. Perrin, *Sexual Orientation*, in *Child and Adolescent Health Care* (2002); J. Stacey & T.J. Biblarz, *Does Sexual Orientation of Parents Matter?* 65 *Am. Sociological Rev.* 159 (2001); F. Tasker,

comparison group.

Nor have social relationships with peers, adults, and extended family relationships been found to be measurably different among children of same-sex parents than among children of different-sex parents.

Golombok (1983, 1997), Green et al. (1978, 1986) and Patterson (1994) found normal development of peer relationships, including same-sex best friends and peer groups among school-age children. Adolescents' relationships with parents were described as equally warm and caring, regardless of whether the parents had partners of the same sex or opposite sex.²³ In this area as well, some studies showed *better* outcomes for children of same-sex parents.

The claim that children develop best when raised by one parent of each gender finds scant social scientific support. A very recent article by Judith Stacey, PhD, affirms this conclusion. Stacey characterizes the current popular and legal discourse as consisting "primarily of overly generalized stereotypes about gender differences (such as that fathers rough-house, foster independence, impose discipline, while mothers are more protective, nurturing, empathetic, and permissive) accompanied with

Children in Lesbian-Led Families – A Review, 4 Clinical Child Psychology and Psychiatry 153 (1999)).

²³ Patterson Summary at 14 (citing Wainwright, Russell & Patterson, *Psychosexual Adjustment, School Outcomes, and Romantic Attractions of Adolescents with Same-Sex Parents*).

unsupported assertions that children need one parent of each category.”²⁴

She concludes: “there is no empirical support in the social science research literature for the claim that there is an optimal gender mix of parents or that children with two female or two male parents suffer any developmental disadvantages compared with children with two different-gender parents.”²⁵

The argument that children raised by same-sex couples are doomed to suffer the effects of “fatherlessness” or “motherlessness” also finds no support in the research. While a considerable body of literature has reported poor outcomes for the children of single parents, the underlying research has been conducted solely by comparing married-parent and single-parent families. None included comparison of children of same-sex couples. Thus, it is unsound to rely upon these studies for the proposition that the gender or sexual orientation of the absent parent – or the single parent – is responsible for poor outcomes. Instead, this research suggests that the number of parents, the parents’ economic resources, and the deleterious effects of family disruption and divorce, are correlated with negative outcomes. Moreover, observes Stacey, “there is no evidence that it is the absence of a male or a female parent that accounts for the poorer outcomes for children raised by single parents. Indeed, children whose

²⁴ Stacey, 23 QLR at 533 (2004).

fathers died do not experience the adjustment problems of children who live with a single mother after divorce, demonstrating that the presence or absence of a father is not what determines healthy adjustment.”²⁶

The research collected and referenced by Patterson and Stacey puts to rest the claim that children suffer if raised by same-sex couples. Judge Downing and Judge Hicks were right to decline to credit this claim. *Amici* urge this Court to affirm the trial court decisions on this basis.

C. The denial of marriage equality unjustly denies the benefits of marriage to the children of same-sex couples.

*It's hard to explain to others how much something means, how much you value it, unless it's something that you've always been denied, and that you've never had a right to have. It was one of the most wonderful, unforgettable, and joyous moments of my life as I stood alongside my two mothers as they were LEGALLY married.*²⁷

1. Marriage confers many tangible benefits on families with children.

It is beyond dispute that the marital status of parents confers numerous benefits on families with children, including economic benefits

²⁵ *Id.*

²⁶ Stacey, 23 QLR at 536 (citing S. McLanahan, *Family Structure and the Reproduction of Poverty*, 90 Am. J. Soc. 878 (1985); S. McLanahan & G. Sandefur, *Growing up with a Single Parent: What Hurts, What Helps* (2d ed. 1996); F.F. Furstenburg, Jr. & A.J. Cherlin, *Divided Families: What Happens to Children When Parents Part* (1991)).

²⁷ Quote from Marina, age 15, upon the marriage of her mothers in San Francisco in February 2004. COLAGE, *Just for Us: Focus on Marriage* (Vol. 16 No. 1, 2004).

and legal protections as well as stability and social legitimacy. So universally regarded are the benefits of marriage to children that our government has for many years encouraged, promoted, and subsidized the married family unit above all other family forms. Washington law links over 400 separate benefits to marital status.²⁸ While this brief does not attempt to identify all of the ways children benefit from laws linking benefits to marital status, several major categories of benefits arising under state law are discussed below. It stands to reason that if the children of different-sex married couples benefit from the preferential treatment of their parents' legal status, the children of same-sex couples would also benefit if their parents were allowed to marry. By denying the parents of these children the opportunity to legally marry, the State of Washington is unjustly placing the children at risk.

a. Presumption of parentage

Under Washington law, children born into marriage are presumed to be the legal issue of their parents, whether conceived through heterosexual intercourse or assisted reproduction. *See* RCW 26.26. The presumption does not apply to children born to same-sex couples,

²⁸ J.D. Pedersen, *The RCW Project 2004: An Analysis of the Benefits and Burdens of Marriage Contained in the Revised Code of Washington* (2004) (available at www.lmaw.org).

however, because these couples cannot marry. As a result, unless and until the parent who is not biologically related to the child takes the steps necessary to establish parentage of the child through adoption, that parent will remain a legal stranger to the child. The child will have no legal right to receive child support from that parent or to inherit from the parent under the intestacy statutes, nor will the child be assured that his or her relationship with that parent will be respected and safeguarded in the event of a dispute with the legal parent or, in the event of the legal parent's death or incapacity, the legal parent's extended family.²⁹

Children are necessarily left at risk when legal parentage is uncertain, as is the case for children of same-sex couples prior to adoption by the non-biological parent. While second-parent adoptions by same-sex couples have been approved by the courts in some Washington counties since the mid-1980s, Washington, like nearly two-thirds of all states, has no statute or high court decision guaranteeing these parents the right to adopt.³⁰ Financial circumstances, lack of access to accurate information,

²⁹ See, e.g., M.B. Jacobs, *Micah Has One Mommy and One Legal Stranger: Adjudicating Maternity for Nonbiological Lesbian Coparents*, 50 Buffalo L. Rev. 341 (2002).

³⁰ As of April 2004, seven states and the District of Columbia guaranteed the opportunity for same-sex parents to jointly establish themselves as legal parents of a child they were raising together. L. Bennett & G. Gates, Ph.D., Human Rights Campaign Foundation, *The Cost of Marriage Inequality to Children and Their Same-Sex Parents* (2004) (www.hrc.org).

or simply fear of opening their lives to court scrutiny may prevent same-sex couples from taking the steps to adopt. If the adoption is never accomplished, these children are left vulnerable in a way that children born into legal marriages simply are not.

b. Health care and medical decision-making

Marriage inequality also disadvantages the children of same-sex couples in terms of access to health care and guaranteed medical decision-making for both parents. Same-sex couples with children are less likely to have access to family health care through a parent's employer. Even if coverage is available, a working gay or lesbian parent who has been unable to establish a legal relationship to his or her child may not be able to add the child to his or her coverage, leaving the child – and the family's finances – at risk should a medical catastrophe occur, and potentially depriving the child of access to routine, non-emergency health care. A child whose parent remains uninsured because of the unavailability of domestic partner benefits is also placed at risk, as the entire family's financial security may be upset by a health disaster involving that parent.

Even if insurance is available, children of same-sex couples may be unable to rely on their parents' ability to authorize care. A gay or lesbian parent who has been unable to establish a legal relationship to his or her child may be prevented from authorizing the child's medical

treatment, even in the event of an emergency. The parent may be unable to take the child to routine appointments, have access to the child's medical information, or communicate with medical providers. These inequities may prevent children from receiving the health care they need.

c. Education and access to school records

Gay or lesbian parents who have been unable to establish a legal relationship with their children may be unable to play a role in their children's education in the same manner married different-sex parents can. Schools may balk at allowing individuals without legal parentage or guardianship status to have contact with teachers, receive report cards, participate in conferences, or even pick up children from school. These issues are crucial for children, who need the security of knowing that both their parents can advocate for them in the educational context, as well as assurance that their families, and their parents, will be respected.

Additionally, RCW 26A.605.030, which governs access to school records in Washington, links the ability to inspect and review records, request a hearing to challenge and correct inaccurate records, and control the release of records to third parties, to "parenthood." Denied access to their children's records, same-sex parents who have not attained legal status may find themselves unable to function effectively as their children's educational advocates.

2. Marriage also confers intangible benefits.

*I drew our family . . . my two brothers, me, Mom, and Donna. The teacher asked who Donna was. I told her "Donna." I thought every family had a Donna.*³¹

Marriage is widely believed to bring with it a variety of intangible social and psychological benefits. Research has shown that married couples are likely to report greater feelings of self-worth, purpose, happiness, and well-being than unmarried cohabitants, as well as greater levels of commitment to the relationship.³² Married individuals are also thought to be physically and mentally healthier than their unmarried counterparts.³³ It stands to reason that children are likely to benefit if their parents' relationships are secure, stable, and subject to minimal stress. By denying same-sex couples the right to marry, and thus enjoy the intangible benefits of marriage to the same extent as different-sex couples, the state deprives their children of these benefits.

Marriage also confers the important additional benefit of providing

³¹ Quote from Derek, in A. Garner, *Families Like Mine: Children of Gay Parents Tell It Like It Is* (2004).

³² S.L. Nock, *A Comparison of Marriages and Cohabiting Relationships*, 16 J. Fam. Issues 53 (1995); W.R. Gove, C.B. Style, & M. Hughes, *The Effect of Marriage on the Well-Being of Adults: A Theoretical Analysis*, 11 J. Fam. Issues 4, 5 (1990).

³³ See, e.g., N.J. Johnson, E. Backlund, P.D. Sorlie, & C.A. Loveless, *Marital Status and Mortality: The National Longitudinal Mortality Study*, 10 Annals Epidemiology 224 (2000); C.E. Ross, J. Mirowsky & K. Goldsteen, *The Impact of the Family on Health: The Decade in Review*, 52 J. Marr. & Fam. 1059 (1990); Nock, 16 J. Fam. Issues 53; Gove, Style & Hughes, 11 J. Fam. Issues 4, 5.

parents, children, extended family, and the broader social community with a common vocabulary with which to describe the family's relationship, a concern whose importance to children can easily be overlooked by adults.

Abigail Garner provides an illustrative anecdote:

A few years back Russ introduced me to one of his colleagues at a party by saying, "Abigail's father is my partner." The man squinted at me and tilted his head. He didn't get it. Russ sighed, put his arm around me, and told him, "It's complicated." I could not help but clarify: No, it's not complicated. There's just not a word for it."³⁴

Had Russ simply been able to use the word "stepdaughter," comprehension might have come quicker to the befuddled colleague.

Because so many important benefits are linked to marital status, marriage conveys society's expression of value of parental relationships, and parents' relationships with their children, in a way in which the allowance of "separate but equal" statuses, such as civil unions, will not. The state's denial of the right of marriage to same-sex couples encourages the stigmatization of their relationships and their families as inferior. The devaluation of families headed by same-sex couples fuels homophobia and discrimination and heightens psychological distress among lesbians and gay men.³⁵ While it has been demonstrated that gay and lesbian parents

³⁴ Garner, Families Like Mine at 141.

³⁵ I.H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence*, 129 Psychol. Bull. 674, 690 (2003).

take steps to shield their children from the harmful effects of societal discrimination, the children may nonetheless be subjected to greater stress as a result of diminished social support for their parents' relationships and the parents' relationships with their children, and as a result of the greater strain their parents must carry.

V. CONCLUSION

*I've always been around people saying "Oh, my parents' anniversary is this week. It's always been the sight of two parents, married, with rings. And knowing I'd probably never experience it ever . . . I just couldn't hold myself in. It was oh my god oh my god oh my god. I felt so happy I wanted to scream."*³⁶

For the reasons set forth above, *amici* ask the court to safeguard the rights of Washington's children of same-sex couples – those who exist now, and those who will join their families in the future. *Amici* urge the affirmation of the trial court decisions below.

DATED this 3rd day of February, 2005.



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³⁶ Quote from Alex, age 11. P.L. Brown, *For Children of Gays, Marriage Brings Joy*, New York Times, Mar. 19, 2004, at A1.

Appendix A – Interest Statements of *Amici*

Children's Rights is a national, non-profit organization that works to reform failing child welfare systems by ensuring that the rights of children dependent upon them for their protection and care are recognized and safeguarded. Children's Rights has appeared as *amicus* in other significant cases involving the rights of gay men and lesbians and the children in their care and custody.

The Evan B. Donaldson Adoption Institute is a non-profit organization dedicated to promoting, on a national level, the understanding of adoption as a means of family formation and to advancing quality in adoption policy and practice. To achieve these goals, the Donaldson Institute engages in research to improve adoption practices, trains and educates child welfare professionals, and advances public policies that support ethical, high-quality adoption practices. The Institute's work currently includes research and advocacy on behalf of same-sex couples and their children.

Children of Lesbians and Gays Everywhere (COLAGE) engages, connects and empowers people to make the world a better place for children of lesbian, gay, bisexual, and/or transgender parents and families. As a national youth-driven and constituent-based organization with nearly 10,000 member contacts, 40 chapters in 28 states (including one in Seattle,

WA), and 15 years of expertise in lesbian, gay, bisexual and transgendered family matters, COLAGE provides an integrated array of peer support, public education and policy advocacy programs structured to empower children and youth, strengthen families, create safer communities and promote just laws and policies with and for the millions of people in the U.S. who have same-gender loving and/or transgender parents and guardians in the U.S.

The National Center for Youth Law (NCYL) is a private, non-profit organization based in Oakland, California that uses the law to ensure that low-income children have the resources, support, and opportunities they need for a healthy and productive future. NCYL engages in litigation, legislative and administrative advocacy, and policy development in four core areas: ensuring the safety, stability, and well-being of abused and neglected children; promoting successful transitions to adult self-sufficiency for disconnected youth; preserving and strengthening the social safety net to meet children's basic needs; and eliminating barriers to health and mental health care for youth. NCYL has appeared as amicus curiae in several significant cases involving the rights of children of gay and lesbian parents and foster parents.

Amara Parenting and Adoption Services is dedicated to creating and preserving family relationships and ensuring that all children grow up in permanent, nurturing environments.

The Washington State Association of Court Appointed Special Advocate/Guardian ad Litem Programs (Washington State CASA), founded in 1988, provides technical support and training to CASA/VGAL programs in Washington State, their staff and volunteers. CASA volunteers investigate and advocate for the best interests of children in custody matters and dependency proceedings in both state and tribal court. More than 500 individual volunteers in 30 programs statewide are members of the Association. Though different in many ways, CASA volunteers have one thing in common: they come forward to make a difference in the life of a child. With this goal in mind, CASA is interested in providing this Court with helpful analysis about children's interests in the legal recognition of their families.