

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 05-2604

CITIZENS FOR EQUAL PROTECTION, INC.,
a non-profit organization incorporated under the laws of Nebraska;
NEBRASKA ADVOCATES FOR JUSTICE AND EQUALITY, INC.,
a non-profit organization incorporated under the laws of Nebraska; and
ACLU NEBRASKA, a non-profit organization incorporated
under the laws of Nebraska,

Plaintiffs-Appellees,

vs.

ATTORNEY GENERAL JON BRUNING, in his official capacity,
and GOVERNOR DAVE HEINEMAN, in his official capacity,

Defendant-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA, No. 4:03-CV-3155

Honorable Joseph F. Bataillon, United States District Judge

BRIEF FOR *AMICI CURIAE*
NATIONAL ASSOCIATION OF SOCIAL WORKERS AND NEBRASKA
CHAPTER OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS

(Continued)

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INTEREST OF THE *AMICI CURIAE*

This case revolves around the constitutionality of Nebraska's constitutional amendment, referred to as Section 29, which bans lesbians and gay men from civil marriage or any other form of protection for or based on a same-sex relationship. Certain *amici curiae* have filed briefs in support of Defendants-Appellants (collectively, the "State" or "Defendants") which argue that children raised by same-sex couples are adversely affected by such a family structure and thus, Nebraska's ban advances a rationale state interest. The available social science research simply does not support such a contention. The National Association of Social Workers ("NASW") and the Nebraska Chapter of the National Association of Social Workers submit this brief to ensure the Court is provided with the accurate data, which in fact, establishes that children raised by lesbians and gay men develop as well as children raised by heterosexuals, and therefore, there is no child welfare justification for banning same-sex couples from civil marriage, or other similar types of protections.

NASW was established in 1955 as a nonprofit professional association dedicated to the practice and interests of the social work profession. It is the largest social work association in the world, with 153,000 members and chapters in every state as well as internationally. The Nebraska Chapter of NASW represents 5,500 social workers. In furtherance of its organizational purposes NASW, *inter*

alia, promulgates professional standards and criteria, conducts research, publishes studies of interest to the social work profession, provides continuing education and enforces the NASW Code of Ethics. NASW also adopts policy statements on issues of importance to the social worker profession.

NASW adopted a policy statement on gay issues in 1977, which was subsequently revised and expanded in 1987, 1993, and 1996, which prohibits social workers from discriminating on the basis of sexual orientation. NASW's "Family Policy" recognizes that gay and lesbian people are a part of existing families and provide important care giving to children, as well as other family members. The policy further identifies discrimination against lesbian and gay parents as undermining the survival of their families. NASW reaffirmed its policy supporting same-sex marriage in 2004.

The parties in this appeal have consented to the filing of this brief, pursuant to the requirement of Fed. R. App. P. 29(a).

ARGUMENT

Alliance for Marriage, Inc. (“Marriage, Inc.”) as well as other organizations and individuals (*see* Brief of *Amicus Curiae* Alliance for Marriage, Inc., in Support of Defendants-Appellants, Brief of *Amicus Curiae* Nebraska Family Council in Support of the Appellants and Reversal, pp. 14-17; Brief of the *Amici Curiae* The Honorable Tom Baker *et al.*, pp. 15-19), argue that the prohibition of marriage and other forms of state recognition for lesbian or gay couples is justified by the State as a means of promoting procreation and the interests of children in being raised by heterosexual couples.¹ Their position is based upon the assumption that children are better off with heterosexual parents. There is no empirical basis for this proposition. To the contrary, all the social science research on same-sex parenting has reached the same, unequivocal conclusion: lesbian and gay couples raise children who are as healthy, happy and well-adjusted as those raised by heterosexual couples. Based on all the measures by which child development is analyzed, there is no meaningful distinction between children raised by same-sex couples and children raised by opposite-sex couples. Indeed, there are no scientifically valid social science studies establishing that children raised by an

¹ As noted in the Brief of Plaintiffs-Appellees (“Plaintiffs’ Brief”), the State does not advance these particular issues in its justification for Section 29. Nonetheless, various *amici* have briefed the issue and NASW, therefore, seeks to provide the Court with a presentation of the valid, peer-reviewed social science data and information on the issue.

intact same-sex couple are any differently adjusted as compared with those raised by an intact opposite-sex couple.

Civil marriage benefits children by promoting family stability and providing a range of supports to families. One of these important benefits is its stabilizing influence on keeping couples together, creating the optimal family paradigm for raising children. Lesbians and gay men in Nebraska and across the country have formed families with children. Excluding lesbian and gay parents from the civil institutions created by the state for the protection of families actually denies their children and families of many important legal and social benefits. “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.” *Baker v. State*, 744 A.2d 864, 882 (Vt. 1999).

Research has confirmed that children raised by married couples benefit first and foremost from the relative stability that accompanies marriage as compared to situations involving unmarried couples. Married couples are more likely to stay together than unmarried couples. Thus, children raised by married couples are less likely to be impacted by the disruption that comes with the separation of the couple and their family. Whether the family unit is comprised of a same-sex or opposite-sex couple is thus a secondary consideration as all social science research has shown that children raised by same-sex parents are as well-adjusted as children

raised by opposite-sex couples. Based on the results of this research, every one of the major child welfare and mental health professional organizations to address the issue has concluded that restrictions on the full range of legal protections with respect to same-sex couples, such as Nebraska's Section 29, are contrary to the best interests of children. Thus, not only is there no child welfare basis to exclude gay couples from all forms of state-sanctioned relationships, including civil marriage, child welfare policy points decisively toward the removal of barriers to civil marriage by same-sex couples.

I. SOCIAL SCIENCE RESEARCH DEMONSTRATES THAT LESBIANS AND GAY MEN CAN BE AND ARE GOOD PARENTS WHO RAISE CHILDREN WHO ARE AS WELL-ADJUSTED AS CHILDREN RAISED BY OPPOSITE-SEX COUPLES.

Over the last twenty years, a considerable body of social science research has established that lesbian and gay parents have parenting skills that are at least equivalent to those of heterosexual parents.² Studies consistently establish the

² See, e.g., David K. Flaks, *et al.*, *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children*, 31 *Dev. Psychol.* 105, 111 (1994) [hereinafter "*Choosing Motherhood*"]; David K. Flaks, *Research Issues*, in Child Welfare League of America, *Issues in Gay and Lesbian Adoption* 27 (Anne Sullivan ed. 1995) [hereinafter "*Research Issues*"]; Charlotte J. Patterson, *Adoption of Minor Children by Lesbian and Gay Adults: A Social Science Perspective*, 2 *Duke J. Gender L. & Pol'y* 191, 198 (1995); Jerry J. Binger & R. Brooke Jacobsen, *Adult Responses to Child Behavior and Attitudes Toward Fathering: Gay and Nongay Fathers*, 23 *J. Homosexuality* 99, 109 (1992); Frederick W. Bozett, *Gay Fathers*, in *Gay and Lesbian Parents* 15 (1987); Beverly Hoeffler, *Children's Acquisition of Sex-Role Behavior in Lesbian-Mother Families*, 51 *Am. J. Orthopsychiatry* 536, 542-43 (1981); Judith Ann Miller, *et al.*, *The*

absence of differences between gay and heterosexual parents on every meaningful measure of parenting ability.³ For example, there are no differences in terms of child-rearing practices, commitment to parenting, self-esteem and psychological

Child's Home Environment for Lesbian vs. Heterosexual Mothers: A Neglected Area of Research, 7 J. Homosexuality 49, 55-56 (1981).

3 See, e.g., Cheryl A. Parks, Ph.D., *Lesbian Parenthood: A Review of the Literature*, 68 Am. J. Orthopsychiatry 376, 380, 386 (1998) (a critical examination of 17 peer-reviewed studies published between 1980 and 1992 concluded that “few differences” exist between heterosexual and lesbian mothers); *Choosing Motherhood*, *supra* note 2, at 111-12 (no differences between lesbian and heterosexual parents); Sally L. Kweskin & Alicia S. Cook, *Heterosexual and Homosexual Mothers' Self-Described Sex-Role Behavior and Ideal Sex-Role Behavior in Children*, 8 Sex Roles 967, 971 (1982) (lesbian mothers and heterosexual mothers have comparable attitudes towards sex roles); Martha Kirkpatrick, *Clinical Implications of Lesbian Mother Studies*, 14 J. Homosexuality 201, 210 (1987) (lesbian mothers no different from heterosexual mothers in lifestyle, parenting style, or social support system); K. F. McNeill, *et al.*, *Families & Parenting: A Comparison of Lesbian & Heterosexual Mothers*, 82 Psychol. Rep. 59 (1998) (finding no differences in parenting behaviors or sex role characteristics between lesbian and heterosexual mothers); Ellen C. Perrin, M.D. & the Committee on Psychological Aspects of Child and Family Health, American Academy of Pediatrics, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 341, 342 (2002), available at <http://aappolicy.aappublications.org> (“no differences” between gay and heterosexual fathers in providing appropriate recreation, encouraging autonomy, or “dealing with general problems of parenting”) [hereinafter “*Pediatric Report*”]; J. Binger & Jacobsen, *supra* note 2, at 99, 109 (almost no differences between gay and non-gay fathers in providing recreation, involvement, problem-solving and parenting styles); Mary B. Harris & Pauline H. Turner, *Gay & Lesbian Parents*, 12 J. Homosexuality 101, 112 (Winter 1985/86) (comparing gay fathers, non-gay fathers, lesbian and non-lesbian mothers and finding no significant differences in the parents’ relationship with their children).

adjustment between lesbian mothers and heterosexual mothers.⁴ Similarly, studies have also shown no discernible differences between the parenting skills of gay fathers and heterosexual fathers.⁵ “Empirical evidence reveals . . . that gay fathers have substantial evidence of nurturance and investment in their parental role and no differences from heterosexual fathers in providing appropriate recreation, encouraging autonomy, or dealing with general problems of parenting.”⁶

Moreover, there is scientific consensus that children of lesbian and gay parents are not disadvantaged in any respect (except to the extent that the State will not let their parents marry, thereby increasing the risk factors towards instability by depriving those children access to the full protections afforded by civil marriage).⁷

4 *Pediatric Report*, *supra* note 3, at 342 (citing Fiona L. Tasker & Susan Golombok, *Growing Up in a Lesbian Family: Effects on Child Development* (1997)); Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 19 *Advances in Clinical Child Psychology* 235 (Thomas H. Ollendick & Ronald J. Prinz eds., 1995); Martha Kirkpatrick, *et al.*, *Lesbian Mothers and Their Children: A Comparative Survey*, 51 *Am J. Orthopsychiatry* 545, 550 (1981).

5 Binger & Jacobsen, *supra* note 2, at 109; Bozett, *supra* note 2, at 15; Frederick Bozett, *Gay Fathers: A Review of the Literature*, in *Homosexuality and the Family* 137 (Frederick W. Bozett ed., 1989); Frederick W. Bozett, *Children of Gay Fathers*, in *Gay and Lesbian Parents* 47 (1991); Brian Miller, *Gay Fathers and Their Children*, 28 *Fam. Coordinator* 544, 551 (1979).

6 *Pediatric Report*, *supra* note 3, at 342 (footnotes and citations omitted).

7 See Judith Stacey & Timothy J. Bilbarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 *Am. Sociological Rev.* 159, 164 (2001) (surveying studies and reporting no deficits in children raised by lesbians concerning self-esteem, anxiety, depression, behavioral problems, performance in sports, school and friendships, use of counseling, sociability, hyperactivity or emotional difficulty); Raymond W. Chan, *et al.*, *Psychological Adjustment Among Children Conceived via Donor*

Numerous studies conducted by respected child development researchers consistently show that children raised by lesbians or gay men demonstrate no deficits in intellectual development, social adjustment or psychological well-being in comparison to children raised by heterosexual parents.⁸ As one study concluded, “[t]he research is extraordinarily clear in its finding about lesbian and gay parents and their children: they look remarkably like their heterosexual counterparts and their children.”⁹

Insemination by Lesbian and Heterosexual Mothers, 69 *Child Development* 443 (1998); Tasker & Golombok, *supra* note 4; *Research Issues*, *supra* note 2, at 33-34 (citing Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 *Child Development* 1025, 1026-42 (1992)); Robert L. Barrett & Bryan E. Robinson, *Gay Dads*, in *Redefining Families: Implications for Children’s Development* 157, 168 (Adele E. Gottfried & Allen W. Gottfried eds., 1994) Fiona L. Tasker & Susan Golombok, *Children Raised by Lesbian Mothers: The Empirical Evidence*, 21 *Fam. L.* 184, 186 (1991); Julie S. Gottman, *Children of Gay and Lesbian Parents*, 14 *Marriage & Fam. Rev.* 177, 186-92 (1990); Patricia J. Falk, *Lesbian Mothers: Psychological Assumptions in Family Law*, 44 *Am. Psychologist* 941, 943-47 (1989); Elizabeth D. Gibbs, *Psychosocial Development of Children Raised by Lesbian Mothers*, 8 *Women & Therapy* 65, 66-74 (1988)); David Kleber, *et al.*, *The Impact of Parental Homosexuality in Child Custody Cases: A Review of the Literature*, 14 *Bull. Am. Acad. Psychiatry L.* 81, 86 (1986).

⁸ See *Pediatric Report*, *supra* note 3, at 342-43 (citations omitted); Chan, *supra* note 7; Tasker & Golombok, *supra* note 4; *Research Issues*, *supra* note 2, at 29; Sharon L. Huggins, *A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers*, 18 *J. Homosexuality* 123 (1989); Kirkpatrick, *supra* note 4, at 547-49.

⁹ G. Dorsey Green & Frederick W. Bozett, *Lesbian Mothers and Gay Fathers*, in *Homosexuality: Research Implications for Public Policy* 197, 198 (John C. Gansiorek & James D. Weinrich eds., 1991).

Amicus Marriage, Inc. cites to case law for the proposition that children are best raised by both a mother and a father. (See Brief of Marriage, Inc., pp. 4-5.) The position taken by the courts in these cases is conclusory, unfounded and contrary to valid social science research. The courts in these cases provided little discussion, and did not review the research, regarding the well being of children raised by same-sex couples. Ultimately, these decisions either ignore, or fail to cite the uniform results of the research, or else disingenuously suggest that there is contrary research to review. Whether a review of the research is undertaken by the courts or the legislature, *In re Kandu*, 315 B.R. 123, 146 (Bankr. W.D. Wash. 2004), there is no competing research to weigh. As discussed herein, all of the valid, peer-reviewed research evaluating children raised by same-sex couples have concluded that there is simply no relationship between parental sexual orientation and any measure of a child's healthy development.

II. LEADING EXPERTS, CHILD WELFARE AND MENTAL HEALTH PROFESSIONALS AGREE THAT CHILDREN RAISED BY GAY AND LESBIAN PARENTS FARE AS WELL AS CHILDREN RAISED BY HETEROSEXUAL PARENTS ON ALL MEASURES OF WELL-BEING, DEVELOPMENT, AND ADJUSTMENT.

This court should not simply accept the notion that children are better off with opposite-sex parents than with same-sex parents. See, e.g., *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941, 963 (Mass. 2003); *Baker*, 744 A.2d at 884-85. There is no valid scientific basis for such a conclusion. Reliable research has

conclusively established that children raised by same-sex couples fare as well as children raised by heterosexual parents in terms of their general health and well-being. Every medical, psychological, and child-welfare organization to have addressed the topic has concluded that 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.

NASW has also affirmed that “same-gender sexual orientation should be afforded the same respect and rights as other-gender orientation.”¹⁰ NASW 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.¹¹

The American Academy of Pediatrics (“AAP”), a nonprofit organization with over 60,000 members dedicated to the health, safety, and well-being of children, has adopted a formal policy declaring that “children who grow up with 1

10 National Association of Social Workers, *Lesbian, Gay, and Bisexual Issues, in Social Work Speaks* 224, 228 (2003).

11 National Association of Social Workers, *Policy Statement: Lesbian, Gay, and Bisexual Issues, in Social Work Speaks* 193, 194 (1997).

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.”¹²

According to the AAP, the keys to positive outcomes are the quality of the parent-child relationship and the quality of the parents’ own relationship, rather than the gender or sexual orientation of the parents.

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 are apparently more powerfully influenced by family processes and relationships than by family structure.¹³

An analysis completed for the APP has ultimately concluded that “there is also ample evidence to show that children raised by same-gender parents fare just as well as those raised by heterosexual parents. Simply put, same-gender civil

¹² *Pediatric Report*, *supra* note 3, at 341, 343; *see also* Ellen C. Perrin *et al.*, *Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 339, 339 (2002).

¹³ *Pediatric Report*, *supra* note 3, at 343 (emphasis supplied).

marriage harms no one, whereas prohibiting civil marriage for gays and lesbians harms these couples and their children.”¹⁴

The American Psychoanalytic Association, with approximately 3,500 members, has also reached the same unequivocal conclusion: 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.¹⁵

Similarly, 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.”¹⁶

14 Jim Pawelski, *The Effects of Marriage, Civil Union and Domestic Partnership Statutes and Amendments on the Legal, Financial and Psychosocial Health and Well-Being of Children*, An Analysis for the American Academy of Pediatrics Board of Directors, p. 18 (July 2005) (emphasis supplied).

15 American Psychoanalytic Association, *Position Statement on Gay and Lesbian Parenting* (May 16, 2002).

16 American Psychological Association, *Lesbian and Gay Parenting: A Resource for Psychologists* 8 (1995) (emphasis supplied).

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.”¹⁷

Finally, 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.”¹⁸ 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.”¹⁹

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 a parent’s sexual orientation and any recognized measure of a child’s social and psychological adjustment or cognitive abilities. All

17 American Academy of Child & Adolescent Psychiatry, *Policy Statement: Gay, Lesbian, and Bisexual Parents* (June 1999) (emphasis supplied).

18 American Medical Association House of Delegates, Resolution 204 (A-4) (Apr. 29, 2004).

19 *Id.* (emphasis supplied).

of the organizations referenced above—each of whom has the mission of promoting children’s welfare—have recognized that lesbians and gay men can provide healthy child-rearing environments, and that their children adjust just as well as other children. There simply is no scientifically justifiable basis to disfavor parenting by lesbian and gay men, nor deprive their children by adhering to scientifically disproved assumptions.

III. ALTERNATIVE THEORIES ABOUT HARM TO CHILDREN RAISED BY GAYS OR LESBIANS ARE UNFOUNDED AND BASED ON INAPPLICABLE STUDIES.

Amicus Marriage, Inc. asserts that children not raised in intact families with both a mother and a father are fated to a litany of “terribles” (*e.g.*, drug and alcohol abuse, emotional and behavioral problems, depression, unwed pregnancy, etc.). (Brief of Marriage, Inc., p. 7.) This is a reckless assertion based on a distortion of otherwise valid, but inapplicable, social science research which focuses on the well-being of children raised by opposite-sex couples. (*See* Plaintiffs’ Brief p. 53 n.19.) Specifically, Marriage, Inc. largely relies on studies that compare married opposite-sex couples with divorced and/or single parent families. Thus, the studies focused on whether the couples were married or not, rather than the sexual orientation of the people making up those couples. As noted by Professor Judith Stacey, this research on heterosexual-parent families in this context “confound[s] the effects of the number and the legal status of parents. None of the research cited

to demonstrate the importance of fathers (or mothers) examines the adjustment of children raised by same-sex couples.”²⁰

Marriage, Inc. asserts that “children raised by a biological mother and a father are less likely to suffer serious physical abuse.” (Brief of Marriage, Inc., p. 10-11.) However, Marriage, Inc. acknowledges the statistics cited compared children living with their married, opposite-sex parents with those children living with the biological mother and a cohabiting male partner. (*Id.* at 11.) Thus, the research does not address children who are raised by parents in same-sex relationships. Marriage, Inc. also selectively quotes from case law in an attempt to support their erroneous propositions. For example, in quoting *Morrison v. Sadler*, 821 N.E.2d 15 (Ind. Ct. App. 2005), Marriage, Inc. omits the following crucial, highlighted language: “we cannot ignore the existence of studies and scholarly commentary indicating that the increase in out-of-wedlock births, and we are talking here specifically about children resulting from opposite-sex intercourse, has resulted in higher instances of physical and sexual child abuse, educational failure, and poverty, among other things.” *Compare Morrison*, 821 N.E.2d at 25 n.11 with Brief of *Amicus* Marriage, Inc. p. 13. Ultimately, Marriage, Inc. simply cannot mask the fact that its studies and case law contemplate evaluations of heterosexual families and ultimately achieve nothing more than prove the commonsensical

20 Judith Stacey, Ph.D., *Legal Recognition of Same-Sex Couples: The Impact on Children and Families*, 23 *Quinnipiac L. Rev.* 529, 534 (2004).

proposition that “two parents are better than one.”²¹ As the Washington Supreme Court correctly recognized in a carefully analyzed opinion, “[t]he offered studies ... regarding children from broken homes or children raised by a single parent have no logical relevance.” *Andersen v. King County*, No. 04-2-04964-4, 2004 WL 1738447, *10 (Wash. Aug. 4, 2004).

These studies simply cannot be equated to the situation wherein a same-sex couple plans for children together, conceiving (or adopting), and jointly raising those children together. Such a planned, same-sex family is simply not analogous to the step-parent and other opposite-sex parenting scenarios outlined in the studies cited by Marriage, Inc. The *amici* for Defendants simply ignore the vast body of research that has evaluated the impact of parental sexual orientation on children reared by gay individuals and/or same-sex couples. While the research materials cited by Marriage, Inc. and other *amici* make meaningful distinctions between children raised by opposite-sex, married parents from children raised in step-families or single-parent homes, these studies cannot be applied to draw adverse conclusions as to the well-being of children raised by same-sex couples.

²¹ Stacey, *supra* note 20, at 534.

IV. CHILDREN RAISED BY SAME-SEX COUPLES ARE NOT NEGATIVELY AFFECTED BY THE ABSENCE OF AN OPPOSITE SEX PARENT.

Despite the weight and scope of opinion by medical, psychological, and child welfare professionals, opposing *amici* advance certain hypotheses related to the supposed negative effect of raising a child outside of an opposite-sex, married family. Essentially, *amici* argue that children are best served when raised in a family with both biological parents. This suggestion is misleading and unsupported.

The general hypothesis posited by Marriage, Inc. is that the absence of a father or a mother is negative for children and therefore same-sex parenting is inferior. This hypothesis is based on an inappropriate interpretation of the literature. The “motherlessness” or “fatherlessness” in the referenced studies frequently relates to children growing up with a single parent, in a step-family, or in some disrupted family situation (*e.g.*, divorce) causing the absence of the biological father (or mother) from a heterosexual coupling. There is no valid scientific literature, however, that suggests that children raised with two male (or two female) parents do not do as well as children with two opposite-sex parents.

As two leading scientists observed:

[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.²²

Indeed, significant research demonstrates beyond dispute that children raised by gay men are not disadvantaged by their fathers' sexual orientation.²³

Similarly, several studies compared children born to lesbian mothers and heterosexual mothers, each of whom had conceived through donor insemination. The research confirmed that there are no differences in behavioral adjustment or social or psychological functioning among the children and, in fact, determined that "it was impossible to distinguish" at all between either group.²⁴ There also has

22 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).

23 Jerry J. Binger & Frederick W. Bozett, *Parenting by Gay Fathers*, 14 *Marriage & Fam. Rev.* 155, 163 (1990) ("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 "and may be even more so in some ways than nongay parents"); Gottman, *supra* note 7, at 186 ("In general, none of the above studies on children of lesbian mothers and gay fathers reported negative effects on children"); Barrett & Robinson, *supra* note 7, at 90-91 ("[c]hildren of homosexual fathers do not differ significantly from children raised in more traditional families").

24 Chan, *supra* note 7, at 445 ("It was impossible to distinguish between children born to and brought up by lesbian versus heterosexual parents," and concluding that the results refute the idea that "only heterosexual parents can raise healthy children"); see also A. Brewaeys, et al., *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*, 12 *Human Reproduction* 1349, 1356 (1997) (finding no differences in behavioral adjustment of children in comparison groups and concluding that "children in lesbian mother families have been growing up for the first years of their lives in a warm and secure family environment, just like children in the heterosexual control groups"); *Choosing*

been no difference in the rate of psychiatric, emotional or behavioral difficulty among children of lesbians and heterosexual parents.²⁵ The findings of no differences in emotional health and psychosocial adjustment hold true universally in studies comparing children born to lesbian mothers with those born to

Motherhood, *supra* note 2 at 105, 112 (donor insemination study finding remarkable similarity between the children of lesbian and heterosexual parents with respect to behavioral adjustment).

25 Ellen C. Perrin, M.D., *Children Whose Parents Is/Are Lesbian or Gay*, in *Sexual Orientation in Child and Adolescent Health Care* 105, 118 (2002) (“no differences were found between the children with lesbian and those with heterosexual mothers in the number or type of psychiatric difficulties”); Susan Golombok, *et al.*, *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 *J. Child Psychol. Psychiatry* 551, 565, 567 (1983) (lesbian mothers strongly endorse child-centered attitudes and commitment to their maternal roles; researchers found no significant differences between the children of lesbian mothers and those of heterosexual mothers with respect to emotional difficulties, conduct difficulties, unsociability, or hyperactivity); Tasker & Golombok, *supra* note 4, at 134-44 (in a longitudinal study, researchers found no difference between the children raised by a lesbian mother and those raised by a heterosexual mother with respect to anxiety or depression, and no significant differences with respect to mental health problems of mothers); Falk, *supra* note 7, at 944 (“[N]o evidence exists for a direct relationship between a mother’s sexual orientation and the mental health of her offspring”); Barbara McCondish, *Against All Odds: Lesbian Mother and Family Dynamics*, in *Gay and Lesbian Parents* 23, 24 (Frederick W. Bozett ed., 1987) (finding that lesbian and gay parents provide effective parenting for their children, and observing that “children of gay and lesbian parents have no more frequent psychiatric problems and gender dysfunction than do the children of heterosexual parents”).

heterosexual mothers,²⁶ and comparing children of divorced lesbian mothers with those of divorced heterosexual mothers.²⁷

26 A. Brewaeys & E.V. Van Hall, *Lesbian Motherhood: The Impact on Child Development and Family Functioning*, 18 J. Psychosom. Obstet. Gynecol. 1, 13 (1997) (results of studies of children raised from birth by lesbian mothers “do not seem to suggest that different early childhood experiences with respect to the absence of a father and with respect to the presence of two lesbian mothers had any effect on child development”); Charlotte J. Patterson, *Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex-Role Identity*, in *Contemporary Perspectives on Lesbian & Gay Psychology: Theory, Research, & Application* 156, 167-68 (B. Green & G. Herek eds., 1994) (children of lesbian mothers found to be similar to the normative sample on social competence, social behavior, self-esteem, sociability, and aggressiveness); Charlotte J. Patterson, *Lesbian Mothers and Their Children: Findings from the Bay Area Families Study*, in *Lesbians and Gay Couples and Families: A Handbook for Therapists* 420, 434 (J. Laird & R.J. Green eds., 1996) (results show “child development is proceeding normally”); Patterson, *supra* note 4, at 255 (“social competence among children with lesbian mothers was rated as normal”); Susan Golombok, *et al.*, *Children Raised in Fatherless Families from Infancy: Family Relationships and the Socioemotional Development of Children of Lesbian and Single Heterosexual Mothers*, 38 J. Child Psychol. & Psychiatry & Allied Disciplines 783, 789 (1997) (finding no negative impact on children’s psychological development when growing up with lesbian parents).

27 Gottman, *supra*, note 7, at 189-90 (daughters of lesbian mothers scored higher than daughters of non-remarried heterosexual mothers with respect to the individuals’ sense of security in the world and in relationships); Kirkpatrick, *supra* note 4, at 547-48 (researchers found no differences in the type or frequency of pathology “by any measure . . . available” between the children living with divorced lesbian mothers and the ones living in similar households with divorced heterosexual mothers); Green, *supra* note 9, at 182 (children raised from early childhood by a lesbian mother are not different on parameters of psychosexual and psychosocial development from children raised by heterosexual mothers); Kirkpatrick, *supra* note 3, at 207 (“[T]he comparative studies completed so far have not identified any damaging consequences to the children’s development of growing up in a lesbian household”); Ann O’Connell, *Voices from the Heart: The Developmental Impact of a Mother’s Lesbianism on Her Adolescent Children*, 63 Smith & Stud. In Soc. Work 281, 284 (1993) (identifying numerous studies using

It is disheartening and intellectually dishonest for opposing *amici* to take a position against any form of relationship recognition of same-sex couples based on research that tells nothing but the tale of woe experienced disproportionately by children born to or raised by a single parent rather than two parents. In such circumstances, these children experience the sometimes devastating disruption of the divorce of their parents or the effects associated with forming step-families.

In contrast, lesbian and gay parents are able to raise children who are as well adjusted as those of heterosexual parents because the factors associated with a child's positive adjustment have no relation to the parent's sexual orientation.²⁸

These factors include, among other things, secure attachments between parent and child, emotionally stable parents, an authoritative (not authoritarian) parenting style (*i.e.*, warmth, approval and emotional empathy coupled with a willingness to impose rules, structure and limits when necessary), and parents with realistic

various methods and samples across age groupings, which all report “no major differences in psychological or social development” between children of heterosexual and lesbian single parents); Cheri A. Pies, *Lesbians and the Choice to Parent*, 14 Marriage & Fam. Rev. 137, 140 (1989) (referring to growing body of studies of children of lesbian parents and concluding that “children raised by lesbians have an equally good chance of developing into healthy, happy human beings as do children raised in heterosexual homes”); Huggins, *supra* note 8, at 131 (study found no significant statistical differences in self-esteem scores of adolescent children with divorced lesbian mothers and adolescent children with divorced heterosexual mothers).

28 See Michael E. Lamb, *et al.*, *Parent-child Relationships: Development in the Context of the Family*, in *Developmental Psychology: An Advanced Textbook* 32-42 (4th ed. 1999).

expectations, well-developed behavior management, coping and good listening skills, flexible family roles and a strong support network.²⁹ Lesbian and gay parents can and do provide those parental attributes. Thus, it is not surprising that lesbian and gay parents are just as likely as heterosexual parents to be able to provide for the best interests of children.³⁰

V. DEFENDANTS 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 *amicus* NASW 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 that lesbian and gay parents fare as well as their heterosexual counterparts, by every measure.

29 *See id.* at 7-10, 26-29, 42-43.

30 To the extent that the State or any *amici* suggest that children of lesbians and gays are more likely to be lesbian or gay themselves, there is no scientific basis to reach the conclusion that same-sex parents somehow “cause” children who do not otherwise have same-sex attraction feelings to have such feelings or enter into romantic relationships with members of the same sex. *See Pediatric Report*, at 342 (2002) (“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”).

Noted researcher Elizabeth 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).³¹

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. Ultimately, there is no "battle of the experts" on the basic, crucial points.³²

31 Perrin, *Children Whose Parents*, *supra* note 25, at 126.

32 The only "researcher" who has predicted such harm is Paul Cameron who apparently resigned from the American Psychological Association under pressure 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 and Biblarz, *supra* note 7, at 161; Patterson, *supra* note 26, at 155-157; *Baker v. Wade*, 106 F.R.D. 526, 536-37 & n.31 (N.D. Tex. 1985).

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 NASW 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. “Although many may hold strong opinions on the subject, the fact is that there are no scientifically valid studies tending to establish a negative impact on the adjustment of children raised by an intact same-sex couple as compared with those raised by an intact opposite-sex couple.” *Andersen*, 2004 WL 1738447 at *10.

CONCLUSION

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. To the extent 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, or other forms of protection based on a same-sex relationship, undermines such a purpose and inflicts great harm to the children of gays and lesbians. Section 29 discriminates not just against gay and lesbian couples, but also against their children. Section 29,

as written, denies those children the benefits and protections that come with state recognition of their families and relationships.

Dated: November 9, 2005

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C), the undersigned hereby certify, as counsel for Amici Curiae National Association of Social Workers and the Nebraska Chapter of the National Association of Social Workers, that this brief was prepared in Microsoft Word 2000, using 14-point Times New Roman proportionally-spaced font, and further certify this brief complies with the type-volume limitation as there are 6,273 number of words in this brief pursuant to Fed. R. App. R. 29(d), excluding the parts of the brief exempted by Fed.R.App.P. 32(a)(7)(B)(iii), according to Microsoft Word 2000's word count. A CD-ROM filed with this brief has been scanned for viruses and is virus-free.

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