

Case Nos. 13-4178, 14-5003, 14-5006

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UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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DEREK KITCHEN, ET AL.,

*Plaintiffs-Appellees,*

v.

GARY R. HERBERT, ET AL.,

*Defendants-Appellants.*

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On Appeal from the United States District Court for the District of Utah  
Civil Case No. 2:13-CV-00217-RJS

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MARY BISHOP, ET AL.,

*Plaintiffs-Appellees,*

SUSAN G. BARTON, ET AL.,

*Plaintiffs-Appellees/Cross-Appellants,*

v.

SALLY HOWE SMITH, ET AL.,

*Defendant-Appellant/Cross-Appellee.*

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On Appeal from the United States District Court for the Northern District of  
Oklahoma, Civil Case No. 04-CV-848-TCK-TLW

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**AMICUS CURIAE BRIEF OF THE AMERICAN SOCIOLOGICAL  
ASSOCIATION IN SUPPORT OF PLAINTIFFS-APPELLEES AND  
PLAINTIFFS-APPELLEES/CROSS-APPELLANTS**

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The American Sociological Association (“ASA”) is the national professional and scholarly association of sociologists in the United States. Founded in 1905, the ASA has more than 13,000 members, including most sociologists holding doctoral degrees from accredited universities. The ASA publishes nine leading peer-reviewed journals. The ASA is committed to and bound by the highest standards of research methodology and objectivity and is dedicated to advancing sociology as a scientific discipline and profession that serves the public good.

The ASA has a long history of presenting the consensus research findings of social scientists to American courts for their use in evaluating evidence and legal issues, and its conclusions are regularly relied on by courts. As part of that mission, the ASA submits this brief to present to the Court the consensus view of social scientists on certain issues raised in these cases—namely, the effects of same-sex parents on the wellbeing of children.<sup>2</sup>

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<sup>1</sup> Pursuant to Rule 29(c)(5) of the Federal Rules of Appellate Procedure, *amicus curiae* states that no counsel for a party authored any part of this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

<sup>2</sup> The ASA submitted similar amicus briefs to the Supreme Court of the United States in *United States v. Windsor*, No. 12-307, and *Hollingsworth v. Perry*, No. 12-144, and to the United States Court of Appeals for the Ninth Circuit in *Sevcik v. Sandoval*, No. 12-17668, and *Jackson v. Ambercrombie*, No. 12-16995.

## SUMMARY OF ARGUMENT

In their briefs to this Court in *Kitchen v. Herbert* and *Bishop v. Smith*, Appellants Gary R. Herbert and Sean D. Reyes and Appellant Sally Howe Smith support upholding Amendment 3 of the Utah Constitution and Sections 30-1-2 and 30-1-4.1 of the Utah Code (the “Utah Marriage Bans”), and Section 35(A)-(B) of Article 2 of the Oklahoma Constitution (the “Oklahoma Marriage Ban,” and together with the Utah Marriage Bans, the “Marriage Bans”), respectively, on an assertion that children fare better with different-sex parents than with same-sex parents. For instance, Appellants Herbert and Reyes contend that “[c]ommon sense, long experience, and sociological evidence confirm that . . . children do best when raised by their biological mothers and fathers in stable marriage unions.” *See* Brief of Appellants Herbert and Reyes at 62. Similarly, Appellant Smith argues that “on average, children do not fare as well when they are raised outside stable marriages between their biological parents.” *See* Brief of Appellant Smith at 48 (citations and quotations omitted).

However, the claim that same-sex parents produce less positive child outcomes—either because such families lack both a male and female parent, or because both parents are not the biological parents of their children—is contradicted by abundant social science research. Decades of methodologically sound social science research, especially multiple nationally representative studies

and the expert evidence introduced in courts around the country, confirm that positive child wellbeing is the product of stability in the relationship between the two parents, stability in the relationship between the parents and the child, and greater parental socioeconomic resources. Whether a child is raised by same-sex or different-sex parents has no bearing on a child's wellbeing.

The clear and consistent consensus in the social science research is that across a wide range of indicators, children fare just as well when raised by same-sex parents as children raised by different-sex parents. Many of the social science studies cited by the Appellants to support their arguments fail to evaluate same-sex parents at all. Accordingly, as a matter of science, these studies cannot serve as the basis for conclusions about same-sex parents and related child outcomes and do not undermine the social science consensus that children fare just as well with same-sex parents. To the extent some of the studies show that stability improves child outcomes, they confirm that marriage rights for same-sex couples and recognition of such marriages are likely to improve the wellbeing of children of same-sex parents by providing enhanced family stability. The Supreme Court has recognized that the government's failure to recognize marriages for same-sex couples "humiliates tens of thousands of children now being raised by same-sex

couples,”<sup>3</sup> making it “even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives.” *United States v. Windsor*, 133 S. Ct. 2675, 2694 (2013). The research presented in this brief articulates these points in greater detail, and demonstrates that the government’s interest in promoting the wellbeing of children is neither substantially nor rationally connected to the Marriage Bans because, *inter alia*, the overwhelming scientific evidence shows that same-sex couples are equally capable of generating positive child outcomes.<sup>4</sup>

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<sup>3</sup> Based on the U.S. Census Bureau’s American Community Survey, over 220,000 children live in same-sex couple households. See Krista K. Payne, *Demographic Profile of Same-Sex Couple Households with Minor Children, 2012*, National Center for Family & Marriage Research (FP-14-03), [http://www.bgsu.edu/content/dam/BGSU/college-of-arts-and-sciences/NCFMR/documents/FP/FP-14-03\\_DemoSSCoupleHH.pdf](http://www.bgsu.edu/content/dam/BGSU/college-of-arts-and-sciences/NCFMR/documents/FP/FP-14-03_DemoSSCoupleHH.pdf); Gary J. Gates, *LGBT Parenting in the United States* (Feb. 2013), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf>. This number does not include the significant number of children living with one parent who identifies as gay, lesbian, or bisexual.

<sup>4</sup> The Marriage Bans in no way affect whether children will be raised by same-sex or different-sex parents. They do not encourage gay and lesbian individuals to enter into different-sex marriages, nor do they deter such individuals from having children within same-sex relationships. Various courts have made this point when assessing the constitutionality of other laws that limit the recognition of marriage to different-sex couples. For example, with respect to the Defense of Marriage Act (“DOMA”), the U.S. Court of Appeals for the Second Circuit said: “We agree that promotion of procreation can be an important government objective. But we do not see how DOMA is substantially related to it.” *Windsor v. United States*, 699 F.3d 169, 188 (2d Cir. 2012), *aff’d* 133 S. Ct. 2675 (2013). See also *Windsor v. United States*, 833 F. Supp. 2d 394, 404 (S.D.N.Y. 2012), *aff’d* 133 S. Ct. 2675 (2013) (“DOMA has no direct impact on heterosexual couples at all; therefore, its

Courts have long relied on social science research to inform their decisions. For example, in *Roper v. Simmons*, the Supreme Court relied on social science research showing that “juveniles have less control, or less experience with control, over their own environment” and that “[t]he personality traits of juveniles are more transitory, less fixed” to support its conclusion that capital punishment for crimes committed while a minor is unconstitutional. 543 U.S. 551, 569-70 (2005); *see also Atkins v. Virginia*, 536 U.S. 304, 318 (2002) (noting that “[t]here is no evidence that [mentally retarded individuals] are more likely to engage in criminal conduct than others” and holding, in part based on the social science evidence and “germane expertise” of *amicus curiae*, that executing mentally retarded individuals violates the Eighth Amendment). The Appellants offer no facts to support the contention that Utah and Oklahoma possess an important or rational basis for their respective state laws against marriage for same-sex couples. In this instance, when the social science evidence is exhaustively examined—which the ASA has done—the facts demonstrate that children fare just as well when raised by same-sex parents. Unsubstantiated fears regarding same-sex parents do not overcome these facts and provide no justification for upholding the Marriage Bans.

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ability to deter those couples from having children outside of marriage, or to incentivize couples that are pregnant to get married, is remote, at best.”).

## ARGUMENT

### I. SCHOLARLY CONSENSUS IS CLEAR: CHILDREN OF SAME-SEX PARENTS FARE JUST AS WELL AS CHILDREN OF DIFFERENT-SEX PARENTS

The social science consensus is clear: children raised by same-sex parents fare just as well as children raised by different-sex parents. Numerous nationally representative, credible, and methodologically sound social science studies form the basis of this consensus. These studies reveal that children raised by same-sex parents fare just as well as children raised by different-sex parents across a wide spectrum of measures of child wellbeing: academic performance, cognitive development, social development, psychological health, early sexual activity, and substance abuse.

#### A. ACADEMIC PERFORMANCE AND COGNITIVE DEVELOPMENT

Social science research confirms that the academic performance of children raised by same-sex parents is indistinguishable from that of children raised by different-sex parents. A leading study by Daniel Potter based on nationally representative, longitudinal data found no significant difference in academic achievement between children of same-sex parents and children of different-sex parents. *See Daniel Potter, Same-Sex Parent Families and Children's Academic Achievement*, 74 *Journal of Marriage & Family* 556 (2012). Similarly, another leading 2009 study by sociologists Alicia Fedewa and Teresa Clark employing

nationally representative data that examined the academic achievement of first-grade children reported no significant differences in academic achievement between children raised by same-sex and different-sex parents. See Alicia L. Fedewa & Teresa P. Clark, *Parent Practices and Home-School Partnerships: A Differential Effect for Children with Same-Sex Coupled Parents?*, 5 *Journal of GLBT Family Studies* 312 (2009); see also Michael J. Rosenfeld, *Nontraditional Families and Childhood Progress Through School*, 47 *Demography* 755 (2010) (demonstrating that children of residentially stable same-sex parents are as likely to make normal progress through school as children from stable different-sex married parents); Douglas W. Allen et al., *Nontraditional Families and Childhood Progress Through School: A Comment on Rosenfeld*, 50 *Demography* 955 (June 2013), <http://link.springer.com/article/10.1007/s13524-012-0169-x/fulltext.html> (confirming similar results of academic performance when comparing children of residentially stable same-sex parents with children of stable different-sex married parents).<sup>5</sup> The same pattern holds true among older children. For example, in

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<sup>5</sup> Opponents of same-sex marriage often cite to this study. Allen re-works data used by Rosenfeld, but he ignores stability as a control factor, and as a result, finds a difference in academic achievement. However, as Rosenfeld himself responds, and as demonstrated by the social science consensus, stability is the primary factor influencing child outcomes. By removing the control element for stability, Allen cannot discern children's family history. Allen's work thereby conceals that many children in families with same-sex parents come from other settings, such as foster care, influencing the results but not reflecting on the quality of same-sex parents. When stability is included as a control element, Allen's study confirms that same-

another nationally representative study, social scientists found similar GPA levels among adolescents living with same-sex and different-sex parents. See Jennifer L. Wainright et al., *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, 75 *Child Development* 1886 (2004).

Research also reveals similar cognitive development between children raised by same-sex parents and different-sex parents. See Justin A. Lavner et al., *Can Gay and Lesbian Parents Promote Healthy Development in High-Risk Children Adopted from Foster Care?*, 82 *American Journal of Orthopsychiatry* 465 (2012).

In fact, a report of children with same-sex parents reveals that they score at least as well as—and sometimes better than—children of different-sex parents on numerous indicators of educational achievement and involvement. See Joseph G. Kosciw & Elizabeth M. Diaz, *Involved, Invisible, Ignored: The Experiences of Lesbian, Gay, Bisexual, and Transgender Parents and Their Children in Our Nation's K-12 Schools*, Gay, Lesbian and Straight Education Network (2008).

Finally, opponents of same-sex marriage have cited a recent paper written by Douglas Allen for the proposition that a discrepancy in graduation rates exists between children raised by same-sex and different-sex parents. See Douglas W.

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sex parents have no negative impact on academic outcomes of children. See Michael J. Rosenfeld, *Reply to Allen et al.*, 50 *Demography* 963 (June 2013), <http://link.springer.com/article/10.1007%2Fs13524-012-0170-4>.



Allen, *High School Graduation Rates Among Children of Same-Sex Households*, 11 Rev. Econ. Household, 635–58 (Sept. 2013), <http://link.springer.com/article/10.1007%2Fs11150-013-9220-y>. This study does not change the analysis of the literature because the results indicate a mixed pattern of findings, and the most rigorous model in the study, which involved controlling for 5-year residential stability, indicates no statistical differences in the graduation rates of young adults (ages 17–22) living in same-sex and different-sex parent families. Moreover, unlike prior research on high school graduation rates, this study rests on the living arrangements of young adults at the time of interview rather than during the period of adolescence that preceded graduation (the period relevant for studying the impact on graduation rates).

## **B. SOCIAL DEVELOPMENT**

The social development of children raised by same-sex parents is equivalent to that of children raised by different-sex parents. Analysis of nationally representative data reveals no differences in social adjustment depending on whether children were raised by same-sex or different-sex parents. *See* Fedewa & Clark at 312. Nationally representative studies of adolescents find that the number, support, and quality of peer relationships and friendships are similar for teens raised by female same-sex parents and those raised by different-sex parents. *See* Jennifer L. Wainright & Charlotte J. Patterson, *Peer Relations Among Adolescents*

*with Female Same-Sex Parents*, 44 *Developmental Psychology* 117 (2008); *see also* Fiona Tasker, *Lesbian Mothers, Gay Fathers and Their Children: A Review*, 26 *Developmental and Behavioral Pediatrics* 224 (2005) (finding that children of same-sex parents exhibited the same typical adjustments related to peer relations as children of different-sex parents and therefore could not be said to fare worse based on their parents' sexuality).

### **C. MENTAL HEALTH**

Social science studies also confirm that children of same-sex parents are just as psychologically healthy as children of different-sex parents. According to a nationally representative study, adolescents raised by same-sex and different-sex parents report similar levels of self-esteem and depression. *See* Wainright et al. at 1886. Other reliable studies corroborate these results. *See* Loes van Gelderen et al., *Quality of Life of Adolescents Raised from Birth by Lesbian Mothers: The US National Longitudinal Family Study*, 33 *Journal of Developmental & Behavioral Pediatrics* 1, 1 (2012) (concluding that “[a]dolescent offspring in planned lesbian families do not show differences in [quality of life] when compared with a matched group of adolescents reared in heterosexual families”). Recent research focusing on young children reports that the ability of adopted children to externalize and internalize behaviors does not depend on whether they are raised in male same-sex, female same-sex, or different-sex parent families. *See* Abbie E. Goldberg &

JuliAnna Z. Smith, *Predictors of Psychological Adjustment in Early Placed Adopted Children With Lesbian, Gay, and Heterosexual Parents*, 27 *Journal of Family Psychology* 431 (2013). Similarly, surveys reveal no greater levels of anxiety or Attention Deficit Disorder among teenagers raised by same-sex parents than among those raised by different-sex parents. See Nanette Gartrell & Henny Bos, *US National Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents*, 126 *Pediatrics* 28 (2010).<sup>6</sup>

#### **D. EARLY SEXUAL ACTIVITY**

Social science studies also demonstrate that teenagers raised by same-sex parents and those raised by different-sex parents engage in similar levels of teenage sexual activity. For instance, nationally representative studies show that similar proportions of teenagers raised by same-sex parents and by different-sex parents have had sexual intercourse or a romantic relationship. See Charlotte J. Patterson & Jennifer L. Wainright, *Adolescents with Same-Sex Parents: Findings from the National Longitudinal Study of Adolescent Health, in Adoption by*

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<sup>6</sup> See also Rachel H. Farr et al., *Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?*, 14 *Applied Developmental Science* 164 (2010) (reporting similar findings); Scott Ryan, *Parent-Child Interaction Styles between Gay and Lesbian Parents and Their Adopted Children*, 3 *Journal of GLBT Family Studies* 105 (2007) (same); Stephen Erich et al., *A Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children*, 1 *Journal of GLBT Family Studies* 43 (2005) (same).

*Lesbians and Gay Men: A New Dimension in Family Diversity* (David M. Brodzinsky & Adam Pertman eds., 2012). Reports by 17-year-olds raised by same-sex mothers of their sexual behavior indicate that the age at which they first engage in sexual intercourse was slightly older than those in a gender- and age-matched national sample of children raised by different-sex parents. See Nanette Gartrell et al., *New Trends in Same-Sex Sexual Contact for American Adolescents?*, 41 *Archives of Sexual Behavior* 5 (2011). Moreover, the odds of having a sexually transmitted disease, becoming pregnant, or impregnating someone were statistically similar. *Id.* And none of the children raised by same-sex parents examined in the National Longitudinal Lesbian Family Study reported any physical or sexual abuse by a parent or caregiver. See Nanette Gartrell et al., *Adolescents of the U.S. National Longitudinal Lesbian Family Study: Sexual Orientation, Sexual Behavior, and Sexual Risk Exposure*, 40 *Archives of Sexual Behavior* 1199 (2011).

#### **E. SUBSTANCE ABUSE AND BEHAVIORAL PROBLEMS**

Social science studies confirm that children of same-sex parents are no more likely to abuse substances than children of different-sex parents. A nationally representative sample of adolescents living with female, same-sex parents reveals that the adolescents are similar to their counterparts raised by different-sex parents in terms of frequency of and problems with substance use (*i.e.*, tobacco, alcohol,

and marijuana) and delinquent behavior. *See* Jennifer L. Wainright & Charlotte J. Patterson, *Delinquency, Victimization, and Substance Use Among Adolescents with Female Same-Sex Parents*, 20 *Journal of Family Psychology* 526 (2006).

Furthermore, children of different-sex and same-sex parents report similar levels of problematic, rule-breaking, and inappropriately aggressive behaviors. *See* Gartrell & Bos.

\* \* \*

As the overwhelming body of social science research confirms, whether a child is raised by same-sex or different-sex parents has no bearing on a child's wellbeing.<sup>7</sup> Instead, the consensus is that the key factors affecting child wellbeing are stable family environments and greater parental socioeconomic resources, neither of which is related to the sex or sexual orientation of a child's parents. *See* Rand D. Conger et al., *Socioeconomic Status, Family Processes, and Individual Development*, 72 *Journal of Marriage & Family* 685 (2010). These factors indicate

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<sup>7</sup> Some critics make blanket dismissals of the studies underlying the social science research consensus. *See, e.g.*, Loren Marks, *Same-Sex Parenting and Children's Outcomes: A Closer Examination of the American Psychological Association's Brief on Lesbian and Gay Parenting*, 41 *Social Science Research* 735 (2012). (But an expert in child social and psychological development has said that "Marks fails to recognize the repeated demonstration by researchers using a variety of methods (including the survey research methodology he favors in the critique) that parental sexual orientation is unrelated to children's outcomes." Decl. of Lamb at 20-21, n.6, *Jackson v. Abercrombie*, No. CV11-00734, ECF No. 93-23.) The ASA's review of the studies confirms that they are methodologically sound and conform to the highest standards of sociological research.

that in order to enhance child outcomes and wellbeing, we should encourage stable and financially secure family units—including same-sex parent families—rather than exclude the hundreds of thousands of children living with same-sex couples from the stability and economic security that marriage provides.

## **II. THE RESEARCH CLAIMED TO UNDERMINE THE CONSENSUS EITHER DOES NOT ADDRESS SAME-SEX PARENTS AND THEIR CHILDREN OR IS MISCHARACTERIZED BY APPELLANTS**

Studies relied on by Appellants and opponents of marriage for same-sex couples fail to support the claim that children fare better with different-sex parents than same-sex parents because nearly all of the studies do not examine same-sex parents or their children. For example, Appellants cite to a study by Kristin Anderson Moore et al. that was published by Child Trends to support their arguments, but the authors of that study have explicitly disclaimed the use of their work for this purpose. *See* Brief of Appellants Herbert and Reyes at 63, 66; Brief of Appellant Smith at 48, 50. Similarly, the Appellants cite to studies by David Popenoe as authoritative in spite of the fact that his work does not analyze families with same-sex parents.

Moreover, Appellants and opponents of same-sex marriage often rely on two papers by Mark Regnerus, which are referred to herein as “Regnerus 2012a” and “Regnerus 2012b.” *See* Mark Regnerus, *How Different Are the Adult Children of Parents Who Have Same-Sex Relationships? Findings from the New Family*

*Structures Study*, 41 Social Science Research 752 (2012) (“Regnerus 2012a”); Mark Regnerus, *Parental Same-Sex Relationships, Family Instability, and Subsequent Life Outcomes for Adult Children: Answering Critics of the New Family Structures Study with Additional Analyses*, 41 Social Science Research 1367, 1369 (2012) (“Regnerus 2012b”). But for the reasons articulated below, and as Regnerus acknowledges, these papers do not examine, and provide no conclusions regarding, the wellbeing of children who lived with and were raised by same-sex parents.

As described below, the reports put forth by Appellants and opponents of same-sex marriage have no bearing on the issue of same-sex parents because they draw inappropriate apples-to-oranges comparisons and often do not address same-sex parents at all. Moreover, some of the findings in the studies are mischaracterized by Appellants and actually affirm that family stability and greater parental socioeconomic resources are the principal factors affecting child wellbeing.

**A. STUDIES CITED BY OPPONENTS OF SAME-SEX MARRIAGE DO NOT ADDRESS SAME-SEX PARENTS AND DO NOT UNDERMINE THE CONSENSUS**

Opponents of same-sex marriage often rely on studies analyzing stepparents, single parents, and adoptive parents—none of which address same-sex parents or their children—in order to make speculative statements about the wellbeing of

children of same-sex parents. The studies confirm that parental stability and higher parental socioeconomic resources are the key drivers of positive child outcomes.

### **1. Studies Purporting to Examine the Effect of Two Biological Parents**

Opponents of marriage for same-sex couples often cite studies purporting to show the superiority of biological parents over adoptive parents and problems faced by children conceived by donor sperm. *See* Brief of Appellants Gary R. Herbert and Sean D. Reyes at 67 (citing Institute for American Values (Elizabeth Marquardt, Norval D. Glenn, & Karen Clark), *My Daddy's Name is Donor: A New Study of Young Adults Conceived Through Sperm Donation* (2010)). It is hard to see the relevance of reports about the significance of biological parenting on the issue of marriage rights for same-sex couples given that both adoption and assisted reproduction are widely used by different-sex couples, as reflected in the very sources cited in support of the Marriage Bans.

But in any case, there is no basis for the assertion that adoption or assisted reproduction leads to negative child outcomes. Studies indicate that children raised in adoptive families since infancy or in families utilizing assisted reproduction techniques fare just as well as other children. *See also* Gartrell & Bos at 33–34 (showing that “adolescents who have been raised since birth in planned lesbian families demonstrate healthy psychological adjustment” and that they “demonstrated higher levels of social, school/academic, and total competence than



gender-matched normative samples of American teenagers”); Brent Miller et al., *Comparisons of Adopted and Non-Adopted Adolescents In A Large, Nationally Representative Sample*, 71 *Child Development* 1458 (2000) (finding little difference between adoptees and non-adoptees who live in two-parent families, and finding, to the extent there was any difference, that the difference occurs in children who were adopted later in their childhood). The recent 2013 study by Goldberg and Smith corroborates this finding. That study examined 120 families who have adopted children younger than 18 months old. Utilizing longitudinal data, the study reported that adopted children across families with male same-sex, female same-sex, and different-sex parents fair equally as well in terms of externalizing and internalizing behaviors, which are well established factors for measuring child wellbeing. *See* Goldberg and Smith.

## **2. Studies Regarding the Impact of Stepparents, Divorced Parents, or Single Parents**

Opponents of same-sex marriage often rely on studies examining the impact of stepparents, divorced parents, and single parents on child wellbeing outcomes, and use these studies to argue that two biological parents are necessary to positive child outcomes. Contrary to their assertions, these studies in no way examine same-sex parents or their impact on child wellbeing. *See, e.g.*, Kristin Anderson Moore et al., *Marriage from a Child’s Perspective: How Does Family Structure Affect Children, and What Can We Do About It?*, *Child Trends Research Brief* 1–2,

6 (June 2002), <http://www.childtrends.org/wp-content/uploads/2013/03/MarriageRB602.pdf> (comparing the wellbeing of children raised by stepparents and single parents to that of children raised by stable, two parent families); Sara McLanahan & Gary Sandefur, *Growing Up with a Single Parent* 38 (1994) (comparing “disrupted” families with “intact” families, but nowhere discussing same-sex parents); Marilyn Coleman et al., *Reinvestigating Remarriage: Another Decade of Progress*, 62 *Journal of Marriage & Family* 1288 (2000) (comparing stepparents to non-divorced parents, but not addressing same-sex parents); Mark V. Flinn et al., *Growth and Fluctuating Assymetry of Stepchildren*, 20 *Evolutionary Human Behavior* 465 (1999) (analyzing the wellbeing of children raised by stepfathers, but not addressing same-sex parents); Nicholas H. Wolfinger, *Understanding the Divorce Cycle: The Children of Divorce in Their Own Marriages* (2005) (analyzing the impact of divorce, but not addressing same-sex parents). Accordingly, they cannot be relied upon as scientific evidence regarding the effects of same-sex parenting.

Aside from not specifically addressing same-sex parents, the studies regarding stepparents and divorce indicate that child outcomes are, on average, not as positive because of the disruption caused by divorce or the introduction of a new parent into the family, but do not indicate that the source of the negative outcomes is related to the fact that the stepparent is not biologically related to the child. *See*,

*e.g.*, Moore at 1 (“Divorce is linked to academic and behavior problems among children, including depression, antisocial behavior, impulsive/hyperactive behavior, and school behavior problems. Mental health problems linked to marital disruption have also been identified among young adults.”). Therefore, the argument that research regarding stepparents is relevant to same-sex parents because at least one of the same-sex parents is not the biological parent, and is therefore “step,” is misplaced. In a planned, same-sex parent family, both parents have brought the child into the family and raised the child from infancy. Accordingly, the studies cited by Appellants analyzing the effects of single parents and stepparents are mischaracterized. The research on children in divorced, single parent, and stepparent families simply says nothing about the wellbeing of children raised by same-sex parents.

Finally, and critically, the authors of one of the principal studies relied on by Appellants—the Child Trends study by Kristin Anderson Moore, et al.—have publicly responded that their study focused on children being raised in families headed by single parents, stepparents, and married, different-sex parents and not same-sex parents. *See* Kristin Anderson Moore (disclaiming on cover page that “no conclusions can be drawn from this research about the well-being of children raised by same-sex parents”). Moreover, before the Supreme Court considered *Windsor* and *Perry*, the authors of the Child Trends study expressly disclaimed the

misuse of their study by the Bipartisan Legal Advisory Group, which defended DOMA, explaining that “no conclusions can be drawn from this research about the wellbeing of children raised by same-sex parents or adoptive parents.” *Id.* In addition, this study concluded that “when researchers have compared marriage to cohabitation, they have found that marriage is associated with better outcomes for children.” *Id.* Extending this logic to the context of same-sex couples and their children, recognition of marriage rights of such couples would improve, not impair, the wellbeing of children being raised by currently unmarried same-sex parents. *See also* Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well-Being in Cohabiting, Married, and Single-Parent Families*, 65 *Journal of Marriage & Family* 876 (2003) (noting that marriage provides enhanced socioeconomic resources to families, improving child wellbeing outcomes); Pamela J. Smock & Wendy D. Manning, *Living Together Unmarried in the United States: Demographic Perspectives and Implications for Family Policy*, 26 *Law & Policy* 87, 94 (2004) (discussing the role of marriage in contributing to the stability of a family).

### **3. Studies Regarding Gender Roles in Families with Different-Sex Parents**

Opponents of marriage for same-sex couples also rely on a number of studies that examine the parental roles of mothers and fathers within the context of different-sex parent families and claim that these studies demonstrate that child

wellbeing depends on having both a male and female parent. *See, e.g.,* C.A. Nelson & M. Bosquet, *Neurobiology of Fetal and Infant Development: Implications for Infant Mental Health*, in *Handbook of Infant Mental Health* 37–59 (C.H. Zeanah Jr. ed., 2d ed. 2000); Eleanor Maccoby, *The Two Sexes* 266–67 (1998); Paul R. Amato & Fernando Rivera, *Paternal Involvement and Children’s Behavior Problems*, 61 *Journal of Marriage & Family* 375 (1999); Shmuel Shulman & Moshe M. Klein, *Distinctive Role of the Father in Adolescent Separation-Individuation*, 62 *New Directions for Child & Adolescent Development* 41, 53 (1993). But these studies do not support this suggestion, and reliance on them is misplaced for multiple reasons.

First, like the other studies cited by opponents of marriage for same-sex couples, these studies do not examine the parenting and disciplinary dynamics of same-sex parents. Without any social science evidence to support their conclusion, they are asking a court to deduce that a child raised by two married same-sex individuals would not receive the necessary neural development or improvement in emotional and communicative skills. No such conclusion is proper based on any study published to date.

Second, these opponents ignore the fact that the research regarding different parenting roles and styles indicates that those roles are relative, and nothing in the research indicates that same-sex couples are not able to provide such relative

parenting dynamics. *See* David Popenoe, *Life Without Father: Compelling New Evidence that Fatherhood & Marriage Are Indispensable for the Good of Children & Society*, 147 (1996) (noting that among same-sex parents, one partner commonly fills the “male-instrumental role while the other fills the female-expressive role” in rearing their children).

Third, the research also indicates that there is a range of parenting styles, that no couple parents identically, and that children do not need their parents to adopt particular parenting styles to be well adjusted. *See* Paul R. Amato & Frieda Fowler, *Parenting Practices, Child Adjustment, and Family Diversity*, 64 *Journal of Marriage & Family* 703, 714 (2002) (“When parents spend time with children, help with homework, talk about problems, provide encouragement, and show affection, children do well.”).

Fourth, arguments based on rigid gender roles should be rejected as courts routinely decline to rely upon “outdated misconceptions” and “loose-fitting characterizations” regarding gender. *See Craig v. Boren*, 429 U.S. 190, 198–99 (1976); *see also Price Waterhouse*, 490 U.S. at 251, 255–56 (“[W]e are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group[.]”). The District Court in *Perry* concluded after an extensive trial and examining the testimony of Dr. Michael Lamb, “[c]hildren do not need to be raised by a male parent and a female

parent to be well-adjusted, and having both a male and a female parent does not increase the likelihood that a child will be well-adjusted.” *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 981 (N.D. Cal. 2010).

Finally, the studies relied on by the Appellants that examine the role of absentee fathers, *see, e.g.*, Popenoe at 146, do not establish that, within the context of same-sex parents, fathers are necessary to the child’s wellbeing. In fact, the research regarding the negative impact of absentee fathers, such as David Popenoe’s, has nothing to do with the unique contributions of fathers, but rather with the loss of a parental relationship. *Id.* at 139 (“Much of what fathers contribute to child development, of course, is simply the result of being a second adult in the home. Other things being equal, two adults are far better than one in raising children. As the distinguished developmental psychologist Urie Bronfenbrenner has noted, the quality of interaction between principal caregiver and child depends heavily on the availability and involvement of another adult, a *third party* who assists, encourages, spells off, gives status to, and expresses admiration and affection for the person caring for and engaging in joint activity with the child.” *Id.* (internal quotations omitted)).

In sum, the studies relied upon by Appellants here (as well as opponents of marriage for same-sex couples at large) examine child outcomes within the context of different-sex relationships, and do not address the impact of same-sex parents on

child wellbeing. These studies do not undermine the social science consensus, supported by the most reliable studies available, that children raised by same-sex parents fare just as well as children raised by different-sex parents across a broad spectrum of indicators.

**B. THE REGNERUS PAPERS DO NOT SUPPORT CONCLUSIONS ABOUT CHILDREN RAISED BY SAME-SEX PARENTS**

Opponents of same-sex marriage, and Appellants here, often rely on two papers by Mark Regnerus (defined above as “Regnerus 2012a” and “Regnerus 2012b”). Both papers are analyzed in greater detail below, but it is important to note at the outset that the Regnerus 2012a paper—a principal source relied on by the Appellants to support the proposition that children of different-sex parents fare better than those of same-sex parents—did not specifically examine children raised by same-sex parents, and provides no support for the conclusions that same-sex parents are inferior parents or that the children of same-sex parents experience worse outcomes. This critique of Regnerus 2012a was made in an internal audit in the very journal in which Regnerus’s article was published—indeed, this audit went so far as to state that the Regnerus 2012a paper should not have been published. Darren E. Sherkat, *The Editorial Process and Politicized Scholarship: Monday Morning Editorial Quarterbacking and a Call for Scientific Vigilance*, 41



Social Science Research 1346–1349 (2012). Nor does the re-stated Regnerus 2012b paper remedy the deficiencies contained in Regnerus 2012a.

**1. The Regnerus 2012a Paper Offers No Basis for Conclusions About Same-Sex Parents**

First, the Regnerus 2012a paper does not specifically examine children born or adopted into same-sex parent families, but instead examines children who, from the time they were born until they were 18 or moved out, had a parent who at some time had “a same-sex romantic relationship.” *See* Regnerus 2012a at 752. As Regnerus noted, the majority of the individuals characterized by him as children of ‘lesbian mothers’ and ‘gay fathers’ were the offspring of failed different-sex unions whose parent subsequently had a same-sex relationship. *Id.* In other words, Regnerus did not study or analyze the children of two same-sex parents.

Second, when the Regnerus 2012a paper compared the children of parents who at some point had a “same-sex romantic relationship,” most of whom had experienced a family dissolution or single motherhood, to children raised by two biological, married different-sex parents, the study stripped away all divorced, single, and stepparent families from the different-sex group, leaving only stable, married, different-sex parent families as the comparison. *Id.* at 757 (the comparison group consisted of individuals who “[l]ived in intact biological famil[ies] (with mother and father) from 0 to 18, and parents are still married at present”). Thus, it was hardly surprising that this different-sex parent group had

better outcomes given that stability, as noted above, is a key predictor of positive child wellbeing. By removing divorced, single, and step-parent families from the different-sex group, the Regnerus 2012a paper makes inappropriate apples-to-oranges comparisons.

Third, the Regnerus 2012a data analysis failed to consider whether the children lived with, or were raised by, the parent who was, at some point, apparently involved in “a romantic relationship with someone of the same sex” and that same-sex partner. *Id.* at 756. Instead, Regnerus categorized children as raised by a parent in a same-sex relationship regardless of whether they were in fact raised by the parent and the parent’s same-sex romantic partner and regardless of the amount of time that they spent under the parent’s care. As a result, so long as an adult child believed that he or she had *had* a parent who at some point had a relationship with someone of the same sex, then he or she was counted by Regnerus as having been “raised by” a parent in a same-sex relationship.

Fourth, in contrast to every other study on same-sex parents, Regnerus 2012a identified parents who had purportedly engaged in a same-sex relationship based solely on the child’s own retrospective report of the parent’s romantic relationships that were made once the child was an adult. This unusual measurement strategy ignored the fact that the child may have limited and inaccurate recollections of their parents’ distant romantic pasts. *Id.*

Finally, Regnerus failed to account for the fact that negative outcomes may have been caused by other childhood events or events later in the individual's adult life, particularly given that the vast majority of the outcomes measured (thirty-seven of forty) were adult and not childhood outcomes. Regnerus himself recognizes that the survey data he relied upon—the New Family Structures Study—“is poised to address [questions] about the lives of young adults between the ages of 18 and 39, but not about children or adolescents.” Regnerus 2012a at 755. Factors other than having same-sex parents are likely to explain these outcomes in the Regnerus 2012a study. Regnerus himself concludes that “I am thus not suggesting that growing up with a lesbian mother or gay father causes suboptimal outcomes *because of* the sexual orientation or sexual behavior of the parent.” *Id.* at 766 (emphasis in original).

In sum, by conflating children raised by same-sex parents with individuals who reportedly had a parent who had “a romantic relationship with someone of the same sex” at some point, and referring to such individuals as children of “lesbian mothers” or “gay fathers,” the Regnerus 2012a study obscures the fact that it did not specifically examine children raised by two same-sex parents. It cannot speak to the wellbeing of children raised by same-sex parents.

## 2. The “Re-Stated” Regnerus 2012b Paper Offers No Basis for Conclusions About Same-Sex Parents

A group of over one hundred social scientists signed an article faulting the Regnerus 2012a paper for failing to take account of family structure and family instability. See Gary J. Gates et al., *Letter to the Editor and Advisory Editors of Social Science Research*, 41 *Social Science Research* 1350 (2012). The article specifically criticized Regnerus 2012a’s failure to “distinguish between the impact of having a parent who has a continuous same-sex relationship from the impact of having same-sex parents who broke-up from the impact of living in a same sex stepfamily from the impact of living with a single parent who may have dated a same-sex partner.” *Id.* Regnerus acknowledged the merit of these scholarly critiques regarding the underlying aspects of his research and subsequently published a second analysis of the data, which is referred to as Regnerus 2012b. Through Regnerus 2012b, Regnerus attempted to remedy the fact that Regnerus 2012a did not analyze whether the children had actually lived with the parent who, according to the adult child, had at some point, been “romantically involved” with someone of the same sex.

Nevertheless, the Regnerus 2012b analysis does *not* resolve the problems inherent in the initial analysis and contains many of the same shortcomings. First, a recently published review of Regnerus 2012a elaborated on these shortcomings. See Andrew J. Perrin, *Are Children of Parents Who Had Same-Sex Relationships*

*Disadvantaged? A Scientific Evaluation of the No-Differences Hypothesis*, 17 Journal of Gay & Lesbian Mental Health 327 (2013). Second, Regnerus 2012b maintained the same flawed and extremely broad definition of what constitutes “lesbian mothers” and “gay fathers”—that is, a mother or father who ever had a romantic relationship with someone of the same-sex during the period from the birth of the child until the child turned eighteen (or left home to be on their own). Regnerus 2012b at 1368. Accordingly, Regnerus 2012b continues to ignore stability as the primary factor in child outcomes. Third, Regnerus 2012b still fails to account for the duration of time spent with a mother who was “romantically involved” with a same-sex partner and that partner. *See id.* at 1372. Only two of the eighty-five children who at some point lived with a mother who was “romantically involved” with another woman reported that they did so for the entire duration of their childhood. Finally, the Regnerus 2012b paper is still not informative of same-sex parents because Regnerus did not determine whether the recorded childhood experiences occurred while the mother lived with a same-sex partner *or* during another family living arrangement.

If any conclusion can be reached from Regnerus 2012a and 2012b, it is that family stability is predictive of child wellbeing. As Regnerus himself notes, family structure (for instance whether the family has a single parent or two parents) matters significantly to child outcomes. *See* Regnerus 2012a at 761. As the social

science consensus described above demonstrates, the evidence regarding children raised by same-sex parents overwhelmingly indicates that they fare just as well as children raised by different-sex parents, and that children raised by same-sex parents are likely to benefit from the enhanced stability the institution of marriage provides to their families. All told, the Regnerus studies, even as revised, simply do not undermine the consensus that children raised by same-sex parents fare just as well as those raised by different-sex parents.

### **CONCLUSION**

The social science consensus is both conclusive and clear: children fare just as well when they are raised by same-sex parents as when they are raised by different-sex parents. This consensus holds true across a wide range of child outcome indicators and is supported by numerous nationally representative studies. Accordingly, assuming that any of the Marriage Bans has any effect on whether children are raised by different-sex or same-sex parents, there is no basis to prefer different-sex parents over same-sex parents. The research supports the conclusion that extension of marriage rights to same-sex couples has the potential to improve child wellbeing insofar as the institution of marriage may provide social and legal support to families and enhances family stability, which are key drivers of positive child outcomes. The Regnerus papers and other sources relied on by opponents of marriage for same-sex couples provide no basis for their arguments because they

do not examine the wellbeing of children raised by same-sex parents. These studies therefore do not undermine the consensus from the social science research and do not establish a legitimate basis for the Marriage Bans.

Respectfully submitted,

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March 3, 2014

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,995 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
  
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Dated: March 3, 2014

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## CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

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## **CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2014, I electronically filed the Amicus Curiae Brief of the American Sociological Association in Support of Plaintiffs-Appellees and Plaintiffs-Appellees/Cross-Appellants using the Court's CM/ECF system.

I certify that the foregoing document was served on all parties of their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record as follows:

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