

EXHIBIT C

Appeal Nos. 14-2386, 14-2387, and 14-2388

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

MARILYN RAE BASKIN, et al.,

Plaintiffs-Appellees,

v.

PENNY BOGAN, in her official capacity as Boone County Clerk, et al.,

Defendants-Appellants.

On Appeal from the Judgment and Order of the
United States District Court for the Southern District of Indiana
Case Nos. 1:14-cv-0355-RLY-TAB, 1:14-cv-00404-RLY-TAB, and
1:14-cv-00406-RLY-MJD
(Honorable Richard L. Young)

**BRIEF OF AMICUS CURIAE FAMILY-PAC FEDERAL, INC.
IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL**

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 14-2386, 14-2387, 14-2388

Short Caption: Marilyn Rae Baskin, et al., v. Penny Bogan, et al.

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Family-Pac Federal, Inc.

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Attorney's Signature: /s/ John Mauck

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<i>Lynch v. Donnelly</i> , 465 U.S. 668, 687–88 (1984) (O’Connor, J., concurring)	29
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Other Authorities

A. Dean Byrd, <i>Conjugal Marriage Fosters Healthy Human and Societal Development, in What's the Harm?: Does Legalizing Same-Sex Marriage Really Harm Individuals, Families or Society?</i> 16 (Lynn D. Wardle ed., 2008)	13
Annette Cary, <i>Arlene’s Flowers in Richland Sued by Gay Couple</i> , Tri–City Herald (Apr. 18, 2013), http://www.tri-cityherald.com/2013/04/18/2361691/arlenes-flowers-in-richland-sued.html	28
Baskin et al. First Amended Complaint.....	16, 17
Bruce Ellis, <i>Timing of Pubertal Maturation in Girls: An Integrated Life History Approach</i> , 130 <i>Psychology Bulletin</i> 920 (2002)	14
C.C. Hoff et al., <i>Serostatus Differences and Agreements about Outside Sex Partners among Gay Couples</i> , 21 <i>AIDS Educ. & Prevention</i> 25 (2009)	23
Cynthia Harper & Sara McLanahan, <i>Father Absence and Youth Incarceration</i> , 14 <i>Journal of Research on Adolescence</i> 369 (2004)	14
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Douglas Allen, <i>High School Graduation Rates among Children of Same-Sex Households</i> , 11 <i>Rev. Econ. Household</i> 635 (2013)	9, 23, 24, 26
Douglas W. Allen, <i>An Economic Assessment of Same-Sex Marriage Laws</i> , 29 <i>Harv. J.L. & Pub. Pol’y</i> 949 (2006)	14, 16, 18, 22

E.J. Graff, *Retying the Knot, in Same-Sex Marriage: Pro and Con: A Reader* 134
 (Andrew Sullivan ed., 1st ed. 1997).....20

Elizabeth Marquardt, *Family Structure and Children’s Educational Outcomes*
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Gregory L. Greenwood et al., *Battering Victimization among a Probability-Based
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Gunilla Ringback Weitoft et al., *Mortality, Severe Morbidity, and Injury in
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Gunnar Andersson et al., *The Demographics of Same-Sex Marriages in Norway
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Judith Stacey, *Gay and Lesbian Families: Queer Like Us, in All Our Families:
 New Policies for a New Century* 117 (Mary Ann Mason et al. eds., 1998)..20

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Lee Moran, *Baker Refuses to Make Wedding Cake for Lesbian Couple*, N.Y. Daily
 News (Feb. 4, 2013), [http://www.nydailynews.com/news/national/baker-
 refuses-wedding-cake-lesbian-couple-article-1.1254776](http://www.nydailynews.com/news/national/baker-refuses-wedding-cake-lesbian-couple-article-1.1254776).....28

Lettie L. Lockhart et al., *Letting Out the Secret: Violence in Lesbian Relationships*,
 9 *Journal of Interpersonal Violence* 469 (1994).....26

Maggie Gallagher & Joshua K. Baker, *Same-Sex Unions and Divorce Risk: Data
 from Sweden*, iMapp Policy Brief, May 3, 200423

Maggie Gallagher, *Banned in Boston: The Coming Conflict Between Same-Sex
 Marriage and Religious Liberty*, *The Weekly Standard*, May 5, 2006, at 20
27

Maria Xiridou et al., *The Contribution of Steady and Casual Partnerships to the
 Incidence of HIV Infection in America*, 17 *AIDS* 1029 (2003).....23

Mark Regnerus, *How Different Are the Adult Children of Parents Who Have Same-
 Sex Relationships? Findings from the New Family Structures Study*, 41
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The Witherspoon Institute, *Marriage and the Public Good: Ten Principles* (2008)
.....19

Tod W. Burke et al., *A Cross-National Comparison of Gay and Lesbian Domestic
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Walter Schumm, *Comparative Relationship Stability of Lesbian Mother and
Heterosexual Mother Families: A Review of the Evidence*, 46 Marriage &
Fam. Rev. 499 (2010)23

INTEREST OF THE AMICUS CURIAE

Family-Pac Federal, Inc. (Family-Pac) is the leading pro-family, conservative political action committee in Illinois, whose members include over 100 of Chicago's business leaders. Family-Pac qualifies to contribute as an amicus because of its consistent advocacy for conservative family values and backing of candidates who share those values. These core values motivate Family-Pac's particular interest in defending the ability of states to recognize in their laws that marriage is a comprehensive union of one man and one woman.

Family-Pac endorses candidates who believe that marriage is designed to bind one man and one woman to each other, exclusively and permanently, for the good of children and society. Family-Pac thus seeks to defend the Indiana laws that recognize male-female marriage, because this almost-universal definition best supports family stability and children's welfare, and because redefining marriage as an essentially emotional commitment threatens those public goods.

Family-Pac certifies that all parties to the case have consented to the filing of this brief, in accordance with Federal Rule of Appellate Procedure 29(a). Further, pursuant to Federal Rule of Appellate Procedure 29(c)(5), Family-Pac certifies that no counsel for any party wrote this brief, in whole or in part, and that no person or entity other than amicus, its supporters, and its counsel has made a monetary contribution to the preparation and submission of this brief.

INTRODUCTION TO AND SUMMARY OF THE ARGUMENT

In this brief, amicus advocates that widely shared public policy considerations demonstrate that preserving male-female marriage is in the best interests of children and families. “The human good of marriage, and its implications for the common good of human communities, can be understood, analyzed, and discussed without engaging specifically theological issues and debates.”¹

Based on the most statistically reliable social science available, the permanence, comprehensiveness, and exclusivity of male-female marriage make it the best environment for raising children.² Further, the studies purporting to demonstrate no difference between the outcomes of male-female and same-sex parenting rely on faulty sampling and methodology.³ Even after controlling for other relevant factors, children raised by parents with same-sex relationships are more likely to suffer negative outcomes, including lower graduation rates and unemployment as adults.⁴

¹ Girgis et al., *What is Marriage?*, 34 Harv. J.L. & Pub. Pol’y 245, 285 (2010).

² See, e.g., 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, 766 (2012).

³ See Douglas Allen, *High School Graduation Rates among Children of Same-Sex Households*, 11 Rev. Econ. Household 635, 640–42 (2013).

⁴ See *id.* at 653; Regnerus, 41 Social Science Research at 761.

It should be emphasized that Plaintiffs and all people should be treated by law and by society with dignity and respect even, or especially, when their views are in the minority. Amicus does not seek to devalue the Plaintiffs or their relationships. Nor should the refusal of Indiana to redefine marriage be considered such a devaluation. Rather, it is a rational decision by the State to protect and encourage the most healthy family structure in which to raise children.

ARGUMENT

I. PRESERVING TRADITIONAL MARRIAGE IS IN THE BEST INTERESTS OF THE CHILDREN OF INDIANA

A. Marriage exists primarily to serve the needs of children, not adults

The relationship between parent and child “is consequential to that of marriage, being its principal end and design; and it is by virtue of this relation that infants are protected, maintained, and educated.”⁵ “[T]he bond between woman and man is rooted in the biological need to nurture human infants for a long time.”⁶ It is thus both reasonable and of compelling importance for all societies to promote and regulate lifelong, monogamous, heterosexual relationships for the good of the resulting children, and, in turn, the next generation. “Bertrand Russell, no fan of bourgeois morality, said that ‘it is through children alone that sexual relations become of importance to society, and worthy to be taken cognizance of by a legal institution.’”⁷

While same-sex couples can form committed and caring relationships, they cannot form truly comprehensive unions. “[M]arriage involves: first, a comprehensive union of spouses.”⁸ This comprehensive union involves both the consent to be married and organic bodily union, where “a man and a woman’s

⁵ Sir William Blackstone, Commentaries *410.

⁶ Dent, 15 Tex. Rev. L. & Pol. at 400.

⁷ *Id.* at 394–95.

⁸ Girgis et al., 34 Harv. J.L. & Pub. Pol’y at 252.

bodies coordinate by way of their sexual organs for the common biological purpose of reproduction.”⁹

If human beings reproduced asexually, then organic bodily union—and thus comprehensive interpersonal union—would be impossible, no kind of union would have any special relationship to bearing and rearing children, and the norms that these two realities require would be at best optional features of any relationship. Thus, the essential features of marriage would be missing; there would be no human need that only marriage could fill.¹⁰

Likewise, same-sex couples are engaged in relationships that have no special link to bearing and rearing children and therefore have no need for government recognition or regulation. “Organic bodily union is possible only between a man and a woman.”¹¹ That being said, “[t]his debate is not about anyone’s private behavior. Instead, public recognition of certain relationships and the social effects of such recognition are at stake.”¹² In fact, concerning male-female marriage,

sexual orientation as such is not a disqualifier. The union of a husband and wife bears this connection to children even if, say, the husband is also attracted to men. What is necessary in this respect is rather sexual complementarity. In this sense, it is not individuals as such who are singled out—as being less capable of affectionate and responsible parenting, or anything else. Instead, what are systematically favored as bearing a special and valuable link to childrearing are certain arrangements and the acts that complete or embody them—to which, of course, particular individuals are more or less inclined.¹³

⁹ *Id.* at 254.

¹⁰ *Id.* at 287.

¹¹ *Id.* at 272.

¹² *Id.* at 283.

¹³ *Id.* at 258–59.

B. Male-female marriage should be promoted in Indiana because it is best for children

“[C]hildren fare best (and thus society benefits) when raised by their biological parents who are married to each other.”¹⁴ The benefits are due in part to the fact that “mothers and fathers contribute in gender specific and in gender-complementary ways to the healthy development of children.”¹⁵ Governments are therefore justified in promoting marriage between one man and one woman to foster the well-being of children. Children raised by their biological parents fare better than those raised in different parental arrangements, according to studies that control for other relevant factors:

- School-aged children are approximately 30% less likely to cut class, be tardy or absent from school.¹⁶
- Less likely to drop out of school—13% of children from intact families compared with 37% of children born outside of marriage and 31% of children with divorced parents.¹⁷
- A study of the entire population of Swedish children found that those in two-parent homes were approximately 50% less likely to attempt suicide, abuse drugs and/or alcohol, or suffer from serious psychiatric illnesses than those raised in single-parent homes.¹⁸

¹⁴ Dent, 15 Tex. Rev. L. & Pol. at 362.

¹⁵ A. Dean Byrd, *Conjugal Marriage Fosters Healthy Human and Societal Development, in What's the Harm?: Does Legalizing Same-Sex Marriage Really Harm Individuals, Families or Society?* 16 (Lynn D. Wardle ed., 2008).

¹⁶ Elizabeth Marquardt, *Family Structure and Children's Educational Outcomes* (2005).

¹⁷ Sara McLanahan & Gary Sandefur, *Growing Up with a Single Parent* (1994).

¹⁸ Gunilla Ringback Weitof et al., *Mortality, Severe Morbidity, and Injury in Children Living with Single Parents in Sweden: A Population-Based Study*, 361 *The Lancet* 289 (2003).

- Only 5% of girls raised in intact families become pregnant as teenagers, compared to 10% of girls whose fathers left after the girls turned 6 and 35% of girls whose fathers left while the girls were preschoolers.¹⁹
- Boys raised in fatherless homes were found to be significantly more likely to be incarcerated in a study that controlled for other risk factors.²⁰
- Children conceived through artificial reproductive technologies and raised without fathers often have deep and disturbing questions about their biological origins and “hunger for an abiding paternal presence.”²¹
- “[C]hildren appear most apt to succeed well as adults—on multiple counts and across a variety of domains—when they spend their entire childhood with their married mother and father, and especially when the parents remain married to the present day.”²²

Marriage should not be recognized primarily to confer benefits upon the adult partners; it should be recognized and regulated for the good of the resulting children. “[M]arriage is designed . . . between a husband and a wife . . . to create incentives to procreate and to invest in their offspring so that they will be successful members of the next generation.”²³ So recognized and interpreted, it is clear that the failure to recognize same-sex marriages is not a devaluation of those relationships, but merely a recognition that those relationships differ from male-

¹⁹ Bruce Ellis, *Timing of Pubertal Maturation in Girls: An Integrated Life History Approach*, 130 *Psychology Bulletin* 920 (2002).

²⁰ Cynthia Harper & Sara McLanahan, *Father Absence and Youth Incarceration*, 14 *Journal of Research on Adolescence* 369 (2004).

²¹ Kyle Pruett, *Fatherneed* 207 (2000).

²² 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, 766 (2012).

²³ Douglas W. Allen, *An Economic Assessment of Same-Sex Marriage Laws*, 29 *Harv. J.L. & Pub. Pol’y* 949, 958 (2006).

female relationships with respect the creation and nurture of children. David

Blankenhorn, a self-described liberal Democrat, said the following:

In all societies, marriage shapes the rights and obligations of parenthood. Among us humans, the scholars report, marriage is not primarily a license to have sex. Nor is it primarily a license to receive benefits or social recognition. It is primarily a license to have children. In this sense, marriage is a gift that society bestows on its next generation. Marriage (and only marriage) unites the three core dimensions of parenthood—biological, social and legal—into one pro-child form: the married couple. Marriage says to a child: The man and the woman whose sexual union made you will also be there to love and raise you. Marriage says to society as a whole: For every child born, there is a recognized mother and a father, accountable to the child and to each other. . . . Marriage is society’s most pro-child institution. . . . All our scholarly instruments seem to agree: For healthy development, what a child needs more than anything else is the mother and father who together made the child, who love the child and love each other.²⁴

In addition to the direct benefits of male-female marriage for children, the law has a teaching function to society that, in the case of marriage, is beneficial.

[T]he more effectively the law teaches the truth about marriage, the more likely people are to enter into marriage and abide by its norms. And the more people form marriages and respect marital norms, the more likely it is that children will be reared by their wedded biological parents.²⁵

The law of marriage should teach those who enter into that institution the importance of children and their proper upbringing. “[A]ny marriage law at all communicates some message about what marriage is as a moral reality. The state

²⁴ David Blankenhorn, Editorial, *Protecting Marriage to Protect Children*, L.A. Times, Sept. 19, 2008, at A27.

²⁵ Girgis et al., 34 Harv. J.L. & Pub. Pol’y at 269.

has an obligation to get that message right, for the sake of people who might enter the institution, for their children, and for the community as a whole.”²⁶

For all these reasons, Indiana’s support of male-female marriage is rationally related to its interest in fostering the best environment for children’s nurturing and development. Further, male-female marriage is narrowly tailored to further this interest. The existence of infertile couples and couples who do not wish to have children does not undermine this narrow tailoring because government intrusion into a couple’s fertility as a condition of marriage would violate the very rights of privacy and self-determination on which Plaintiffs mistakenly rely.²⁷

II. STATE REDEFINITION OF MARRIAGE TENDS TO HAVE UNINTENDED NEGATIVE CONSEQUENCES

“[Male-female m]arriage is efficiently designed to have children raised by both biological parents, and . . . tampering with this design can lead to dire consequences.”²⁸ “Abolishing the conjugal conception of marriage would weaken the social institution of marriage, obscure the value of opposite-sex parenting as an ideal, and threaten moral and religious freedom.”²⁹

A. Redefining marriage tends to destabilize it

²⁶ *Id.* at 268. Those who support the redefinition of marriage agree with the preceding assertion but conclude that the courts rather than the legislature should decide what message is “right.” Amicus believes the legislature is in the best position to make that determination.

²⁷ See Baskin et al. First Amended Complaint, ¶ 5.

²⁸ Allen, 29 Harv. J.L. & Pub. Pol’y at 954.

²⁹ Girgis et al., 34 Harv. J.L. & Pub. Pol’y at 260.

“The experience with liberalized divorce follows the law of unintended consequences. It should caution us against assuming that an unprecedented change in the law and meaning of marriage will have only . . . beneficial consequences.”³⁰ Because redefining marriage in Indiana will likewise impact the marriage culture in that state, the negative unintended consequences of no-fault divorce should be considered.

Like no-fault divorce, state recognition of same-sex marriage would shift the focus from the needs of children to the emotional gratification of adults. Plaintiffs seek relief in part to rectify their perceived diminished status as unmarried same-sex couples.³¹ Plaintiffs understandably wish to feel a certain way about their relationships according to the status afforded thereto by the state. While their love for their partners is not disputed, as mentioned above, governments have a higher interest in protecting children than in validating every loving relationship. Nor is express government validation required for the existence or acceptance of such loving relationships. Even if such recognition were appropriate or necessary, such recognition can be accorded without redefining marriage or creating negative consequences for children.

³⁰ Dent, 15 Tex. Rev. L. & Pol. at 382.

³¹ See, e.g., Baskin et al. First Amended Complaint, ¶ 4.

“Proponents of same-sex marriage . . . use the same arguments and marriage models employed by no-fault divorce reformers,” namely, that “marriage is based on ‘loving relationships’ instead of being ‘an institution designed around procreation.’”³² The availability of no-fault divorce led to increased divorce rates and “influenced . . . the incidence of spousal abuse, the feminization of poverty, and the age at which people married” as well as “laws related to spousal and child support, custody, joint parenting and the definition of marital property.”³³

The results of no-fault divorce were “unanticipated because no one had a proper theory of marriage.”³⁴ Because “divorce reformers felt that marriage was the domain of lovers” instead of the domain of children, they “failed to account for the economic realities of marriage” and therefore were “unable to predict how no-fault divorce would affect behavior.”³⁵ “The same mistakes made by no-fault divorce reformers are now being made by proponents of same-sex marriage.”³⁶ While it is tempting to make a decision based on what might seem best for the particular Plaintiffs, any decision should take into account the potential farther reaching implications:

If same-sex partnerships were recognized as marriages, however, that ideal would be abolished from our law: no civil institution would any

³² Allen, 29 Harv. J.L. & Pub. Pol’y at 954.

³³ *Id.* at 967.

³⁴ *Id.* at 977.

³⁵ *Id.* at 978.

³⁶ *Id.* at 966.

longer reinforce the notion that children need both a mother and father; that men and women on average bring different gifts to the parenting enterprise; and that boys and girls need and tend to benefit from fathers and mothers in different ways.³⁷

Redefining marriage would teach society, including children and adolescents, that no relationship is better than any other for raising children. “In redefining marriage, the law would teach that marriage is fundamentally about adults’ emotional unions, not bodily union or children, with which marital norms are tightly intertwined. Since emotions can be inconstant, viewing marriage essentially as an emotional union would tend to increase marital instability.”³⁸

The law is a teacher, instructing the young either that marriage is a reality in which people can choose to participate but whose contours individuals cannot remake at will, **or** teaching the young that marriage is a mere convention, so malleable that individuals, couples, or groups can choose to make of it whatever suits their desires, interests, or subjective goals of the moment.³⁹

If the state abandons the principled norm, it also removes the purpose and therefore any need for promotion and/or regulation. When the state recognizes same-sex marriage, it attenuates the connection between marriage and children. It then “becomes much harder to show why the state should take any interest in marriage at all.”⁴⁰

³⁷ Girgis et al., 34 Harv. J.L. & Pub. Pol’y 245 at 263.

³⁸ *Id.* at 260–61.

³⁹ The Witherspoon Institute, *Marriage and the Public Good: Ten Principles* 21 (2008) (emphasis added).

⁴⁰ Girgis et al., 34 Harv. J.L. & Pub. Pol’y at 271.

Judith Stacey, Professor of Social and Cultural Analysis and Sociology at New York University, advocates taking the redefinition of marriage to its logical conclusion:

Legitimizing gay and lesbian marriages would promote a democratic, pluralist expansion of the meaning, practice, and politics of family life in the United States, helping to supplant the destructive sanctity of The Family with respect for diverse and vibrant families. . . . If we begin to value the meaning and quality of intimate bonds over their customary forms, people might devise marriage and kinship patterns to serve diverse needs. . . . Two friends might decide to “marry” without basing their bond on erotic or romantic attachment. . . . Or, more radical still, perhaps some might dare to question the dyadic limitations of Western marriage and seek some of the benefits of extended family life through **small group marriages** arranged to share resources, nurturance, and labor. After all, if it is true that "The Two-Parent Family is Better" than a single-parent family, as family-values crusaders proclaim, might not three-, four-, or more-parent families be better yet, as many utopian communards have long believed?⁴¹

Revisionists seek, and Plaintiffs ask for, relief that will forever sever the already weakened links among marriage, reproduction, and child-rearing that is proven best for children. According to revisionist E.J. Graft, recognizing same-sex marriage would make marriage “ever after stand for sexual choice, for cutting the link between sex and diapers.”⁴²

⁴¹ Judith Stacey, *Gay and Lesbian Families: Queer Like Us, in All Our Families: New Policies for a New Century* 117, 128–29 (Mary Ann Mason et al. eds., 1998) (emphasis added).

⁴² E.J. Graft, *Retying the Knot, in Same-Sex Marriage: Pro and Con: A Reader* 134, 136 (Andrew Sullivan ed., 1st ed. 1997).

Removing marital norms is detrimental to society. “Because children fare best on most indicators of health and wellbeing when reared by their wedded biological parents, the further erosion of marital norms would adversely affect children, forcing the state to play a larger role in their health, education, and formation more generally.”⁴³ This phenomenon is clearly demonstrated in inner cities, where fatherless families become dependent on government for multiple generations.

According to a Brookings Institute study, \$229 billion in welfare expenditures between 1970 and 1996 can be attributed to the breakdown of the marriage culture and the resulting exacerbation of social ills: teen pregnancy, poverty, crime, drug abuse, and health problems. Sociologists David Popenoe and Alan Wolfe have conducted research on Scandinavian countries that supports the conclusion that as marriage culture declines, state spending rises.”⁴⁴

Redefining marriage “would significantly weaken the extent to which the social institution of marriage provided social pressures and incentives for husbands to remain with their wives and children. And to the extent that children were not reared by both parents, they would be prone to suffer in the ways identified by social science.”⁴⁵ Indiana’s legislature has determined that preservation of the institution of male-female marriage is best for Indiana’s children. This is a rational decision, based upon existing evidence and not based on animus toward Plaintiffs.

⁴³ Girgis et al., 34 Harv. J.L. & Pub. Pol’y at 262.

⁴⁴ *Id.* at 270.

⁴⁵ *Id.* at 263.

In view of the potential harm to children, should individual litigants be able to use this Court to redefine marriage or should the legislature decide what is in the best interests of the children of Indiana?

B. Redefining marriage is not in the best interests Indiana children

Same-sex couples can and do provide homes for children that may be better than the likely placement if a married opposite-sex couple were unavailable.

Nonetheless, assuming that the need for adoptive parents exceeds the supply of married opposite-sex couples, “[t]he need for adoption where the ideal is practically impossible is no argument for redefining civil **marriage**.”⁴⁶ The biological link between both parents and their children that is so beneficial to children is missing in a same-sex household. “All children in a same-sex marriage necessarily have a broken biological link to at least one of their parents, whether because of a previous marriage by one of the partners, artificial insemination, or adoption. What is the exception for heterosexual marriage is ubiquitous for same-sex marriages.”⁴⁷

The absence of a biological bond between the children and at least one of the parents reduces the incentive for the partners to stay together. Research indicates that same-sex couples have higher dissolution rates and exhibit more promiscuity

⁴⁶ *Id.*(emphasis added).

⁴⁷ Allen, 29 Harv. J.L. & Pub. Pol’y at 960.

than heterosexual couples, even when married.⁴⁸ The higher probability that same-sex couples will break up puts any children involved at greater risk of growing up in a single-parent home or with a step-parent and the associated negative outcomes.

Research also demonstrates that adult children of parents who have same-sex relationships are **at greater risk** of negative outcomes than adult children from intact biological families. Probably the most statistically reliable study on same-sex parenting outcomes is Douglas Allen's work on high school graduation rates, which uses a large, random sample based on the 2006 Canada census.⁴⁹ Allen found that "[i]n general, it appears that these children [who lived in same-sex households] are only about 65% as likely to graduate from high school compared

⁴⁸ See Gunnar Andersson et al., *The Demographics of Same-Sex Marriages in Norway and Sweden*, 43 *Demography* 79 (2006) ("divorce-risk levels are considerably higher in same-sex marriages"); Maria Xiridou et al., *The Contribution of Steady and Casual Partnerships to the Incidence of HIV Infection in America*, 17 *AIDS* 1029, 1031 (2003) (finding that among a sample of Amsterdam men that gay male partnerships lasted on average 1.5 years and that men in these partnerships had an average of eight casual partners per year); Maggie Gallagher & Joshua K. Baker, *Same-Sex Unions and Divorce Risk: Data from Sweden*, iMapp Policy Brief, May 3, 2004 (study of registered partnerships in Sweden finding that gay male couples were 50% more likely to divorce, and lesbian couples were over 167% more likely to divorce than heterosexual couples); C.C. Hoff et al., *Serostatus Differences and Agreements about Outside Sex Partners among Gay Couples*, 21 *AIDS Educ. & Prevention* 25 (2009) (study finding that half of gay couples in committed relationships had explicit agreements allowing sex with others); Walter Schumm, *Comparative Relationship Stability of Lesbian Mother and Heterosexual Mother Families: A Review of the Evidence*, 46 *Marriage & Fam. Rev.* 499, 504 (2010) (finding that after about ten years in a couple relationship "37.8% of lesbian couples separated compared with 15.7% of heterosexual couples").

⁴⁹ Allen, 11 *Rev. Econ. Household* at 643.

to the control group—a difference that holds whether conditioned on controls or not.⁵⁰ Another large study found other differences in outcomes for children who

were raised in a variety of family structures; the table below lists a selection.⁵¹

	Intact Biological Family (IBF)	Lesbian Mother	Gay Father
Family received welfare growing up	17%	69%*	57%*
Currently on public assistance	10%	38%*	23%
Currently employed full-time	49%	26%*	34%
Currently unemployed	8%	28%*	20%
Thought recently about suicide	5%	12%	24%*
Recently or currently in therapy	8%	19%*	19%
Had affair while married/cohabitating	13%	40%*	25%
Has ever had a	8%	20%*	25%*

⁵⁰ *Id.* at 653.

⁵¹ Regnerus, 41 *Social Science Research* at 761. This study has been critiqued because, although it is based on a large, random sample, it uses broad definitions of “gay father” and “lesbian mother” that capture elements of family instability. However, less than 2% of the 73 respondents who reported their father having had a same-sex romantic relationship lived with his partner for at least three years, and 23% of the 175 who said the same about their mother lived with her romantic partner for at least three years. *Id.* at 755, 757. This result reflects the reality that same-sex relationships tend to be more unstable than heterosexual relationships, and that many individuals raised by a gay or lesbian parent came from failed heterosexual relationships. *Id.* at 757. Next to Allen’s study on high school graduation rates, Regnerus’s study seems have the most statistically reliable methodology of any study examining outcomes of same-sex parenting.

sexually transmitted infection			
Ever touched sexually by parent/adult	2%	23%*	6%*
Ever forced to have sex against will	8%	31%*	25%*
<p>“An asterisk (*) next to the estimate indicates a statistically-significant difference ($p < 0.05$) between the group’s coefficient and that of IBF’s, controlling for respondent’s age, gender, race/ethnicity, level of mother’s education, perceived household income while growing up, experience being bullied as a youth, and state’s legislative gay-friendliness, derived from logistic regression models.”</p>			

Homosexual individuals also suffer increased rates of domestic violence, exposing any children in the home to a greater risk of violence themselves. Numerous studies have found increased rates as high as twice the rate for heterosexuals.⁵² For example, one study found that rates of intimate partner battering among urban homosexual males were substantially higher than those among heterosexual males and possibly heterosexual females. Of the sample of 2881 gay men, 34% had experienced psychological/symbolic battering, 22% had experienced physical battering, and 5% had experienced sexual battering in the past five years, compared to 7.7% of heterosexual males who reported physical or

⁵² See, e.g., Statistics Canada, *Family Violence in Canada: A Statistical Profile* 19 (2005) (Spousal violence, including violence from former partners in the past 5 years, was twice as common among homosexual individuals (15%) as it was among heterosexual individuals (7%.); Tod W. Burke et al., *A Cross-National Comparison of Gay and Lesbian Domestic Violence*, 18 *Journal of Interpersonal Violence* 231, 242 (2002) (28.6% and 32.4% of homosexual respondents from the United States and Venezuela, respectively, had been hit or physically assaulted by their partner.).

sexual partner violence in their lifetimes.⁵³ In another study, 75.8% of the surveyed lesbian women reported that their intimate partner had sworn at or insulted them in the past year, and 30.6% had experienced physical abuse in the same timeframe.⁵⁴ By contrast, about 25% of all women in a nationally representative sample were physically assaulted by a romantic partner **in their lifetimes**.⁵⁵

The assertion that the outcomes of same-sex parenting are no different than those of male-female parenting relies on studies that suffer from selection bias and weak statistical power because of their small, nonrandom samples.⁵⁶ Of the many studies on which Plaintiffs and others might have relied, **only one** had a large, random sample, and even that study was questioned because of its “inability to statistically distinguish the children from [same-sex] households with any others—including ones known to be poor environments for children.”⁵⁷

⁵³ Gregory L. Greenwood et al., *Battering Victimization among a Probability-Based Sample of Men Who Have Sex with Men*, 92 *American Journal of Public Health* 1964, 1964, 1967 (2002)

⁵⁴ Lettie L. Lockhart et al., *Letting Out the Secret: Violence in Lesbian Relationships*, 9 *Journal of Interpersonal Violence* 469, 480 (1994)

⁵⁵ The Centers for Disease Control and Prevention and The National Institute of Justice, *Extent, Nature, and Consequences of Intimate Partner Violence* iii (2000).

⁵⁶ Allen, 11 Rev. Econ. Household at 640–42 (noting that small sample sizes mean that “the data cannot generate any power for statistical testing, and low power means there is a small chance of rejecting a false null hypothesis. . . . [This] creates a bias towards accepting a null hypothesis of ‘no effect’ in child outcomes between same-sex and opposite-sex households.”).

⁵⁷ *Id.* at 641.

While many same-sex couples may remain together for life and provide loving environments for children, state recognition of same-sex marriage is simply not in the best interests of the children due to the increased risk of negative outcomes demonstrated above.

C. Redefining marriage tends to inhibit religious freedom

Concerning religious freedom, “the implications are clear: if marriage is legally redefined, believing what every human society once believed about marriage—namely, that it is a male-female union—will increasingly be regarded as evidence of moral insanity, malice, prejudice, injustice, and hatred.”⁵⁸

State redefinition of marriage and its resulting encroachment upon religious freedom can impact children’s welfare quite directly. In October 2005, the Vatican was accused of “putting an ugly political agenda before the needs of very vulnerable children” when it clarified that placing children for adoption with same-sex couples violated Catholic teaching.⁵⁹ In a bit of cruel irony, about six months later, Catholic Charities of Boston was forced to give up its adoption services rather than place children with same-sex couples in violation of its religious principles.⁶⁰

⁵⁸ Girgis et al., 34 Harv. J.L. & Pub. Pol’y at 265.

⁵⁹ Maggie Gallagher, *Banned in Boston: The Coming Conflict Between Same-Sex Marriage and Religious Liberty*, The Weekly Standard, May 5, 2006, at 20

⁶⁰ *Id.*

Government redefinition of marriage will also “undermine religious freedom and the rights of parents to direct the education and upbringing of their children.”⁶¹ Consider another example from Massachusetts, where the public policy ramifications of same-sex marriage have been significant. In a case involving two families with religious objections to portrayals of homosexual behavior in a public elementary school, the First Circuit Court of Appeals upheld a district court decision finding that the families did not have a constitutional right to have notice and opt out of the objectionable programs. Both decisions reasoned that Massachusetts could override parents’ interests in raising their children because, given the state’s recognition of same-sex marriages, “the conduct at issue . . . is rationally related to the goal of preparing [students] for citizenship.”⁶²

Redefining marriage also harms children more indirectly when it infringes upon religious liberty. Several recent cases have been decided against individuals who sought to avoid contributing to same-sex weddings and thereby violating their religious beliefs.⁶³ These cases send a clear message to children that, no matter

⁶¹ Girgis et al., 34 Harv. J.L. & Pub. Pol’y at 264.

⁶² See *Parker v. Hurley*, 474 F.Supp.2d 261, 275 (D. Mass. 2007). See also *Parker v. Hurley*, 514 F.3d 87, 95 (1st Cir. 2008).

⁶³ See, e.g., *Elane Photography, LLC v. Willock*, 309 P.3d 53 (NM 2013); Lee Moran, *Baker Refuses to Make Wedding Cake for Lesbian Couple*, N.Y. Daily News (Feb. 4, 2013), <http://www.nydailynews.com/news/national/baker-refuses-wedding-cake-lesbian-couple-article-1.1254776>; Annette Cary, *Arlene’s Flowers in Richland Sued by Gay Couple*, Tri–City Herald (Apr. 18, 2013), <http://www.tricityherald.com/2013/04/18/2361691/arlenes-flowers-in-richland-sued.html>.

how kind and thoughtful they or their parents may be in faithfully practicing their religion, their belief that marriage is between one man and one woman are necessarily hateful, irrational, bigoted, and unworthy of respect. As a result, the state tends to ostracize, stigmatize, and shame children by redefining marriage and abridging the religious freedom of those who disagree. This result seems to be precisely what Justice Sandra Day O'Connor had in mind when she described how government can violate the Establishment Clause: "Endorsement [of religion] sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community. Disapproval [of religion] sends the opposite message."⁶⁴

While the exact balance between state recognition of same-sex relationships and protection of religious liberty might be debated, courts should be mindful of the effects on public policy that recognition of same-sex marriage will have, particularly its effects on children, and wisely defer to the legislature.

⁶⁴ *Lynch v. Donnelly*, 465 U.S. 668, 687–88 (1984) (O'Connor, J., concurring).

CONCLUSION

Male-female marriage, between one man and one woman, developed and has survived for thousands of years because it is the best familial arrangement for children and, therefore, for society. Male-female marriage is promoted in society because it is the only relationship in which the partners can attain organic unity for the purpose of reproducing themselves and, in turn, the next generation. Children fare best when raised by their biological parents. Thus, male-female marriage is the ideal because it gives children the best hope for a good life.

While some same-sex couples do raise children well, the children often do not fare as well as those raised by their biological parents and are at **greater risk** of negative outcomes. Redefining marriage weakens the institution of marriage and risks unintended consequences for religious freedom. “[T]he social damage that we could expect from further eroding the conjugal view would more than justify preserving it in the law.”⁶⁵ In light of the proven benefits to children of male-female marriages and the potential negative consequences of redefining marriage, amicus strongly supports the Indiana marriage laws.

Wherefore, Family-Pac Federal, Inc. requests that this Court reverse the decision of the district court.

⁶⁵ Girgis et al., 34 Harv. J.L. & Pub. Pol’y at 264, 275.

Respectfully submitted this twenty-second day of July, 2014,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 5,681 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). I also certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface, using Microsoft Word in 14-point Times New Roman font.

Dated: July 22, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2014, I electronically filed the foregoing brief with the Clerk of the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system, which will electronically notify all parties of the filing.

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