

IN THE CONSTITUTIONAL COURT OF ROMANIA

In re: The Legislative Proposal To Revise The Constitution Of Romania, Published In The
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Brief of Amicus Curiae Liberty Counsel, Orlando, Florida U.S.A.

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Amicus Curiae, Liberty Counsel is a civil liberties organization that provides education and legal defense on issues relating to traditional family values, including marriage, across the United States. Liberty Counsel has been involved in defending the definition of marriage as the union of one man and one woman against constitutional challenges in several jurisdictions. Liberty Counsel is committed to upholding the institution of marriage as defined for millennia – the union of one man and one woman – and to ensuring that the institution is not undermined. Liberty Counsel has developed a substantial body of information related to the importance of marriage as the fundamental social institution, information that it believes will be critical to this Court’s consideration of the proposed Constitutional amendment.

Liberty Counsel respectfully submits the following Brief in support of the proposal to amend the Romanian Constitution:

INTRODUCTION

This Court should permit the proposed constitutional amendment defining marriage as the union of one man and one woman to be voted upon by the citizens of Romania. This Court and Romania’s citizens have a legitimate and vital interest in preserving millennia of human history and the granite cornerstone of society. *i.e.*, marriage—the union of one man and one woman—and in rejecting an undefined experimental artificial social construct, *i.e.*, same-sex “marriage” that is barely a decade old. Same-sex “marriage” is grounded in fraudulent “research” based on skewed demographics and *the sexual abuse of hundreds of infants and children*.¹ The

¹ Alfred Kinsey, et.al. SEXUAL BEHAVIOR IN THE HUMAN MALE, 175-80 (1948) (“Kinsey MALE” herein). Tables 31-34 describe “observations” of “orgasms” in infants and children as young as two months. Table 34 is reproduced below:

global push for the artificial social construct of same-sex “marriage” has its origins in the “research” of American scientist Alfred Kinsey. Dr. Kinsey’s books on male and female sexuality² promote the normalization of all manner of sexual conduct from birth to death between human beings and even between human beings and animals.³ Although societal change agents have represented the books as objective “scientific studies,” they were, in fact, neither scientifically nor statistically sound.⁴ Instead they were ‘informed by a set of values and intellectual preferences that, taken together, could be said to constitute an ideology.’⁵ That ideology was built upon human experimentation, particularly, the sexual abuse of infants and children, as clearly depicted in tables in Dr. Kinsey’s Male volume.⁶

Nevertheless, the reports prompted clarion calls for fundamental changes in behavioral science, law, medicine and other social institutions worldwide. Over the last 68 years, the calls

AGE	NO. OF ORGASMS	TIME INVOLVED	AGE	NO. OF ORGASMS	TIME INVOLVED
5 mon.	3	?	11 yr.	11	1 hr.
11 mon.	10	1 hr.	11 yr.	19	1 hr.
11 mon.	14	38 min.	12 yr.	7	3 hr.
2 yr.	{ 7	9 min.	12 yr.	{ 3	3 min.
	{ 11	65 min.		{ 9	2 hr.
2½ yr.	4	2 min.	12 yr.	12	2 hr.
4 yr.	6	5 min.	12 yr.	15	1 hr.
4 yr.	17	10 hr.	13 yr.	7	24 min.
4 yr.	26	24 hr.	13 yr.	8	2½ hr.
7 yr.	7	3 hr.	13 yr.	9	8 hr.
8 yr.	8	2 hr.		{ 3	70 sec.
9 yr.	7	68 min.	13 yr.	{ 11	8 hr.
10 yr.	9	52 min.		{ 26	24 hr.
10 yr.	14	24 hr.	14 yr.	11	4 hr.

Table 34. Examples of multiple orgasm in pre-adolescent males

Some instances of higher frequencies.

² *Id.*; Alfred C. Kinsey, *et. al.* SEXUAL BEHAVIOR IN THE HUMAN FEMALE (1953) (“Kinsey FEMALE” herein).

³ Dr. Kinsey devotes an entire chapter in his Male volume to “Animal Contacts,” which are treated as one of six sexual “outlets,” regarded as acceptable and normal. Kinsey MALE, at 667-80.

⁴ See W. Allen Wallis, *Statistics of the Kinsey Report*, 248 JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION, 463-84 (1949) (discussing statistical errors in the report and concluding that Kinsey falsified data); Rene Wormser, ed. FOUNDATIONS 104 (1993) (citing Dr. Albert Hobbs’ congressional testimony that the Kinsey reports were “designed to deceive”).

⁵ Paul Robinson, THE MODERNIZATION OF SEX, 49 (1976).

⁶ Kinsey MALE at 175-80, Tables 31-34.

for change have been heeded and manifested themselves in, *inter alia*, the decriminalization or diminution of punishment for most sexual offenses, no fault divorce and related changes in family law, removal of homosexuality as a mental disorder, and new protected classes based on sexual conduct. The fundamental societal transformation reached the United States Supreme Court in 2003 when, relying upon Kinsey-inspired changes in law and policy, the Court decriminalized same-sex sodomy in *Lawrence v. Texas*, 539 U.S. 558 (2003). Almost immediately, courts throughout the United States began rejecting the millennia-old definition of marriage as the union of one man and one woman in favor of an undefined social construct, same-sex “marriage” based upon the Kinsey-inspired fundamental transformation of law and public policy. The efforts culminated in the United States in 2015 with the Supreme Court decision in *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015), which has been widely accepted as establishing that same-sex couples must be permitted to marry.⁷

European countries began adopting the Kinseyan based social construct of same-sex “marriage” in 2000. The Netherlands began recognizing such “marriages” in 2001 following a December 2000 vote by the Dutch Parliament.⁸ In January 2003, the Belgian parliament legalized same-sex “marriage,” after having offered same-sex couples limited rights under domestic partnerships since 1998.⁹ The Spanish parliament legalized same-sex “marriage” in 2005, by adding the language “Marriage will have the same requirements and results when the two people entering into the contract are of the same sex or of different sexes” to the marriage

⁷ Under United States law, the decision is merely a disposition of the cases before the Court at that time and does not bind the entire country. However, most federal and state courts have regarded *Obergefell* as nationwide precedent and have ordered that states give marriage licenses to same-sex couples.

⁸ Pew Research Center, *Gay Marriage Around the World* (June 26, 2015), <http://www.pewforum.org/2015/06/26/gay-marriage-around-the-world-2013/#netherlands>. Last viewed July 6, 2016.

⁹ *Id.*

statute.¹⁰ The Swedish and Norwegian parliaments legalized same-sex “marriage” in 2009, with Iceland and Portugal following suit in 2010.¹¹ In June 2012, Denmark’s legislature passed a bill legalizing same-sex “marriage,” and the bill became law a few days later when Queen Margrethe II gave her royal assent to the bill.¹² France, England and Wales began permitting same-sex “marriage” in 2013, with Scotland and Luxembourg legalizing such “marriages” in 2014. Same-sex “marriage” became legal in Finland, Greenland and Ireland in 2015.¹³

More than 3 million Romanians have said that they do not want a similar dismantling of the foundational social institution of marriage, but want to confirm that in Romania marriage remains as it has been for millennia the union of one man and one woman.¹⁴ It is the first time in the history of Romania that such a large number of citizens have supported an initiative to amend the Constitution.¹⁵ If approved by Parliament and the voters, the referendum would amend the language of article 48, par. 1 in the Constitution to read:

A family is established through the free-willed marriage between one man and one woman, and is based upon their equality and their right and their duty to provide for the raising, the education and the training of the children.

This Court is being asked to sanction this historic action by the people of Romania. Amicus respectfully states that this Court should approve the referendum in order to protect the foundational social institution that is critical to the future of the country. Amicus respectfully submits this Brief to provide this Court with critical information that demonstrates why millennia

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* Other countries legalizing same-sex “marriage” include Canada, 2005; South Africa 2006; Argentina 2010; Brazil, New Zealand and Uruguay in 2013 and Colombia in 2016. Same-sex “marriage” has been permitted in certain regions of Mexico since 2009. *Id.*

¹⁴ Coalitia pentru Familie, *A historical nationwide and European premiere: 3 million Romanians sign to change the Constitution toward the protection of the family* (May 24, 2016) <http://coalitiapentrufamilie.ro/2016/05/24/historical-nationwide-european-premiere-3-million-romanians-sign-change-constitution-toward-protection-family/>. Last visited July 6, 2016.

¹⁵ *Id.*

of history should not be discarded in favor of an artificial social construct that will undermine the very foundation of the country.

LEGAL ARGUMENT

I. MARRIAGE WAS NOT CREATED BY AND CANNOT BE REDEFINED BY LAW.

Marriage is not merely a creation of any one civilization or its statutes, but is an institution older than the laws of any nation. *See Griswold v. Connecticut*, 381 U.S. 479, 486 (1965).

We deal with a right of privacy older than the Bill of Rights – older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions.

Id. The Supreme Court of the State of Alabama affirmed that:

[M]arriage is a “prepolitical” “natural institution” “not created by law,” but nonetheless recognized and regulated by law in every culture and, properly understood, an institution that must be preserved as a public institution based on the following rationale: “The family is the fundamental unit of society.... [F]amilies ... produce something that governments need but, on their own, they could not possibly produce: upright, decent people who make honest law-abiding, public-spirited citizens. And marriage is the indispensable foundation of the family.”

Ex Parte Alabama, 2015 WL 892752 at *5 (2015). Preserving that indispensable foundation for Romanians is what is at stake in this case.

A. Marriage—the Union Of One Man and One Woman—Transcends History, Culture and Private Desires.

For millennia, human society has understood that a proper understanding and preservation of the institution of marriage is critical for the stability and welfare of society and the general good of the public. *See Id.* at *6. This has been true even in cultures that were

accepting of homosexuality and pedophilia.¹⁶ “[E]ven in cultures very favorable to homoerotic relationships (as in ancient Greece), something akin to the conjugal view [marriage as a comprehensive union] has prevailed—and nothing like same-sex marriage was even imagined.”¹⁷ Indeed, the concept of marriage being anything other than what it has always been was not imagined until Dr. Kinsey’s work became well-ensconced as an authority in decisions that have fundamentally changed law and policy related to sexual conduct.

Memorializing that marriage, by nature, is between one man and one woman, acknowledges that marriage has innate value.¹⁸ Marriage is more than the name that society gives to the relationship that matters most between two adults.

Marriage is, *of its essence*, a comprehensive union: a union of will (by consent) and body (by sexual union); *inherently* ordered to procreation and thus the broad sharing of family life; and calling for permanent and exclusive commitment, ... it is also a *moral reality*: a human good *with an objective structure*, which is *inherently good* for us to live out.¹⁹

This inherent ordering of marriage toward procreation transcends any private desires of the parties. Thus, regardless of whether the parties intend to have a family, the natural structure of marriage is such that it is directed toward the common good of procreation.

Legal recognition makes sense only where regulation does: these are inseparable. The law, which deals in generalities, can regulate only relationships with a definite structure. Such regulation is justified only where more than private interests are at stake, and where it would not obscure distinctions between bonds that the common good relies on.²⁰

Laws “regulate the mode of entering into the contract, but they do not confer the right.” *Meister v. Moore*, 96 U.S. 76, 78-79 (1877).

¹⁶ Sherif Girgis & Ryan T. Anderson, *WHAT IS MARRIAGE? MAN AND WOMAN: A DEFENSE* 11 (2012).

¹⁷ *Id.*

¹⁸ *Id.* at 50.

¹⁹ *Id.* at 6.

²⁰ *Id.* at 92.

For, certainly, no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, fit to take rank as one of the co-ordinate states of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from *the union for life of one man and one woman* in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement.

Murphy v. Ramsey, 114 U.S. 15, 45 (1885) (emphasis added). “Marriage is the foundation of the home, and upon it is builded [sic] the entire superstructure of society.” *United States v. Cannon*, 4 Utah 122, 7 P. 369, 382 *aff’d*, 116 U.S. 55 (1885). “It finds its defense in every human heart, which jealously guards the one object of its affection.” *Id.*

There is far more to the marriage relation than the mere gratification of passion, or the procreation of children. The wife, taking her place by her husband's side, his equal, his counselor, his friend, makes of him a perfect man. Together they share the sorrows of life; together they enjoy its blessings. When each is true to the other, they present a *union not made by man*, and as they pass along life's pathway their very example is of infinite benefit to mankind.

Id. (emphasis added). Memorializing marriage into the statutory and common law is a reflection of the fact that “[a]nything which tends to bring this relation into disrepute is an injury to the world.” *Id.* Memorializing that marriage is the union of one man and one woman, as the Romanian people seek to do here, accords with the adage that “[a]nything which lowers the popular appreciation of the relation, and destroys the good that marriage does the world by mere example, is an evil which the law should correct.” *Id.* “Society, with all its ramifications, being founded upon marriage, it is upon grounds of public policy that it is regulated and protected.” *Id.*

B. Marriage As The Union of One Man and One Woman Shapes Religious and Philosophical Traditions.

The principle that marriage is the foundation of society reflects a “2,400 year *philosophical* tradition that has [] distinguished those uniquely comprehensive unions consummated by coitus from all others.”²¹ In fact, “legal and philosophical traditions have,

²¹ Girgis, *WHAT IS MARRIAGE?* 50 (emphasis in original).

significantly, long termed [coitus] the *generative* act,” as without coitus, organic conception is impossible.²² “Important philosophical and legal traditions have long distinguished friendships of all kinds from those special relationships that extend two people’s union along the bodily dimension of their being and that are uniquely apt for, and enriched by, reproduction and childrearing. The three great philosophers of antiquity – Socrates, Plato, and Aristotle – as well as Xenophanes and Stoics such as Musonius Rufus defended this view – in some cases, amid highly homoerotic cultures.”²³

Instead of religion shaping marriage, as is asserted by those seeking to redefine it, “marriage—the demands of a natural institution—helped to shape our religious and philosophical traditions.”²⁴ Marriage, as a comprehensive union, predates civil government, and is “not peculiar to religion, or to any religious tradition.”²⁵ In fact, “marriage is a *natural* bond that society or religion can only ‘solemnize.’”²⁶ While individuals connected to particular religions might be bound, to some degree, by their religious norms, such norms have no impact on third parties. However, a “major function of marriage laws is to bind *all third parties* (schools, adoption agencies, summer camps, hospitals, friends, relatives, and strangers) presumptively to treat a man as father of his wife’s children, husbands and wives as entitled to certain privileges and sexually off-limits, and so on. This only the state can do with any consistency.”²⁷ Thus, marriage laws protect the common good of health and safety and promote the common good of efficiency; “private efforts cannot adequately secure [these goods], and yet failure to secure them

²² *Id.* at 26 (emphasis in original).

²³ *Id.* at 49.

²⁴ *Id.* at 11 (emphasis in original).

²⁵ *Id.* at 10.

²⁶ *Id.* at 2 (emphasis in original).

²⁷ *Id.* at 41 (emphasis in original).

has very public consequences.”²⁸ Since “the state *can* secure it without undue cost, then the state may step in—and should.”²⁹

Marriage is not simply a religious tradition. In fact, when dealing with the constitutionality of laws proscribing polygamy, the United States Supreme Court held:

Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal.

Reynolds v. United States, 98 U.S. 145, 165 (1878). Thus, while some might be motivated by religion to marry, and religious ceremonies satisfy state requirements for solemnization,³⁰ the purpose of marriage transcends religion, and is to maintain order with regard to man’s social duties.

C. Memorializing that Marriage is the Union of One Man and One Woman Recognizes and Preserves Its Public Purpose.

Consequently, “marriage is not a legal construct with totally malleable contours—it is not ‘just a contract.’ Instead, some sexual relationships are of a distinctive kind of bond that has its own value and structure, which the state did not invent and has no power to redefine.”³¹

As society deprives marriage policy of definite shape, it deprives it of public purpose³² as has been seen in European nations that were among the first to deconstruct the institution. In 2004, just as the United States was beginning its debate on same-sex “marriage,” Scandinavia was already experiencing the consequences of its earlier adoption of the artificial social construct:

²⁸

Id.

²⁹

Id. (emphasis in original).

³⁰

U.S. Marriage Laws, American Marriage Ministries (2012),

<http://www.theamm.org/marriage-laws>.

³¹

Girgis, WHAT IS MARRIAGE? 80.

³²

Id. at 21 (emphasis added).

Same-sex marriage has locked in and reinforced an existing Scandinavian trend toward the separation of marriage and parenthood. The Nordic family pattern – including gay marriage—is spreading across Europe. ... The separation of marriage from parenthood was increasing; gay marriage has widened the separation. Out-of-wedlock birthrates were rising; gay marriage has added to the factors pushing those rates higher. Instead of encouraging a society-wide return to marriage, *Scandinavian gay marriage has driven home the message that marriage itself is outdated, and that virtually any family form, including out-of-wedlock parenthood, is acceptable.*³³

The Netherlands was experiencing similar problems.

Today [2004], marriage is in trouble in the Netherlands. In the mid-1990s, out-of-wedlock births, already rising, began a steeper increase, nearly doubling to 31 percent of births in 2003. These were the very years when the debate over the legal recognition of gay relationships came to the fore in the Netherlands, culminating in the legalization of full same-sex marriage in 2000. The conjunction is no coincidence. A careful look at the decade-long campaign for same-sex marriage in the Netherlands shows that one of its principal themes was the effort to dislodge the conviction that parenthood and marriage are intrinsically linked. Even as proponents of gay marriage argued vigorously—and ultimately successfully—that marriage should be just one of many relationship options, fewer Dutch parents were choosing marriage over cohabitation. No longer a marked exception on the European scene, the Dutch are now traveling down the Scandinavian path.³⁴

The discussions regarding same-sex “marriage” in The Netherlands offer insight into the worldview behind the phenomenon that more than 3 million Romanians want to prevent from occurring in their country:

During the 2000 parliamentary debates, Green party spokesman Femke Halsema said it was only when considered superficially that the drive for same-sex marriage appeared to contradict the feminist quest for the abolition of marriage. **In reality, said Halsema, conservative opponents were largely right to claim that gay marriage would be tantamount to the abolition of marriage--which was exactly why gay marriage was a good thing.** Halsema added that the

³³ Stanley Kurtz, *The End of Marriage in Scandinavia*, 9.20 THE WEEKLY STANDARD (February 2, 2004), <http://www.weeklystandard.com/Content/Public/Articles/000/000/003/660zypwj.asp#> (emphasis added).

³⁴ Stanley Kurtz, *Going Dutch? Lessons from the Same-sex Marriage Debate in the Netherlands*, THE WEEKLY STANDARD (May 31, 2004), <http://www.weeklystandard.com/print/goingdutch/article/5352>

logical consequence of her position was that registered partnerships ought to be protected and encouraged as a nontraditional alternative to marriage.³⁵

More recent statistics from the European Union indicate that the trend of lowered incidence of and respect for marriage described in 2004 continues across the continent. The marriage rate remains high in countries such as Romania which believe that marriage is the union of one man and one woman and do not provide for “nontraditional alternative” legal unions for same-sex couples. However, the marriage rate is continuing to decline in those countries where alternative legal unions, including same-sex “marriage,” have been accepted.

Married couples also accounted for at least 80% of all families in several inland regions of northern/central Portugal, several relatively rural regions in Germany, much of Bulgaria and Romania, and the southern Polish region of Rybnicki. In contrast there were five regions in the EU-28 where fewer than half of all families were composed of married couples. Three of these were French overseas territories: Guyane, on the Atlantic coast of South America recorded by far the lowest share, at 27.8 %. The other two regions where married couples accounted for fewer than half of all families were both located in the United Kingdom, namely, Inner London - East (46.8 %) and Glasgow City (49.4 %). Otherwise, marriage was also quite uncommon in relation to other types of family formation in the Baltic Member States and the northern half of Sweden, and this was also true, to a lesser extent, across much of Finland, southern Sweden, several regions in Denmark, the Netherlands and (southern) Belgium, most of France and the United Kingdom, as well as a cluster of regions in Slovenia, southern Austria and Hungary.³⁶

The declining rate of marriage in these countries that attempted to redefine it has significant adverse and far-reaching consequences. The most significant of these consequences is the adverse effects on children.

³⁵ *Id. (emphasis added).*

³⁶ Eurostat, THE EUROSTAT REGIONAL YEARBOOK 2015, 57 (European Union 2015) <http://ec.europa.eu/eurostat/web/products-statistical-books/-/KS-HA-15-001>. Portugal, Poland, Bulgaria and Romania do not provide for legal unions for same-sex couples, while France, the United Kingdom, Belgium, Sweden, Finland, Denmark, the Netherlands, Hungary, Austria and Slovenia and nine other EU nations have established such legal unions. Eurostat, DEMOGRAPHIC STATISTICS: A REVIEW OF DEFINITIONS AND METHODS OF COLLECTION IN 44 EUROPEAN COUNTRIES, 62-63 (European Union, 2015). <http://ec.europa.eu/eurostat/web/products-manuals-and-guidelines/-/KS-GQ-15-002>.

D. Memorializing Marriage as the Union of One Man and One Woman Promotes Stability That Provides the Optimal Environment for Rearing Children.

Romania’s continuing commitment to marriage as the union of one man and one woman reflects a continuing commitment to creating and maintaining the optimal environment for rearing children. In fact, treating same-sex unions as marriages “would undermine marital stability in ways that we know do hurt children.”³⁷

[The] mind-body union is ordered to the comprehensive good of rearing new members of the human family -- their children -- an open-ended task calling for the coordination of their whole lives, which in turn required undivided commitment. Thus, the norms of marriage, a union specially enriched by family life, fittingly create the stability and harmony suitable for rearing children. ... The intrinsic connection between marriage and children therefore reinforces the reasons spouses have to stay together and faithful for life.³⁸

Therefore, “not only does childrearing deepen and extend a marriage; children also benefit from marriage.”³⁹ The “state of economic and social development we call ‘**civilization**’ **depends on healthy, upright, productive citizens; ... [thus,] civilization depends on strong marriages.**”⁴⁰

The “*public* functions of marriage--both to require and to empower parents (especially fathers) to care for their children and each other--require society-wide coordination.”⁴¹ As has been seen in the “Redefining civil marriage will further erode marital norms thrusting the state even more deeply into leading roles for which it is poorly suited: parent and discipliner of the orphaned, provider to the neglected, and arbiter of disputes over custody, paternity, [child support, alimony,] and visitations. As the family weakens, our welfare and correctional bureaucracies grow.”⁴²

³⁷ Girgis., *WHAT IS MARRIAGE?* at 58-59.

³⁸ *Id.* at 34.

³⁹ *Id.* at 32.

⁴⁰ *Id.* at 38 (emphasis added).

⁴¹ *Id.* at 40 (emphasis in original).

⁴² *Id.* at 9.

A study by the Brookings Institution found that **\$229 billion** in welfare expenditures between 1970 and 1996 in the United States could be attributed to the breakdown of the marriage culture and the resulting exacerbation of social ills such as teen pregnancy, poverty, crime, drug abuse, and health problems.⁴³ In 2014 it was estimated that the breakdown of the family in the United Kingdom cost £45 billion a year, not to mention the incalculable social costs to children.⁴⁴

At stake are *rights*, and costs and benefits (externalities) for all society. Rights, because wherever reasonably possible, parents are entitled to bring up their own children -- and children have a right to their own two parents' care. ... [E]xternalities are in play because **failed marriages burden innocent bystanders, including children and ultimately all society**. As we have seen, not only is it impossible for private groups to secure well the interests at stake, but it is also many times more effective, less intrusive, and less costly for the state to do so by reinforcing marital norms than by picking up the pieces from a shattered marriage culture.⁴⁵

Numerous courts in the United States have recognized that it is at least rational, if not compelling for states (or countries such as Romania) to memorialize that marriage is a union of one man and one woman in order to promote procreation where both the mother and father are present to raise the child. The United States Supreme Court identified the very compelling interest that states have in preserving the natural relationship as opposed to creating an institution:

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. **The law does not create families**, it creates a structure in which family life can be legally recognized and protected. Redefining marriage by court decree would change this orientation. It would shift the legal posture of the state from recognizing a naturally recurring relationship (the joining of men and women in a relationship open to creating new life) to creating the institution (any two people whom the law chooses to recognize). The state would become the creator of families and thus turn the

⁴³ *Id.* at 46.

⁴⁴ John Bingham, *Family breakdown 'could cost taxpayers £46bn'*, THE TELEGRAPH, March 4, 2014, <http://www.telegraph.co.uk/women/sex/divorce/10674267/Family-breakdown-could-cost-taxpayers-46bn.html>.

⁴⁵ Girgis at 42 (italics in original; bold added).

family into a mechanism for imposing state values on individuals.

Bellotti v. Baird, 443 U.S. 622, 638 (1979) (plurality opinion) (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)) (emphasis added). Similarly, the Supreme Court for the State of Washington said, “the legislature was entitled to believe that providing that only opposite-sex couples may marry will encourage procreation and child-rearing in a ‘traditional’ nuclear family where children tend to thrive.” *Andersen v. King County*, 138 P.3d 963, 983 (Wash. 2006). The Court of Appeals of the state of New York (that state’s highest court) discussed in detail how defining marriage as the union of one man and one woman is rationally related to the state’s interest in promoting the welfare of children.

First, the Legislature could rationally decide that, for the welfare of children, it is more important to promote stability, and to avoid instability, in opposite-sex than in same-sex relationships. Heterosexual intercourse has a natural tendency to lead to the birth of children; homosexual intercourse does not. Despite the advances of science, it remains true that the vast majority of children are born as a result of a sexual relationship between a man and a woman, and the Legislature could find that this will continue to be true. The Legislature could also find that such relationships are all too often casual or temporary. It could find that an important function of marriage is to create more stability and permanence in the relationships that cause children to be born. It thus could choose to offer an inducement -- in the form of marriage and its attendant benefits -- to opposite-sex couples who make a solemn, long-term commitment to each other. The Legislature could find that this rationale for marriage does not apply with comparable force to same-sex couples. These couples can become parents by adoption, or by artificial insemination or other technological marvels, but they do not become parents as a result of accident or impulse. The Legislature could find that unstable relationships between people of the opposite sex present a greater danger that children will be born into or grow up in unstable homes than is the case with same-sex couples, and thus that promoting stability in opposite-sex relationships will help children more. This is one reason why the Legislature could rationally offer the benefits of marriage to opposite-sex couples only.

There is a second reason: The Legislature could rationally believe that it is better, other things being equal, for children to grow up with both a mother and a father. Intuition and experience suggest that a child benefits from having before his or her eyes, every day, living models of what both a man and a woman are like. It is obvious that there are exceptions to this general rule-some children who never know their fathers, or their mothers, do far better than some who grow up with parents of both sexes-but the Legislature could find that the general rule will

usually hold.

Hernandez v. Robles 7 N.Y.3d 338, 359-360 (N.Y. 2006). Even the Massachusetts Supreme Judicial Court, which was the first state court to rule that same-sex couples should be allowed to marry, affirmed that marriage is central to the welfare of the community and that “marital children reap a measure of family stability and economic security based on their parents’ legally privileged status that is largely inaccessible, or not as readily accessible, to nonmarital children.” *Goodridge v. Dep’t of Public Health*, 440 Mass. 309, 354-57 (2003).

Marriage is central to the welfare of the community in part because “societies rely on families built on strong marriages to produce what they need but cannot secure: healthy, upright children who become conscientious citizens.”⁴⁶ “Marriages have always been the main and most effective means of rearing healthy, happy, and well-integrated children. The health and order of society depend on the rearing of healthy, happy, and well-integrated children. That is why law, though it may take not notice of ordinary friendships, should recognize and support [natural] marriage.”⁴⁷ “[C]hildren fare best overall when reared by their wedded biological parents.”⁴⁸ They “benefit from the love and care of both mother and father, and from their parents’ committed and exclusive love for each other.”⁴⁹ Studies show children raised by their wedded biological parents fair best in “*educational achievement*: literacy and graduation rates, *emotional health*: rates of anxiety, depression, substance abuse, and suicide, *familial and sexual development*: strong sense of identity, timing of onset of puberty, rates of teen and out-of-

⁴⁶ *Id.* at 16.

⁴⁷ *Id.* at 7.

⁴⁸ *Id.* at 32.

⁴⁹ *Id.* at 16, 32.

wedlock pregnancy, and rates of sexual abuse, and *child and adult behavior*: rates of aggression, attention deficit disorder, delinquency, and incarceration.”⁵⁰

The importance of biological intact families has been corroborated by a number of “[r]ecent literature reviews conducted by the Brookings Institution, the Woodrow Wilson School of Public and International Affairs at Princeton University, the Center for Law and Social Policy, and the Institute for American Values. ...”⁵¹ A Rutgers University sociologist concluded that “gender-differentiated parenting is important for human development and that the contribution of fathers to childrearing is unique and irreplaceable....**The two sexes are different to the core, each is necessary** -- culturally and biologically -- **for the optimal development of a human being.**”⁵² A University of Virginia sociologist similarly concluded “family breakdown poses a serious threat to children and to the societies in which they live.”⁵³

The proposition that children fare best when raised by their biological mothers and fathers in an intact family was affirmed in a recent peer reviewed study by researcher Mark Regnerus (the “Regnerus study”). Regnerus found that children raised by lesbian mothers (“LM”) and gay fathers (“GF”) fared far worse than did children raised by their biological intact families (“IBF”) in numerous ways.⁵⁴ The Regnerus study is a population-based cross-sectional study of 3000 young adults between the ages of 18 and 39.⁵⁵ The study revealed that:

⁵⁰ *Id.* at 42 (emphasis in original).

⁵¹ *Id.* at 43.

⁵² David Popenoe, *LIFE WITHOUT FATHER: COMPELLING NEW EVIDENCE THAT FATHERHOOD AND MARRIAGE ARE INDISPENSABLE FOR THE GOOD FOR CHILDREN AND SOCIETY* 146, 197 (1996).

⁵³ W. Bradford Wilcox, *Reconcilable Differences: What Social Science Shows About the Complementarity of the Sexes and Parenting*, 18.9 *TOUCHSTONE* 36 (2005).

⁵⁴ Mark Regnerus, *How Different are the Adult Children of Parents Who have Same-sex Relationships? Findings from the New Family Structures Study*, 41 *JOURNAL OF SOCIAL SCIENCE RESEARCH* 752, 761 (2012).

⁵⁵ *Id.* at 755, 757.

Sixty-nine (69) percent of LMs and 57% of GFs reported that their family received public assistance at some point while growing up, compared with 17% of IBFs; 38% of LMs said they are currently receiving some form of public assistance compared with 10% of IBFs. Just under half of all IBFs reported being employed full-time at present, compared with 26% of LMs. While only 8% of IBF respondents said they were currently unemployed, 28% of LM respondents said the same. LMs were statistically less likely than IBFs to have voted in the 2008 presidential election (41% vs. 57%), and more than twice as likely --19% vs. 8%--to report being currently (or within the past year) in counseling or therapy 'for a problem connected with anxiety, depression, relationships, etc.,' an outcome that was significantly different after including control variables.⁵⁶

These statistics convey a strong government interest in encouraging biological intact families through marriage policy. Children raised by biological intact families are much more likely to become productive citizens who vote, are mentally stable, have more stable relationships, and who are less likely to become dependents of the state. In addition, the children in biological intact families are more likely to enter relationships in which they can organically produce children of their own: in the Regnerus study, 90% of respondents from IBFs identified as entirely heterosexual, whereas only 61% of those raised by LMs and 71% of those raised by GFs reported identifying entirely as heterosexual.⁵⁷ Similarly, "a greater share of daughters of lesbian mothers reported being 'not sexually attracted to **either** males **or** females' ... 4.1% of female LMs compared to 0.5% of female IBFs."⁵⁸ Similarly, those raised by lesbians "fare worse on educational attainment, family-of-origin safety/security, negative impact of family-of-origin, the CES-D (depression) index, one of two attachment scales, report worse physical health, smaller household incomes than do respondents from still-intact biological families, and think that their current romantic relationship is in trouble more frequently."⁵⁹

⁵⁶ *Id.* at 761-62.

⁵⁷ *Id.* at 762.

⁵⁸ *Id.* (emphasis added).

⁵⁹ *Id.* at 763.

Children raised by homosexual fathers also fared worse than children raised in intact biological families. When contrasted with those raised by intact biological families, those raised by homosexual fathers “reported more modest educational attainment, worse scores on the family-of-origin safety/security and negative impact indexes, less closeness to their biological mother, greater depression, a lower score on the current (romantic) relationship quality index, and think their current relationship is in trouble more frequently.”⁶⁰ In addition, those raised by both lesbian mothers and homosexual fathers were more likely than those raised in biological intact families to smoke, have been arrested, and to have pled guilty to non-minor offenses.⁶¹

In addition, children are apparently safer in IBF homes. “23% of LMs said yes when asked whether ‘a parent or other adult caregiver ever touched you [sic] in a sexual way, forced you to touch him or her in a sexual way, or forced you to have sexual relations,’ while only 2% of IBFs responded affirmatively. ... Among female respondents, 3% of IBFs reported parental (or adult caregiver) sexual contact/victimization, dramatically below the 31% of LMs who reported the same. Just under 10% of female GFs responded affirmatively to the question.”⁶² “[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.”⁶³ It appears that children even grow up to mimic the sexual practices of their parents, as “while [only] 13% of IBFs reported having had a sexual relationship with someone else while they were either married or cohabitating, 40% of LMs said the same.”⁶⁴

⁶⁰ *Id.* at 763.

⁶¹ *Id.* at 764.

⁶² *Id.* at 763.

⁶³ *Id.* at 766.

⁶⁴ *Id.* at 763.

Advocates for same-sex “marriage” have criticized the Regnerus study and claimed that there are many other studies that have shown “no differences” between children raised by their married biological parents and those raised by same-sex couples, but those studies have been shown to be flawed. In a 2015 peer reviewed analysis of those studies, sociologist D. Paul Sullins revealed various shortcomings that call the “no differences” conclusion into serious question.⁶⁵

“[S]ocial-science research that has ostensibly shown positive ‘outcomes’ for children raised by same-sex couples... are really just measurements of what adults want from children so the adults look good: Does the child have good grades? Does the child look happy in photographs. ...? Is the child well-adjusted, healthy, a good athlete, well-liked by his peers,...? In other words, : Do children in same-sex couple’s homes turn out the way gay people want them to, so that gay people look good to straight people?”⁶⁶

In support of this point, it is striking that few studies (to my knowledge, only four) in the ‘no differences’ literature have employed standard psychometric measures of emotional distress...and no study has asked about parental child abuse. If politically aware concern for demonstrably positive child outcomes is as pervasive as these accounts suggest, it is conceivable that same sex parents could also disproportionately emphasize such demonstrable achievement in their children, leading to just the kind of mixed results observed in the Add Health data.⁶⁷

In a 2015 report on his own research on the issue, Professor Sullins found that in eight out of twelve psychometric measures, the risk of clinical emotional problems, developmental problems, or use of mental health treatment services is nearly double among those with same-sex parents when contrasted with children of opposite-sex parents.⁶⁸ He estimated that risk of serious child emotional problems in children with same-sex parents is 17 percent, compared with seven

⁶⁵ D. Paul Sullins, *The Unexpected Harm of Same-sex Marriage: A Critical Appraisal, Replication and Re-analysis of Wainright and Patterson’s Studies of Adolescents with Same-sex Parents* 11 BRITISH JOURNAL OF EDUCATION, SOCIETY & BEHAVIOURAL SCIENCE, 1 (2015).

⁶⁶ *Id.* at 19, citing R. Lopez & R. Edelman, editors, JEPHTHAH’S DAUGHTERS, 486 (2015).

⁶⁷ *Id.* at 19-20.

⁶⁸ D. Paul Sullins, *Emotional Problems among Children with Same-Sex Parents: Difference by Definition* 7 BRITISH JOURNAL OF EDUCATION, SOCIETY & BEHAVIOURAL SCIENCE, 99 (2015).

percent among opposite-sex parents, after adjusting for age, race, gender, and parent’s education and income.⁶⁹ Rates of ADHD were higher as well—15.5 compared to 7.1 percent.⁷⁰ The same was true for learning disabilities: 14.1 versus 8 percent.⁷¹ His conclusions speak to the reason why the proposed constitutional amendment at issue before this Court is necessary to preserve the future of Romania:

The reduced risk of child emotional problems with opposite-sex married parents compared to same-sex parents is explained almost entirely by the fact that married opposite-sex parents tend to raise their own joint biological offspring, while same-sex parents never do this. The primary benefit of marriage for children, therefore, may not be that it tends to present them with improved parents (more stable, financially affluent, etc., although it does do this), but that it presents them with their own parents.

This is the case for all children with married joint biological parents—which most successfully fulfill the formal civil premise of marriage, which is lifelong and exclusive partner commitment— compared to less than half of children in any other family category and no children in same–sex families.⁷²

Professor Sullins offered further evidence of the significance of marriage as the union of one man and one woman to the well-being of children in a study published in April 2016.⁷³ He examined adult children of same-sex parents and found those children at higher risk for mental and physical health problems, including depression, abuse victimization, parental distance and obesity.⁷⁴ He also cautioned against ignoring the problems of children of same-sex couples in the interest of avoiding negative information about homosexuals.⁷⁵ Such inattention to their

⁶⁹ *Id.* at 109-13.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 114-15.

⁷³ D. Paul Sullins, *Invisible Victims: Delayed Onset Depression among Adults with Same-Sex Parents*, 2016 DEPRESSION RESEARCH AND TREATMENT, 1 (2016).

⁷⁴ *Id.*

⁷⁵ *Id.* at 6.

problems could leave “children without support in an environment that may be problematic or dangerous for their dignity and security.”⁷⁶

These studies affirm that marriage as the union of one man and one woman benefits society by encouraging responsible procreation by adults, by encouraging those who have children to first make a permanent, exclusive commitment to the individual with whom he/she plans to procreate, and by encouraging responsible sexual behaviors in their children. It is these benefits that the legislative proposal under review by this Court seeks to preserve for the citizens of Romania.

E. Memorializing Marriage as the Union of One Man and One Woman Fosters True Equality and Relative Value of the Sexes.

Encouraging parenting in an intact biological family unit does not just benefit the child, who needs both a mother and a father, but also fosters equality and optimal health and well-being between the sexes, an important societal goal. “[M]arriage is necessary to bridge the differences between the sexes on a footing of equality for both.”⁷⁷ “[M]arriage provides two significant additional benefits to society which justify its preservation:”

First, **marriage provides an institution where men and women are valued equally**. As currently understood, there can be no marriage without both sexes. Neither sex can be excluded without impairing the institution. This equality is not compelled by lawsuits, as has been the case with the integration of sex-segregated private clubs, but is intrinsic to the nature of the institution. Because the very nature of marriage requires equal participation by men and women, it sends a powerful message about the importance of each sex to society's fundamental unit. Related to this reality of sex equality in marriage is the message that the law of marriage conveys about the relative worth of men and woman, particularly in their roles as fathers and mothers. Redefining marriage to include same-sex couples is a legal endorsement of the fungibility of men and women, mothers and fathers. In other words, when the state says that “any two persons” are equivalent to a mother and father, it is also saying that a mother or a father makes no unique

⁷⁶ *Id.*

⁷⁷ William C. Duncan, *The State Interests in Marriage*, 2 AVE MARIA L. REV. 153, 171(2004) (emphasis added).

contribution to child well-being. In the United States there are 16,473,000 children living in mother-only homes and 3,297,000 children in father-only homes. In the face of these numbers, it is eminently reasonable for the state to shrink from sending a legal message that men (fathers) are not essential to marriage or that women (mothers) can be dispensed with without consequences. Marriage advances these state interests by acknowledging that a marriage cannot exist without both a man and a woman.⁷⁸

Other researchers agree that “the assumption that same-sex unions are fungible with marriages in terms of social policy is wrong.”⁷⁹ “In reality, not all relationships are the same, and not all relationships are of equal value to children, to families, and to society.”⁸⁰ “Marriage has an ethical or moral dimension lacking in other relationships that transfigures it into a truly unique institution and that can transform the individual men and women into caring and ‘other-committed’ husbands and wives, at the same time.”⁸¹

The astounding thing about the argument for functional equivalence between marriage and other partnerships is that it has developed at a time in history when there is overwhelming evidence of the unique value and superior benefits of marriage compared to other adult intimate relationships. **Married couples live longer, are healthier, report that they are happier, have lower rates of mental illness, have lower rates of substance abuse, earn more, save more, have more enjoyable sexual intercourse, [and] experience less physical and emotional abuse.**⁸²

Not only does marriage foster equality, but the refusal to recognize same-sex unions as marriages does not discriminate on the basis of sex. As a rule, both men and women are permitted to marry on equal terms. Most countries place some parameters around marriage and those parameters are applied to men and women equally, whether it is a prohibition against “marrying” persons of the same sex, more than one person, or persons in close familial relation. **Error! Bookmark not defined.**

⁷⁸ *Id.* at 171-172 (emphasis added).

⁷⁹ Lynn Wardle, *The “End” Of Marriage*. 44 FAMILY COURT REVIEW, :45, 58 (2006).

⁸⁰ *Id.* at 52.

⁸¹ *Id.*

⁸² *Id.* (emphasis added).

F. Memorializing Marriage as the Union of One Man and One Woman Promotes The Social Good of a Physically and Psychologically Healthy Society.

In addition to a union of the wills, marriage requires a union of bodies. While it is possible for same-sex couples to enter into a union of the wills, it is not possible for them to join in body in the way marriage has always required. Joining in body requires more than a sexual act. It is a natural, organic union that is “coordinated toward a common biological end of the whole that they form together.”⁸³ By nature:

[In] coitus, and there alone, a man and a woman's bodies participate by virtue of their sexual complementarity in a coordination that has the biological purpose of reproduction – a function that neither can perform alone. Their coordinate action is, biologically, the first step (the behavioral part) of the reproductive process. By engaging in it, they are united, and do not merely touch, much as one's heart, lungs, and other organs are united: by coordinating toward a biological good of the whole that they form together. Here the whole is the couple; the single biological good, their reproduction.⁸⁴

In fact, it is because of this natural aspect of a female-male union that, historically, consummation required sexual intercourse and not simply any sexual act between the couple – the idea was to join the parts that, together, have the potential to embody a whole.⁸⁵ Thus, laws protecting marriage as the union of one man and one woman are advocating for a social good. The “law reflected the rational judgment that unions consummated by coitus were valuable in themselves, and different in kind from other bonds.”⁸⁶ “[T]wo men, two women, and larger groups cannot achieve organic bodily union: there is no bodily good or function toward which their bodies can coordinate,” like procreation.⁸⁷

⁸³ Girgis, *WHAT IS MARRIAGE?* at 25.

⁸⁴ *Id.* at 26.

⁸⁵ *Id.* at 25.

⁸⁶ *Id.*

⁸⁷ *Id.* at 27.

Not only is there no bodily good or function toward which two same-sex bodies can coordinate, but there are in fact inherent *harms* associated with same-sex unions.⁸⁸ For example, homosexual males are at exponentially higher risk of developing a variety of sexually transmitted diseases, and have increased risks of developing various cancers and medical conditions because of the nature of same-sex sex.⁸⁹ On May 9, 2014, the United States Centers for Disease Control and Prevention published a report documenting significant increases in sexually transmitted diseases in homosexual men for the period 2005-2013, calling the trend a “major public health concern.”⁹⁰ The same is true in Europe, where syphilis rates have spiked, particularly among men who have sex with men (MSM).⁹¹ In Sweden, for example, the number of cases have more than tripled in some regions.⁹²

Medical magazine Dagens Medicin says that the Västra Götaland region on Sweden’s west coast is the area where the disease has spread the sharpest, with the number of cases increasing from only ten in 2010, to 51 in 2015. One of the most affected groups are men who have sex with other men.⁹³

⁸⁸ John R. Diggs, Jr., *The Health Risks of Gay Sex*, Catholic Education Resource Center (2002), <http://www.catholiceducation.org/articles/homosexuality/ho0075.html> (internal citations omitted); see also *HIV and Young Men Who Have Sex with Men*, Centers for Disease Control and Prevention 1 (June 2012), http://www.cdc.gov/HealthyYouth/sexualbehaviors/pdf/hiv_factsheet_ymsm.pdf; Richard J. Naftalln, *Correspondence: Anal Sex and AIDS*, 360.6399 *Nature* 10 (Nov. 5, 1992); *Gay and Bisexual Men's Health: For Your Health: Recommendations for A Healthier You*, Centers for Disease Control and Prevention (Jan. 21, 2011), <http://www.cdc.gov/msmhealth/for-your-health.html>; *Lesbian and Bisexual Health Fact Sheet*, Womenshealth.gov (Feb. 17, 2011), <http://womenshealth.gov/publications/our-publications/factsheet/lesbian-bisexual-health.cfm#d>.

⁸⁹ *Id.*

⁹⁰ *Primary and Secondary Syphilis—United States, 2005–2013*, available at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6318a4.htm?s_cid=mm6318a4_w#tab.

⁹¹ *A Seemingly Eradicated STD Is Making A Shocking Comeback...* DAILY HEADLINES, July 4, 2016, http://dailyheadlines.net/2016/07/a-seemingly-eradicated-std-is-making-a-shocking-comeback/?utm_source=ml&utm_medium=ml&utm_campaign=ml#.

⁹² *Sweden sees dramatic rise in syphilis cases*, THE LOCAL, May 25, 2016, <http://www.thelocal.se/20160525/dramatic-rise-in-swedish-syphilis-cases>.

⁹³ *Id.*

Syphilis is not the only sexually transmitted disease that is on the up in the Nordic country. Cases of gonorrhoea more than doubled between 1995 and 2015, according to figures from the Swedish Public Health Agency. In December, doctors warned that a so-called 'super-gonorrhoea' strain that is untreatable by conventional antibiotics could be the cause of the rise.⁹⁴

Advocates for same-sex "marriage" acknowledge that the nature of the sexual acts in which same-sex couples engage carry health risks that are not as prevalent, or in some cases, not present at all, in heterosexual individuals. For example, in Canada, advocates have filed a complaint against the Canadian health service, alleging that the organization discriminates against homosexuals because it does not provide proper treatment for conditions which uniquely affect them.⁹⁵ The homosexual-specific health issues that are the subject of the complaint include lower life expectancy, suicide, higher rates of substance abuse, depression, inadequate access to care and HIV/AIDS.⁹⁶ One of the claimants was quoted as saying, "[t]here are all kinds of health issues that are endemic to our community.... We have higher rates of anal cancer in the gay male community, lesbians have higher rates of breast cancer. These are all issues that need to be addressed."⁹⁷ A survey of members of the Gay and Lesbian Medical Association (GLMA) reported on "10 health care concerns men who have sex with men (MSM) should include in discussions with their physicians or other health care providers," including higher rates of substance abuse, depression, HIV/AIDS, sexually transmitted diseases, certain cancers and eating disorders.⁹⁸

⁹⁴ *Id.*

⁹⁵ Julia Garro, *Canada's healthcare system is homophobic, says group*, XTRA.CA (February 17, 2009), available at <http://dailyxtra.com/canada/news/canadas-healthcare-system-homophobic-says-group> (last visited May 12, 2014).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *A Question of Cultural Competence in the Medical Community*, TEN THINGS GAY MEN SHOULD DISCUSS WITH THEIR HEALTH CARE PROVIDERS (July 17, 2002),

“Among adolescent males aged 13–19 years, **approximately 91%** of all diagnosed HIV infections **are from male-to-male sexual contact**, [and f]rom 2006 to 2009, YMSM [young men who have sex with men] aged 13–24 years had the greatest percentage increase in diagnosed HIV infections of all age groups.”⁹⁹ However, an extraordinarily high prevalence of sexually transmitted diseases is not only prevalent in youth. “Gay and bisexual men (who have sex with other men) are about **17 times more likely** to develop anal cancer than men who only have sex with women.”¹⁰⁰ There is likely a biological basis for this extraordinarily high incidence of anal cancer among those who engage in homosexual behavior:

[T]he colonic and rectal mucosa has a barrier function that normally prevents overwhelming invasion by infective and toxic materials contained within the luminal contents. ... Human semen contains at least two components in sufficiently high concentrations to cause breakdown of the basement membrane that supports the colonic epithelial cell layer: collagenase ... and spermine. Spermine permeates through the colonic mucosa and neutralizes glycoaminoglycans within the intestinal matrix -- this triggers the activation of endogenous collagenases which leads to loss of mucosal barrier function -- this allows seminal collagenase to penetrate the mucosa and hence to cause further damage and breakdown of the barrier function. ... Thus it is apparent that the colorectal mucosa is particularly susceptible to biochemical as well as the normally assumed mechanical t[r]auma consequent upon anal intercourse.¹⁰¹

Dr. Diggs, an internist, draws similar conclusions:

Anal intercourse is the sine qua non of sex for many gay men. Yet human physiology makes it clear that the body was not designed to accommodate this activity. The rectum is significantly different from the vagina with regard to suitability for penetration by a penis. The vagina has natural lubricants and is supported by a network of muscles. It is composed of a mucus membrane with a

available at http://zone.medschool.pitt.edu/sites/lgbt/Shared%20Documents/10ThingsGay_Doc.pdf (last visited May 12, 2014).

⁹⁹ *HIV and Young Men Who Have Sex with Men*, Centers for Disease Control and Prevention 1 (June 2012), http://www.cdc.gov/HealthyYouth/sexualbehaviors/pdf/hiv_factsheet_ymsm.pdf (emphasis added).

¹⁰⁰ *Sexually Transmitted Diseases (STDs): HPV and Men - Fact Sheet*, Centers for Disease Control and Prevention (Feb. 23, 2012), <http://www.cdc.gov/std/hpv/stdfact-hpv-and-men.htm> (emphasis added).

¹⁰¹ Richard J. Naftalln, *Correspondence: Anal Sex and AIDS*, 360.6399 NATURE 10 (Nov. 5, 1992).

multi-layer stratified squamous epithelium that allows it to endure friction without damage and to resist the immunological actions caused by semen and sperm. In comparison, the anus is a delicate mechanism of small muscles that comprise an “exit-only” passage. With repeated trauma, friction and stretching, the sphincter loses its tone and its ability to maintain a tight seal. Consequently, anal intercourse leads to leakage of fecal material that can easily become chronic.

The potential for injury is exacerbated by the fact that the intestine has only a single layer of cells separating it from highly vascular tissue, that is, blood. Therefore, any organisms that are introduced into the rectum have a much easier time establishing a foothold for infection than they would in a vagina. The single layer tissue cannot withstand the friction associated with penile penetration, resulting in traumas that expose both participants to blood, organisms in feces, and a mixing of bodily fluids.

Furthermore, ejaculate has components that are immunosuppressive. In the course of ordinary reproductive physiology, this allows the sperm to evade the immune defenses of the female. Rectal insemination of rabbits has shown that sperm impaired the immune defenses of the recipient. Semen may have a similar impact on humans.

The end result is that the fragility of the anus and rectum, along with the immunosuppressive effect of ejaculate, make anal-genital intercourse a most efficient manner of transmitting HIV and other infections. The list of diseases found with extraordinary frequency among male homosexual practitioners as a result of anal intercourse is alarming: Anal Cancer, Chlamydia trachomatis, Cryptosporidium, Giardia lamblia, Herpes simplex virus, Human immunodeficiency virus, Human papilloma virus, Isospora belli, Microsporidia, Gonorrhea, Viral hepatitis types B & C, [and] Syphilis.

Sexual transmission of some of these diseases is so rare in the exclusively heterosexual population as to be virtually unknown. Others, while found among heterosexual and homosexual practitioners, are clearly predominated by those involved in homosexual activity.¹⁰²

The United States Centers for Disease Control and Prevention reports:

[T]he rate of new HIV diagnoses among MSM is **more than 44 times** that of other men, while the rate of primary and secondary syphilis among MSM is **more than 46 times** that of other men. Many factors contribute to the higher rates of HIV and STDs among gay and bisexual men compared to the general population of men. These factors include high prevalence of HIV and other STDs among

¹⁰² John R. Diggs, Jr., *The Health Risks of Gay Sex*, CATHOLIC EDUCATION RESOURCE CENTER (2002), <http://www.catholiceducation.org/articles/homosexuality/ho0075.html> (internal citations omitted).

MSM, which increases the risk of disease exposure, and limits access to prevention services. Other factors are complacency about HIV risk, particularly among young gay and bisexual men; difficulty of consistently maintaining safe behaviors with every sexual encounter over the course of a lifetime; and lack of awareness of syphilis symptoms and how it can be transmitted (e.g., oral sex).¹⁰³

Not only are homosexual males at higher risk of disease, but some cancers and diseases, such as Bacterial Vaginosis, are “more common in lesbian and bisexual women than in other women.”¹⁰⁴

In addition, not only are homosexuals of all sexes and ages more likely to contract a sexually transmitted disease, and thus, have more **physiological** problems than their homosexual counterparts, but they are also statistically more likely to have **psychological** disorders. Studies show:

LGBQ individuals are **1.87 times as likely** to have a lifetime anxiety disorder and a full two times as likely to have a lifetime mood disorder compared to heterosexuals. While few studies have examined rates of psychiatric disturbance in LGBQ adolescents, preliminary evidence suggests heightened risk for both anxiety and depressive symptoms. These symptoms are a cause for concern, as 75% of lifetime psychiatric disorders will onset in adolescence and often persist into adulthood.¹⁰⁵

In fact, recent surveys suggest that “lesbian and gay youth and young adults are at greater risk for suicide ideation, suicide attempts, and completed suicides than their heterosexual counterparts.”¹⁰⁶ In one study, NHANES III, of men aged 17 to 39 years,

Approximately half of homosexually experienced men reported a positive lifetime history of at least 1 suicide-related symptom. Overall, prevalence rates of all 4

¹⁰³ *Gay and Bisexual Men's Health: For Your Health: Recommendations for A Healthier You*, Centers for Disease Control and Prevention (Jan. 21, 2011), <http://www.cdc.gov/msmhealth/for-your-health.htm> (emphasis added).

¹⁰⁴ *Lesbian and Bisexual Health Fact Sheet*, Womenshealth.gov (Feb. 17, 2011), <http://womenshealth.gov/publications/our-publications/fact-sheet/lesbian-bisexual-health.cfm#d>.

¹⁰⁵ Jordan Simonson, *Toward Understanding Elevated Depression and Anxiety Symptoms in LGBQ Youth: Integrating Minority Stress Theory and the Common Vulnerabilities Hypothesis 2* (June 12, 2012) (internal citations omitted) (emphasis added).

¹⁰⁶ Susan D. Cochran & Vickie M. Mays, *Lifetime Prevalence of Suicide Symptoms and Affective Disorders Among Men Reporting Same-Sex Sexual Partners: Results from NHANES III*, 90 AM. J. OF PUB. HEALTH 573, 573 (Apr. 2000) (discussing the rates of suicidality in homosexual males).

suicide symptoms were significantly greater among these men than among men who reported exclusively opposite-sex sexual partners. These differences remained for 3 of the 4 symptoms assessed by the Diagnostic Interview Schedule (desire to die, suicide ideation, and suicide attempt) after statistical adjustment for possible demographic confounding.¹⁰⁷

NHANES III suggests homosexuals are “**more than 5 times as likely** to have attempted suicide” than those reporting only opposite-sex sexual partners.¹⁰⁸ “Nevertheless, the self-reported lifetime prevalence of a previous suicide attempt found [in NHANES III] is somewhat lower than the rates revealed in two recent surveys of high school students. In one, a case-control study of students in Minnesota, 28% of self-identified homosexual/bisexual male students reported a history of suicide attempts. In another, a population-based survey of students in Massachusetts, 27.5% of those with a history of same-sex sexual contact reported at least 1 previous attempt. Furthermore, 41% of men with same-sex experience reported suicide at some point in the past in NHANES III.”¹⁰⁹ In addition, according to NHANES III, “as many as 1 in 5 homosexually active men may have a lifetime history of an affective disorder, primary recurrent depression, and that the onset of these depressive symptoms occurs at a younger age than in exclusively heterosexually experienced men.”¹¹⁰ “Men who have sex with men are at even greater risk for suicide attempts, especially before the age of 25.”¹¹¹

Heightened rates of psychological disorders are not only prevalent in homosexual youth, but homosexuals of all ages as “research points to higher risk of mood disorders, anxiety disorders, and suicidality among homosexual individuals compared to heterosexuals.”¹¹²

¹⁰⁷ *Id.* at 575 (discussing the rates of suicidality in homosexual males).

¹⁰⁸ *Id.* at 577 (discussing the rates of suicidality in homosexual males) (emphasis added).

¹⁰⁹ *Id.* at 575 (discussing the rates of suicidality in homosexual males).

¹¹⁰ *Id.* at 577.

¹¹¹ *Gay and Bisexual Men’s Health: Suicide and Violence Prevention*, Centers for Disease Control and Prevention (May 15, 2013), <http://www.cdc.gov/msmhealth/suicide-violence-prevention.htm>.

¹¹² Maurice N. Gattis, Paul Sacco, & Renee M. Cunningham-Williams, Substance Use and

As expected, people with same-sex contact tended to report **higher levels of both depressive symptoms and drug use**. ... People with same-sex contact generally reported **higher levels of stress exposure** and lower levels of social support and psychological resources. Further, those who reported same-sex contact showed stronger self-exploratory attitudes, and their network members used drugs more frequently and were more permissive of drug use.¹¹³

“Studies have shown that, when compared with the general population, gay and bisexual men, lesbian, and transgender individuals are **more likely to: Use alcohol and drugs; [h]ave higher rates of substance abuse; [a]re less likely to abstain from alcohol and drug use; [and,] [a]re more likely to continue heavy drinking into later life.**”¹¹⁴

A 2009 study of a nationally representative sample showed:

Self-identified lesbians displayed **greater odds of past-year marijuana use, drug use, alcohol dependence, marijuana dependence, and other drug dependence** than heterosexual women did, and bisexual women displayed greater odds of past-year heavy drinking, marijuana use, other drug use, and alcohol dependence compared to heterosexual women. ... Men who identified as homosexual had **higher odds of past year marijuana use, other drug use, alcohol dependence, and other drug dependence** compared to heterosexual

Mental Health Disorders Among Heterosexual Identified Men and Women Who Have Same-sex Partners or Attraction: Results from the National Epidemiological Survey on Alcohol and Related Conditions, 41 ARCHIVES OF SEXUAL BEHAVIOR 1185, 1185 (2012); see also Jordan Simonson, TOWARD UNDERSTANDING ELEVATED DEPRESSION AND ANXIETY SYMPTOMS IN LGBTQ YOUTH: INTEGRATING MINORITY STRESS THEORY AND THE COMMON VULNERABILITIES HYPOTHESIS 8 (June 12, 2012) (internal citations omitted), Martha W. Waller & Rebecca P. Sanchez, The Association Between Same-Sex Romantic Attractions and Relationships and Running Away Among a Nationally Representative Sample of Adolescents, 28 CHILD ADOLESCENT SOCIAL WORK JOURNAL 475, 477-78 (Aug. 6, 2011). T. Frisell, P. Lichtenstein, Q. Rahman, & N. Langstrom, Psychiatric Morbidity Associated with Same-Sex Sexual Behaviour: Influence of Minority Stress and Familial Factors, 40 PSYCHOLOGICAL MEDICINE 315, 318 (2010) (“Both men and women with any same-sex sexual partner had higher prevalences of psychiatric disorder than individuals with only opposite-sex sexual partners. After adjusting for age, education and relationship status, the risk increases remained for depression, GAD, eating disorder, alcohol dependence and ADHD among men and women with any same-sex sexual partner compared with individuals with only opposite-sex sexual partners.”).

¹¹³ Koji Ueno, *Mental Health Differences between Young Adults with and without Same-Sex Contact: A Simultaneous Examination of Underlying Mechanisms*, 51(4) JOURNAL OF HEALTH AND SOCIAL BEHAVIOR 392, 397 (2010) (emphasis added).

¹¹⁴ *Gay and Bisexual Men's Health: Substance Abuse*, Centers for Disease Control and Prevention (March 22, 2013), <http://www.cdc.gov/msmhealth/substance-abuse.htm> (emphasis added).

men. Adjusted odds of past-year other drug use, alcohol dependence, and other drug dependence among homosexual identified men were **more than three times** that of heterosexually identified men.¹¹⁵

In an analysis of the data from the National Epidemiological Survey of Alcohol and Related Conditions (NESARC), researchers looked at the alcohol and drug use and mental stability of persons in three distinct categories, homosexuals, heterosexuals, and the discordant, defined as those who identified as heterosexual but reported being attracted to people of the same sex (attraction discordance) or having sex with people of the same sex (behavior discordance).¹¹⁶

In regard to behavior discordance in men,

Rates of lifetime alcohol dependence were lower among discordant men than among both heterosexual and gay men. ... Discordant males had lower rates of having a lifetime depressive episode, generalized anxiety disorder, and post-traumatic stress disorder than gay individuals, but higher than heterosexual participants. ... Heterosexual men had the highest levels of social support and lowest stress, while discordant men had lower support and higher stress, and **gay/bisexual men had the highest levels of stress** and the lowest levels of social support.¹¹⁷

In regard to behavior discordant females,

Substance use disorders were present in higher percentages in the discordant women than in heterosexual women; lesbians or bisexual women experienced lifetime [substance use disorders] at the highest rates. Rates of major depressive episode showed a similar pattern, but discordant women experienced lifetime Generalized Anxiety Disorder and PTSD at lower rates than both heterosexual and lesbian/bisexual women did. ... Discordant women reported higher levels of stress than heterosexual women did, but **lesbian women had the highest mean levels of stress**...Overall, mental health functioning was the lowest among lesbians with progressively higher levels in discordant and heterosexual women.¹¹⁸

In regard to attraction discordance in men,

Discordant men had lower rates of life-time substance use disorders than both heterosexual and gay/bisexual men. Rates of mental health diagnoses were lower

¹¹⁵ Gattis, *Substance Use and Mental Health Disorders*, at 1186 (emphasis added).

¹¹⁶ *Id.* at 1187.

¹¹⁷ *Id.* at 1189-90 (emphasis added).

¹¹⁸ *Id.* at 1190 (emphasis added).

among heterosexual men and discordant men including lifetime major depressive episode, generalized anxiety disorder, and PTSD; **higher rates were present among gay/bisexual men.** ... Discordant men drank less on average and exceeded drinking guidelines at lower rates than both heterosexual and gay/bisexual men. ... Discordant and gay men reported higher levels of perceived stress and lower levels of social support than heterosexual men.¹¹⁹

In regard to attraction discordance in women,

Discordant women had significantly lower rates of alcohol, stimulant, cannabis, and inhalant disorders (lifetime) than heterosexuals and lesbians. The same pattern was found in mental health. Discordant women had the lowest rates of Major Depressive Episode, Generalized Anxiety Disorder, and PTSD, and few differences were found on health measures. ... Discordant women had lower support and perceived stress, but less mental health disability.¹²⁰

Thus, according to these scientific studies, even those with homosexual attractions, who did not **act** on those attractions, but instead pursued heterosexual romantic and sexual relationships, fare better psychologically than heterosexuals, and heterosexuals fare significantly better psychologically than homosexuals.

The personal, social and financial costs of these homosexual-specific health problems concern not just those who engage in homosexual activity, but also the larger community of citizens who help provide services and who must bear part of the burdens imposed by the health challenges. Engaging in homosexual conduct is dangerous, and endorsing and subsidizing same-sex unions and treating them as marriages is an endorsement of conduct that does not benefit society, but rather harms it by creating irresponsible and unhealthy people. Furthermore, it endangers children who will have to face the possibility of one or both of their parents becoming incapacitated, ill or even dying before the children are grown. That significantly undermines the *raison d'être* of marriage, *i.e.*, promoting the optimal environment for the rearing of the next generation of citizens.

¹¹⁹ *Id.* at 1192.

¹²⁰ *Id.*

II. FAILING TO MEMORIALIZE THAT MARRIAGE IS THE UNION OF ONE MAN AND ONE WOMAN MEANS ABANDONING OBJECTIVE FOUNDATIONAL TRUTH IN FAVOR OF AN UNDEFINED ARTIFICIAL SOCIAL CONSTRUCT BASED ON FRAUDULENT RESEARCH GROUNDED IN HUMAN EXPERIMENTATION.

Abandoning the understanding that marriage is the union of one man and one woman to create a new undefined institution to include same-sex couples also means abandoning millennia of history based on objective standards grounded in biological reality in favor of an artificial construct based upon ideology. That ideology, in turn, is grounded in human experimentation, specifically the sexual abuse of children, and skewed demographics aimed at upending the established social order. It is akin to moving a family from a house that has withstood centuries of storms by being anchored upon granite to a rickety cabin placed atop quicksand a few years ago. In other words, it is not a change that should be sanctioned by this Court.

A. Kinsey's Reports Were Ideologically Driven Propaganda Not Supported By Science.

The call to dismantle marriage is the latest manifestation of a fundamental societal transformation birthed in 1948, when Dr. Alfred Kinsey burst onto the scene proclaiming that everything society knew about human sexuality for centuries was a lie and those who taught standards for sexual conduct were hypocrites.¹²¹ ACLU founder Morris Ernst described the effect of Kinsey's report on male sexuality:

The whole of our laws and customs in sexual matters is based on the avowed desire to protect the family, and at the base of the family is the father. His behavior is revealed by the Kinsey Report to be quite different from anything the general public had supposed possible or reasonable.¹²²

¹²¹ Morris Ernst & David Loth, *AMERICAN SEXUAL BEHAVIOUR AND THE KINSEY REPORT*, 81, 83 (1948).

¹²² *Id.*

According to the Kinsey team, 95 percent of American men were engaging in sexual conduct that was illegal under existing laws.¹²³ This included 67 percent to 98 percent who had premarital sex; 69 percent who had at least one experience with a prostitute and 50 percent who were adulterers.¹²⁴ Kinsey's team also reported that up to 50 percent of farmers had sex with animals.¹²⁵ As was true with other sexual experiences such as homosexuality, pedophilia and pederasty, Kinsey's team decried any classification of bestiality as "aberrant" or "abnormal," claiming that such labels are applied only because of inexperience and acceptance of an old-fashioned judgment that "abnormal" activities, including "animal intercourse must evidence a mental abnormality, as well as an immorality."¹²⁶ Kinsey also claimed that 10 to 37 percent of men committed homosexual sodomy at some time in their lives and 46 percent "reacted to" both sexes at some point.¹²⁷

Despite the glaring contradiction between what society believed to be true in the post-World War II world and what Kinsey's team reported, the Kinsey "data" were accepted virtually without question and touted as a scientific breakthrough that would change the world.¹²⁸ However, those who have relied upon Kinsey's research have never explained how "scholarly science" could make claims such as: 1) "infant...males are capable of ... complete orgasm whenever a sufficient stimulation is provided;"¹²⁹ 2) absent social restrictions females would be

¹²³ Morris Ploscowe, *Sexual Patterns and the Law*, in *SEX HABITS OF AMERICAN MEN* 126 (Albert Deutsch, ed., 1948).

¹²⁴ Kinsey *MALE*, at 549-52, 586-87, 597.

¹²⁵ *Id.* at 671.

¹²⁶ *Id.* at 677.

¹²⁷ *Id.* at 650-51, 656.

¹²⁸ See, Phillip Zimbardo, *et. al.*, *INFLUENCING ATTITUDES AND CHANGING BEHAVIOR* 89 (1977)

¹²⁹ Kinsey *MALE*, at 181.

sexually active from birth until death;¹³⁰ and 3) children actively seek repeated sexual experiences with adults.¹³¹ Indeed, for more than 60 years, researchers, judges and other devout followers of Kinsey's report merely repeat that "Kinsey also found that infants and toddlers are capable of erections, orgasms, and other sexual responses,"¹³² without pausing to consider the violations of human dignity that Kinsey's team would have had to perpetrate to reach their conclusions. That lack of intellectual curiosity and scholarly integrity has meant that evidence of serial sexual abuse of infants and children as young as two months has not merely been swept under the rug, but has become the pivot point for a fundamental societal shift now manifesting itself in the global effort to demolish natural marriage.

B. Kinsey Used Child Molesters To Convince The World That All Sexual Activity Is Normal And Acceptable.

Kinsey's unquestioned "data" documenting children as "sexual from birth" came from the sexual abuse of up to 2,035 infants and children as young as two months.¹³³ Although displayed openly as "tables" listing infants and toddlers tested for "multiple orgasms,"¹³⁴ from "contacts" with adults, the fact that Kinsey based his "findings" on experimental child sexual abuse has escaped the scrutiny of law enforcement or criticism by scholars for more than 60 years. Kinsey claimed that "these data on the sexual activities of younger males provides an important substantiation of the Freudian view of sexuality as a component that is present in the human animal from earliest infancy...."¹³⁵ "[T]he sexual activities of younger males"¹³⁶ are

¹³⁰ Kinsey FEMALE, at 115-16.

¹³¹ *Id.* at 118.

¹³² Elizabeth Garfinkle, *Coming Of Age In America: The Misapplication Of Sex-Offender Registration And Community-Notification Laws To Juveniles*, 91 CAL. L. REV. 163, 190 (2003).

¹³³ Kinsey MALE, at pp. 176-80, Tables 30-34.

¹³⁴ *Id.*

¹³⁵ *Id.* at 180. This, of course, was long before child abuse scandals in the Roman Catholic church and other institutions came to light.

discussed in detail and documented in five tables: Table 30, “pre-adolescent eroticism and orgasm....one year old....males;” Table 31, “pre-adolescent experience in orgasm....actual observation of 317 males....*two months old* to 15 years;” Table 32, “speed of pre-adolescent orgasm....188....cases....males....*five months* to adolescence....duration of stimulation before climax....timed using....second hand or stop watch;” Table 33, “multiple orgasms182....males....the capacities of pre-adolescent boys in general;” and Table 34, “multiple orgasm in pre-adolescent males....*five months* to 14 years,” timed for up to 24 hours and allegedly having 26 “orgasms.”¹³⁷

Kinsey called the statistics “typical” and said, “Even the youngest males, as young as five months of age, are capable of such repeated reactions....The maximum observed was 26 clima[x]es in 24 hours, and the report indicates that still more might have been possible in the same period of time.”¹³⁸ These “reactions” to sexual stimuli that Kinsey labeled “orgasm” in children from two months to 12 years old included: body tension, twitching, rigidity, extreme tension with violent convulsions, hysterical laughing (among the younger children), extreme trembling, collapse, fainting, excruciating pain and screaming.¹³⁹ Some children “will fight away from the partner [Kinsey’s term for the adult who was abusing the child] and may make violent attempts to avoid climax, although they derive definite pleasure from the situation.”¹⁴⁰ At the time that Kinsey’s book, including these quotes and tables, was released apparently no one asked

¹³⁶ *Id.*, Tables 30-34, pp. 175-80. Throughout the book, Kinsey uses the term “male” to describe infants and children from 2 months to 18 years.

¹³⁷ *Id.* (emphasis added).

¹³⁸ *Id.* at 179-80.

¹³⁹ *Id.* at 160-61.

¹⁴⁰ *Id.* at 161.

how this information was obtained.¹⁴¹ It was not until many years after the books were established as “authoritative” that Kinsey’s associates revealed what should have been clear to everyone reading the books, *i.e.*, that he had obtained the information from serial child rapists, including Nazi Fritz von Balluseck and American Rex King who gave Kinsey their records of sexual assaults on hundreds of children.¹⁴² According to Kinsey co-author Paul Gebhard, King “contributed a fair amount to our knowledge and medicine’s knowledge of sexuality in children.”¹⁴³ “We made our point that children are sexual from birth.”¹⁴⁴

Kinsey reiterated that point in his 1953 report on female sexuality in which he recorded what he called “pre-adolescent sexual contacts with adult males.”¹⁴⁵ An adult male was defined as “at least 15 years of age” and “at least five years older than the female, while the female was still pre-adolescent.”¹⁴⁶ Kinsey reported that 24 percent of the females included in his study had been approached for or actually had sexual “contact:” 52 percent with strangers, 32 percent with “friends or acquaintances” and 20 percent with fathers, grandfathers, uncles and brothers.¹⁴⁷ Kinsey claimed that in “many instances, the experiences were repeated because the children had become interested in the sexual activity and had more or less actively sought repetitions of their experience.”¹⁴⁸ Kinsey said that cases of the “adult contacts” with children causing damage are “in the minority, and the public should learn to distinguish such serious contacts from other adult

¹⁴¹ Jonathan Gathorne-Hardy, *KINSEY SEX THE MEASURE OF ALL THINGS*, 222 (1998) (The chapter discussing the children was almost the only one ignored on publication).

¹⁴² *Id.* at 220-23 (identifying King under the pseudonym initially used by Kinsey, Kenneth Green); *See also* Judith Reisman, *STOLEN HONOR, STOLEN INNOCENCE*, 136-39 (2013).

¹⁴³ Reisman, *STOLEN HONOR*, at 136-39 (quoting Gebhard’s interview on *KINSEY’S PAEDOPHILES*).

¹⁴⁴ *Id.*

¹⁴⁵ Kinsey *FEMALE* at 117-19.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 118.

contacts which *are not likely to do the child any appreciable harm if the child's parents do not become disturbed.*"¹⁴⁹ Kinsey justified his conclusion by saying that among the 4,441 girls and women on whom he had information, there was only one "clear-cut case of serious injury done to the child, and a very few instances of vaginal bleeding which, however, did not appear to do any appreciable damage."¹⁵⁰ "Kinsey numbered himself among those who contended that, as far as so-called molestation of children was concerned, a great deal *more damage was done to the child by adult hysteria.*"¹⁵¹ That refrain has been echoed ever since by courts, police, psychologists, etc., as cases of child sexual abuse and incest have skyrocketed.¹⁵²

Indeed, Kinsey's team made their point that children are sexual from birth so well that it became a rallying cry across the world as Kinsey's "data" were translated into a dozen languages, and Kinsey soon replaced Sigmund Freud as the global "scientific" authority on human sexuality.¹⁵³

Alfred Kinsey . . . was the scientific authority. Kinsey's rejection of Freud's sublimation theory was interpreted as an argument *for the right among the young, even teenagers, to have an unrestricted sex life . . . and evidence that traditional moral standards were outdated and contrary to human nature.*¹⁵⁴

Kinsey's claim that child sexual abuse, what he called adult-child "contacts," was harmless and "normal,"¹⁵⁵ was part of his overall conclusion that all sex—what he termed "sexual outlets," *e.g.*,

¹⁴⁹ *Id.* at 121-22 (emphasis added).

¹⁵⁰ *Id.* at 122.

¹⁵¹ Wardell Pomeroy, DR. KINSEY AND THE INSTITUTE FOR SEX RESEARCH, 207-08 (1972) (emphasis added).

¹⁵² Judith Reisman, *Implications of Kinsey Research on Child Custody Cases*, EXPOSÉ: THE FAILURE OF FAMILY COURTS TO PROTECT CHILDREN FROM ABUSE IN CUSTODY DISPUTES, (Our Children Our Future Charitable Foundation, 1999).

¹⁵³ Lena Lennerhed, *The Pursuit of Pleasure: Sexliberalism in Sweden in the 1960's*, History of Ideas, Gender Studies, International Institute of Social History, www.iisg.nl/womhist/lennerhed.doc.

¹⁵⁴ *Id.* (emphasis added).

¹⁵⁵ Kinsey MALE, at 678.

“masturbation, spontaneous nocturnal emissions, petting, heterosexual intercourse, homosexual contacts and animal contacts”—at any age were equally acceptable and normal reactions to stimuli.¹⁵⁶ “[T]he scientific data which are accumulating make it appear that, if circumstances had been propitious, most individuals might have become conditioned in any direction, even into activities which they now consider quite unacceptable.”¹⁵⁷

The “scientific data” to which Kinsey alluded were not only records of child sexual abuse, but also interviews with predominantly aberrant men and women. Kinsey’s reports were portrayed as representative samples of what average men and women actually did sexually.¹⁵⁸ In fact, as Kinsey’s team acknowledged, the “subjects” listed in the male report included 1,400 convicted sex offenders, about 329 non-sex offender prisoners, 200 sexual psychopath patients, more than 450 homosexuals and about 300 people from what Kinsey called “the underworld.”¹⁵⁹ *Sixty-eight percent of the interviews were conducted when most men were fighting in World War II* and were either away from home or were prohibited from speaking to strangers about their private lives.¹⁶⁰ Kinsey’s co-authors admitted that they mixed male prison inmates in with other interviewees, generalized their observations to the wider population, and deliberately did not publish the exact figures of the population of interviewees.¹⁶¹ The figures for the female population were similarly skewed, as Kinsey said he interviewed 7,789 females, including 216

¹⁵⁶

Id.

¹⁵⁷

Id.

¹⁵⁸

Id., at 5.

¹⁵⁹

Judith Reisman, *STOLEN HONOR STOLEN INNOCENCE*, 91-92 (2013), citing Kinsey *MALE*, at 13-16, 78, 176.

¹⁶⁰

Kinsey *MALE*, at 10, describing the timeframe for the interviews. *See also*, Reisman, *STOLEN HONOR*, 88-89 (2013).

¹⁶¹

Reisman, *STOLEN HONOR*, at 89.

minors, seven under age four,¹⁶² and 915 female prison inmates.¹⁶³ Data from the female prisoners and 934 non-white interviewees were deliberately excluded from his final report.¹⁶⁴

It is this deliberately skewed, predominantly aberrant, child abuser and child abuse victim population upon which Kinsey's team based the statistics which supposedly showed that the World War II generation was secretly promiscuous, to the degree that 95 percent would be in prison under the then-existing criminal statutes.¹⁶⁵ It is also the population upon which Kinsey based his internationally recognized "Kinsey scale," the genesis for the often quoted standard that 10 to 37 percent of the population are homosexual.¹⁶⁶ Kinsey placed individuals along a seven point scale for each period of their lives. Zero denoted solely heterosexual and six denoted solely homosexual.¹⁶⁷ Homosexual experiences included *any* same-sex "contact," including in dreams, fantasies, rapes or "contacts" when a subject was drunk, drugged or asleep.¹⁶⁸ The "Kinsey scale" is cited as authoritative worldwide. However, historian Paul Robinson recognized the scale is:

a pathetic manifestation of Kinsey's philosophical naiveté...a hopelessly mechanical contrivance, which sought to promote a system of classification that bore little relation to reality"...a gargantuan scientific hoax promoted by Kinsey for reasons of his own....¹⁶⁹

While those seeking to establish a new construct of same-sex "marriage" argue that homosexuality is "immutable," Kinsey's scale and his conclusions regarding its meaning belie the claim:

¹⁶² Kinsey FEMALE, at 22, 31, 32, 105.

¹⁶³ *Id.* at 22.

¹⁶⁴ *Id.*

¹⁶⁵ Ploscowe, at 126.

¹⁶⁶ Kinsey MALE at 636-41.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 640-41.

¹⁶⁹ Robinson, at 73-74.

Males do not represent two discrete populations, heterosexual and homosexual. The world is not to be divided into sheep and goats. Not all things are black nor all things white.... Only the human mind invents categories and tries to force facts into separated pigeon-holes. The living world is a continuum in each and every one of its aspects. The sooner we learn this concerning human sexual behavior the sooner we shall reach a sound understanding of the realities of sex.¹⁷⁰

Those “realities,” according to Kinsey, were that “all orgasms were equal, regardless of how one came by them, and that there were accordingly no grounds for placing heterosexual intercourse in a privileged position.”¹⁷¹ Consequently, *marital intercourse, and by extension, marriage, has no particular innate value:*

The notion of *outlet*, for all its apparent innocence, performed important critical services for Kinsey. Principal among these was the demotion of heterosexual intercourse to merely one among a democratic roster of six possible forms of sexual release. . . marital intercourse, was even more rudely confined to a single chapter toward the back of the book, where it received about one third the attention devoted to homosexual relations a remarkable feat of sexual leveling . . . *the fundamental categories of his analysis clearly worked to undermine the traditional sexual order.*¹⁷²

While Kinsey’s sexual leveling has gained wide acceptance, some countries and even some courts that have otherwise acquiesced to the concept of same-sex “marriage” still recognize the fundamental differences between marital intercourse and other sexual conduct. Although it embraced the artificial construct of same-sex “marriage” in 2008, the California Supreme Court recently re-affirmed the fundamental difference between heterosexual intercourse and other sexual acts in upholding the differential treatment of sex offenders who engage in “unlawful sexual intercourse with minors” versus those who engage in oral sodomy or other acts. *Johnson v. Department of Justice*, 60 Cal.4th 871, 884 (2015).¹⁷³ Nevertheless, most scholars and courts

¹⁷⁰ Kinsey MALE, at 639.

¹⁷¹ Robinson, at 55-56, 59.

¹⁷² *Id.* at 58-59 (emphasis added).

¹⁷³ The term “unlawful sexual intercourse” replaced the term “rape” in 1970 to “eliminate the social stigma which arises when the distinction between forcible rape and intercourse with a consenting female minor is not made.” *Id.* at 885

have embraced, Kinsey's ideology that undermined "established categories of sexual wisdom" in favor of his "ideal sexual universe according to a homoerotic model."¹⁷⁴

Consequently, rather than being, as marketed, unbiased studies based upon objective observations, the Kinsey reports were idealized presentations of a sexual utopia reflecting Kinsey's personal preferences and private aberrant lifestyle.¹⁷⁵ Kinsey was secretly a bi/homosexual adulterer whose numerous male sex partners included his co-authors and interviewees.¹⁷⁶ He was addicted to pornography and masturbation and was observed engaging in self-mutilation,¹⁷⁷ which apparently contributed to his contracting "orchitis," a sexually transmitted disease, and his untimely death in 1956.¹⁷⁸ As his biographers have reported, if the public knew at the time what was really going on behind the scenes of Kinsey's reports, "his work and career would have been ruined."¹⁷⁹

Instead, Kinsey's "sexual utopia" became established in academia, law and public perception as "statistically common behavior" that gradually came to be seen as normal, and is now being used to attempt to demolish marriage. As one group of psychologists concluded: "[T]he results of the Kinsey surveys on sexual behavior of the American male and female *established, to some degree, social standards of what was acceptable common practice,*"¹⁸⁰ spawning what came to be called the "sexual revolution."

¹⁷⁴ Robinson at 54, 64, 70.

¹⁷⁵ James H. Jones, *Annals of Sexology Dr. Yes*, THE NEW YORKER, August 25 & September 1, 1997, at 112.

¹⁷⁶ *Id.*

¹⁷⁷ James H. Jones, ALFRED C. KINSEY A PUBLIC PRIVATE LIFE, (1997) at 610

¹⁷⁸ Jones, *Dr. Yes*, at 113.

¹⁷⁹ *Id.* at 111-12.

¹⁸⁰ Zimbardo, at 89 (emphasis added).

C. Kinsey's Reports Have Been Proven To Be Neither Scientific Nor Objective.

Kinsey claimed, and many of his supporters including prominent American jurists¹⁸¹ still maintain, that the reports “represent an attempt to accumulate an objectively determined body of fact about sex which strictly avoids social or moral interpretations” that had until then restricted “scientific investigations in this field.”¹⁸² In fact, the reports were not objective or scientific and were brimming with social and moral interpretations, *i.e.*, the social and moral visions of Dr. Kinsey.

Within one year of the publication of the initial Kinsey report, the American Statistical Association (ASA) released a report concluding that Kinsey had falsified his data.¹⁸³ The “statistical data [don't reveal] the number of males covered in the volume,” but variably claimed that there were about 6,200 or 6,300 subjects, 12,214 interviewees and 21,350 men (and infants and boys).¹⁸⁴ The ASA report concluded that Kinsey had actually only interviewed, at most, 4,120 “men.”¹⁸⁵ What the ASA reviewer did not know at the time was that 75 percent of the records were never used. “Kinsey interviewed 18,000 people and used only a quarter of the cases in his two reports.”¹⁸⁶

Kinsey's co-authors acknowledged that the male sample “is nowhere well described”¹⁸⁷ and that they concealed the composition of the subjects, *i.e.*, that they were primarily sex

¹⁸¹ Richard A. Posner, *SEX AND REASON*, 19 (1994). Judge Posner is the chief judge of the United States Court of Appeals for the Seventh Circuit and is a widely respected and widely quoted legal scholar.

¹⁸² Kinsey *MALE* at 3.

¹⁸³ Wallis, at 463-84.

¹⁸⁴ *Id.* at 474, citing Kinsey *MALE*, at 5.

¹⁸⁵ *Id.*

¹⁸⁶ Arno Karlen, *SEXUALITY AND HOMOSEXUALITY*, 456 (1971), quoting Kinsey researcher William Simon.

¹⁸⁷ Reisman, *STOLEN HONOR*, 52, quoting Kinsey co-author and “statistician” Clyde Martin.

offenders and prisoners.¹⁸⁸ “We anticipated that we would spend the rest of our lives arguing exactly who should be accepted as a normal individual, and who should be ruled out as a low character.”¹⁸⁹ Prisoners, homosexuals and sex offenders were included as average men. Kinsey co-author Clyde Martin said, “I am certain there wasn’t a code to designate which of the case histories were included in the male volume...”¹⁹⁰

The ASA reviewer noted that the statistical data and Kinsey’s conclusions did not match.¹⁹¹

A great many assertions of implications about religious, ethical, sociological, psychological, and philosophical matters are scattered through the book—so many that I got a cumulating impression that the author is at heart a social reformer. Most of his conclusions, explicit or implicit, about social and moral issues are based not so much on the statistical data “routinely secured in the interviews” as on “supplementary data” secured by other techniques.¹⁹²

University of Pennsylvania Sociologist Dr. Albert Hobbs testified before the United States Congress that the Kinsey reports were “designed to deceive.”¹⁹³

Apart from the doubtful veracity of the samples of men and women questioned by Kinsey, his statistical methods have been seriously criticized by organs of the American Statistical Association and several scholarly reviewers. But even...if all the persons interviewed had been willing to give truthful answers and were psychologically capable of doing so, it seems preposterous to propose that social change should be justified upon empirical inquiry alone.¹⁹⁴

But that is precisely what has happened. For the past 68 years, purportedly objective scholars, lawyers and judges have undertaken fundamental societal transformation by embracing statistically and scientifically fraudulent “data” derived from serial child rapists, sex offenders,

188 Pomeroy, at 293.

189 *Id.*

190 Reisman, *STOLEN HONOR* at 52.

191 Wallis, at 464-65.

192 *Id.*

193 Wormser, at 104.

194 *Id.*

prisoners, prostitutes, pedophiles and pederasts¹⁹⁵ misrepresented as average men and women. Now these same change agents, still covering up the fraudulent nature of the Kinsey “data,” are seeking to destroy marriage worldwide. This Court should prevent countenance such a destructive move by approving the legislative proposal.

D. Cultural Change Agents Ignored Errors And Evidence Of Child Molestation And Called For Fundamental Societal Transformation Based Upon Kinsey.

Despite explicit evidence of sexual abuse of children and of significant statistical anomalies, leaders in the behavioral sciences, law, and other disciplines quickly began demanding the jettisoning of the prevailing Judeo-Christian worldview in favor of Kinsey’s “scientific” worldview. These change agents proclaimed that “Kinsey did more than document American sexual behavior. He challenged the legitimacy of public regulation of sexual conduct through morality.”¹⁹⁶ Within weeks of publication, Kinsey’s reports were cited as “scientific” authority for fundamental transformation of law, public policy, education, behavioral sciences, medicine and other institutions. Calls for change began even before the ink was dry on Kinsey’s first report.¹⁹⁷

¹⁹⁵ Kinsey MALE at 39, 176-80; Kinsey FEMALE at 39-40.

¹⁹⁶ David Allyn, *Private Acts/Public Policy: Alfred Kinsey, the American Law Institute and the Privatization of American Sexual Morality*, 30 JOURNAL OF AMERICAN STUDIES, 416-17 (1996).

¹⁹⁷ See e.g., Morris Ploscowe, *Sexual Patterns and the Law* (1948); Ernst & Loth, AMERICAN SEXUAL BEHAVIOUR AND THE KINSEY REPORT (1948); Rene Guyon, THE ETHICS OF SEXUAL ACTS (1948); Donald Porter Geddes & Enid Currie eds. ABOUT THE KINSEY REPORT (1948); Edwin H. Sutherland, *The Sexual Psychopath Laws*, 40 J. OF CRIMINAL LAW AND CRIMINOLOGY 543, 544-45 (1950); Herbert Wechsler, *The Challenge of a Model Penal Code*, 65 HARVARD L. REV. 1097, 1106 (1952).

1. Kinsey's Reports Prompt Changes In Statutory Law.

Legal experts swiftly parlayed Kinsey's "research" into campaigns for fundamental changes in criminal law, particularly related to sex offenses.¹⁹⁸ Immediately after his first book was released, Kinsey met with political and academic leaders and testified before American legislatures working to rewrite sex offense laws.¹⁹⁹ A sex crimes commission for the New Jersey Senate issued a report calling for reform because, *inter alia*:

It has been carefully estimated by Dr. Kinsey that not more than 5 percent of our convicted sex offenders are of a dangerous variety, exercising force or injury upon a victim....The sex fiend....is a rare phenomenon in the criminal history of any state.²⁰⁰

Dr. Kinsey told California legislators that his "data" proved that children are unharmed by sex abuse and that molesters do not re-offend and therefore should be paroled.²⁰¹

Legal scholars and jurists also flooded law reviews with articles calling for the overhaul of sex offender laws. For example, Judge Morris Ploscowe said:

[E]nforcement of the prohibitions of sex legislation [are a] failure, our sex crime legislation is completely out of touch with the realities of [life]. [T]he law attempts to forbid an activity which responds to a wide human need [N]o bar association, law school journal, or lawyers' committee can consider laws . . . on sexual matters without reference to the Kinsey study. *Kinsey's first volume ended an era [It is] the single greatest contribution of science to the . . . law in my lifetime* [more than] the Brandeis Brief.²⁰² [T]he sex offender is not a monster . . . but an individual who is not very different from others in his social group.... The only difference is that others in the offender's social group have not been apprehended.

¹⁹⁸ Allyn at 421.

¹⁹⁹ Tamara Rice Lave, *Only Yesterday: The Rise And Fall Of Twentieth Century Sexual Psychopath Laws*, 69 LA. L. REV. 549, 561 (2009).

²⁰⁰ *Id.* at 561-62, citing Paul W. Tappan, THE HABITUAL SEX OFFENDER: REPORT AND RECOMMENDATIONS OF THE COMMISSION ON THE HABITUAL SEX OFFENDER 13-14 (1950).

²⁰¹ THE SUBCOMMITTEE ON SEX CRIMES OF THE ASSEMBLY INTERIM COMMITTEE ON JUDICIAL SYSTEM AND JUDICIAL PROCESS (Preliminary Report), H. Res. 232-1949, 43-1949 at 103, 105, 117 (Cal. 1949).

²⁰² Ploscowe, *Sexual Patterns and the Law*, 125-26.

This recognition that there is nothing very shocking or abnormal in the sex offender's behavior should lead to other changes in sex legislation. . . . In the first place, it should lead to a downward revision of the penalties presently imposed on sex offenders.²⁰³

"The findings of...the Kinsey report, would seem to require a drastic re-examination of our statutes relating to sexual offenses."²⁰⁴

An author in the University of Georgia law review proclaimed, "if Dr. Kinsey's statistics are reasonably accurate, then the multitude of people in this country" violate sex laws without consequence.²⁰⁵ The "absurdity of enforcing most of our sex laws...should be obvious, even to the most prudish Neo-Puritans."²⁰⁶

Judge Orville Richardson declared that Missouri had "sex crime statutes that are obsolete and....should be scrapped. Most [sex crimes] abound with archaisms, euphemisms and emotionally charged words such as 'ravish,' 'carnal knowledge,' 'defile,' 'debauch,'.... 'abominable and detestable crime against nature.'"²⁰⁷ Citing Kinsey's claims that husbands and wives commonly commit adultery, and "56 percent" of men "had some homosexual contact by age 55," Judge Richardson said that people would deny "sexual liberties to their neighbors, which, at least according to Dr. Kinsey, they allow themselves."²⁰⁸ "Only an intellectually numb person" accepts false sexual standards.²⁰⁹ Judge Richardson concluded that sexual predators "are

²⁰³ *Id.* at 125-26, 133-34 (emphasis added).

²⁰⁴ Morris Ploscowe, *SEX AND THE LAW* 130 (Ace Books revised and enlarged ed. 1962).

²⁰⁵ Note, *Pedophilia, Exhibitionism and Voyeurism: Legal Problems in the Deviant Society*, 4 GA. L. REV. 149 (1969).

²⁰⁶ *Id.* at 150.

²⁰⁷ Orville Richardson, *Sexual Offenses Under the Proposed Missouri Criminal Code*, 38 MO. L. REV. 371, 384 (1973).

²⁰⁸ *Id.* at 371 n.1, 379.

²⁰⁹ *Id.*

dealt with cruelly, to the satisfaction of no one except a shrinking frenetic fringe of maniacal moralists.”²¹⁰

Judge Ploscowe argued that sex offenders “are not for the most part degenerate sex fiends who are potential killers.”²¹¹

If most rapes simply involve consensual acts of sexual intercourse with under-age girls they are not the product of degenerates and psychopaths who force their attentions upon unwilling victims. Only where the age disparity between the man and the girl are very great is it possible to say that the rape may be the work of a mentally abnormal individual, a psychopath, or a potentially dangerous sex offender.²¹²

Further echoing the Kinseyan principle that children are sexual from birth, Tulane University professors claimed that “[e]ven at the age of four or five,” a child’s “seductiveness may be so powerful as to overwhelm the adult into committing the offense.”²¹³

In 1952 Professor Herbert Wechsler issued a clarion call for a model penal code to lower or eliminate sex crime penalties.²¹⁴ Citing Kinsey’s data, Wechsler, the primary drafter of the sexual offense provisions of the eventual model code, said that consensual sodomy between adults should be fully decriminalized, leaving only forcible sodomy and sodomy with a minor as criminal offenses.²¹⁵ That Kinseyan approach was adopted in the final version of the sex offenses provisions.²¹⁶ Illinois adopted the sex offenses provisions in 1961, and by 2001, 37 states had adopted the American Law Institute’s Model Penal Code (“MPC”) sex offenses language.²¹⁷

²¹⁰ *Id.* at 372, 384

²¹¹ Ploscowe, *SEX AND THE LAW* at 202.

²¹² *Id.*

²¹³ Ralph Slovenko & Cyril Phillips, *Psychosexuality and the Criminal Law*, 15 *VANDERBILT LAW REVIEW* 797, 809 (1962). (emphasis added).

²¹⁴ Herbert Wechsler, *The Challenge of a Model Penal Code*, 65 *HARVARD L. REV.* 1097 (1952).

²¹⁵ Eskridge, at 121-24

²¹⁶ *Id.* at 124.

²¹⁷ *Id.* at 388-407.

The MPC incorporated other Kinseyan concepts, particularly related to children being “sexual from birth” and therefore capable of consenting to sexual activity with adults. This included defining rape as nonconsensual intercourse with a “female *less than 10 years old*”²¹⁸ and permitting a defense based upon a mistaken belief that a girl was 10 years old or older and/or was sexually promiscuous.²¹⁹ Peer rape was regarded as “sex play,” and rape of a victim between 10 and 16 years old by a perpetrator more than four years older was reclassified as a misdemeanor of “corruption of a minor.”²²⁰ This was quite a change from less than a decade earlier when rape was a capital crime in one-half of the states in the United States.²²¹

The changes wrought by Kinsey’s fraudulent “data” have permeated all American laws, and indeed laws throughout the world, regarding sexual behavior.

Regarding homosexuality, Schwartz cited the Kinsey Reports as evidence of the frequency of homosexual activity and the senselessness of trying to control it.... *When the American Law Institute’s model penal code was published, it proposed a major reconstruction of the law of sexual behavior. The suggested reconstruction was made possible by the first and second Kinsey Reports.*²²²

While American legal scholars were rewriting U.S. criminal laws according to the Kinsey model in 1955, Dr. Kinsey brought his call for fundamental social transformation to Europe, visiting and speaking in Denmark, Sweden, Norway, France, Italy and the United Kingdom.²²³ His influence was apparent in the United Kingdom almost immediately with the 1957 publication of the Wolfenden Report, which Kinsey helped craft and which called for the legalization and licensing of obscenity, homosexuality, and other activities previously

²¹⁸ MODEL PENAL CODE §213.1(1)(d) (1980).

²¹⁹ MODEL PENAL CODE §213.6(1), (3) (1980).

²²⁰ MODEL PENAL CODE §213.3(1)(a) (1980).

²²¹ Reisman, *STOLEN HONOR*, at 221.

²²² Allyn, at 424-25 (emphasis added).

²²³ Wardell Pomeroy, *DR. KINSEY AND THE INSTITUTE FOR SEX RESEARCH*, 401-14 (1972).

understood to be perversions.²²⁴ The effects of his message are further seen in many of these countries being among the first to grant legal recognition, including marriage, to same-sex couples. Thus, Kinsey's concept that children are sexual from birth became enshrined in statutes throughout the West.

2. *Kinsey's Reports Are Cited As Authority For Changing Common Law.*

Kinsey's reports have been widely cited by courts as authoritative evidence regarding sexuality.²²⁵ In addition, once the Kinseyan approach to sexuality was incorporated into statutory law, particularly, the Model Penal Code ("MPC"), *see supra*, the statutes were cited as authority for Kinseyan-based changes in law,²²⁶ including the United State Supreme Court's decriminalization of same-sex sodomy in *Lawrence v. Texas*, 539 U.S. 558 (2003).

Laws criminalizing consensual same-sex sodomy remained in force in 14 states when the United States Supreme Court heard *Lawrence* in 2003.²²⁷ The Texas court of appeals referenced Kinsey in its decision upholding Texas' law criminalizing consensual same-sex sodomy.²²⁸ The Texas court concluded that the statute did not violate rights of privacy or equal protection under

²²⁴ Cornelia V. Christenson, KINSEY, A BIOGRAPHY, 195 (1971).

²²⁵ *See, e.g., Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000) (citing Kinsey for proposition that "sexual identity is inherent to one's very identity as a person."); *Gay Rights Coalition of Georgetown University Law Center v. Georgetown University*, 536 A.2d 1, 33-34 (D.C. Ct. App. 1987) (citing Kinsey's data on the prevalence of homosexuality and the Kinsey scale); *State v. Next Door Cinema Corp.*, 225 Kan. 112 (1978) (citing Kinsey as authority for educational value of obscenity, and upholding an obscenity exemption for scientific, educational and governmental purposes).

²²⁶ *See e.g., Miller v. California*, 413 U.S. 15, 18 (1973); *Roth v. United States*, 354 U.S. 476, 487n.20 (1957); *Roe v. Wade*, 410 U.S. 113, 139-40 (1973) (citing the MPC as representative of the liberalization of abortion statutes); *Doe v. Bolton*, 410 U.S. 205, Appendix B (1973); *Kennedy v. Louisiana*, 554 U.S. 407, 412 (2008); *Lawrence*, 539 U.S. at 572.

²²⁷ William N. Eskridge, Jr., DISHONORABLE PASSIONS: SODOMY LAWS IN AMERICA 1861-2003, 388-407 (2008).

²²⁸ *Lawrence v. State*, 41 S.W.3d 349, 353 (Tex. Ct. App. 2001), *jdt. rev'd, sub nom Lawrence v. Texas*, 539 U.S. 558 (2003).

the United States Constitution because it did not discriminate on the basis of sexual orientation.²²⁹ Citing Kinsey, the court said:

While homosexuals may be disproportionately affected by the statute, we cannot assume homosexual conduct is limited only to those possessing a homosexual “orientation.” Persons having a predominately heterosexual inclination may sometimes engage in homosexual conduct. Thus, the statute’s proscription applies, facially at least, without respect to a defendant’s sexual orientation.²³⁰

In reaching the opposite conclusion, the United States Supreme Court did not cite directly to Kinsey, but relied on the 1955 MPC and other “laws and traditions of the past half century” that “show an emerging awareness that liberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex.” *Lawrence*, 539 U.S. at 571-72. Those “laws and traditions of the last half century” included not only the MPC, but also legal scholarship built upon Kinsey’s fraudulent data derived from child sexual abuse.²³¹ That scholarship included Judge Posner’s *Sex and Reason*, in which he touted Kinsey’s studies as “high water marks” in scientific study of sex without discussing the background of Kinsey’s data.²³² *Lawrence*, 539 U.S. at 576. The Court also cited researchers who glowingly praised Kinsey for his strong “assault on sexual reticence” and his call for a complete revision of cultural values surrounding sex “to match the actual practices of Americans.”²³³ *Id.* at 568. What was referred to as “actual practices” described by Kinsey were in fact data from the sexual abuse of children and interviews with sex offenders, prisoners and pedophiles misrepresented to be the actions of everyday men and women, as discussed in detail *supra*. The *Lawrence* Court also

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ See Judith Reisman, *Sodomy Decision Based On Fraudulent “Science,”* HUMAN EVENTS, (August 14, 2003) <http://humanevents.com/2003/08/19/sodomy-decision-based-on-fraudulent-science/>

²³² Richard A. Posner, *SEX AND REASON*, 19 (1992).

²³³ John D’Emilio & Estelle B. Freedman, *INTIMATE MATTERS: A HISTORY OF SEXUALITY IN AMERICA* 16, 285-287 (1997).

cited as authority for a purported sea change in cultural values a book, the title of which should have offered a clue to its adoption of the Kinsey worldview: *The Invention of Heterosexuality*. *Id.*²³⁴ Based upon these Kinseyan sources, the Court determined that the Due Process Clause of the U.S. Constitution protects consensual same-sex sodomy. *Id.* at 578. Same-sex sodomy was said to be an aspect of personhood protected by the right to privacy. *Id.* at 574.

At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

Id. (citing *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 851 (1992)). The stage was thus set for the attempted dismantling of natural marriage.

Only five months after the *Lawrence* decision, the Supreme Judicial Court of Massachusetts relied upon it to overturn the Commonwealth's statutes defining marriage as the union of one man and one woman. *Goodridge v. Dep't. of Public Health*, 440 Mass. 309, 312, 349 (2003). The Massachusetts court erased the objective structure of marriage, concluding that it was no longer to be defined as the union of one man and one woman, but must include same-sex couples. *Id.* at 349-50. Left unanswered by the Massachusetts court, or by any of the subsequent courts purporting to grant same-sex couples a right to "marry," is how marriage is to be defined once its objective structure was removed.

Some courts have adopted the *Lawrence* court's language that same-sex relations are choices protected by the Due Process Clause, which is in keeping with Kinsey's opinion that sexuality is fluid.²³⁵ However, Judge Richard Posner actually contradicted Kinsey in an effort to place homosexuality in an even more privileged position. *Baskin v. Bogan*, 766 F.3d 648, 657

²³⁴ Citing Jonathan Ned Katz, *THE INVENTION OF HETEROSEXUALITY*, 10 (1995).

²³⁵ See Kinsey *MALE*, at 639 (describing sexuality as a continuum), discussed *supra*.

(7th Cir. 2014). Homosexuality is “an immutable (and probably an innate, in the sense of in-born) characteristic rather than a choice,” decreed Posner. *Id.*

The American Psychological Association has said that “most people experience little or no sense of choice about their sexual orientation.... The leading scientific theories of the causes of homosexuality are genetic and neuroendocrine theories, the latter being theories that sexual orientation is shaped by a fetus’s[sic] exposure to certain hormones.

Id. Judge Posner relied upon Kinsey’s “data” and history when he claimed that same-sex couples must be included in marriage to ease the pain of a discrimination that is greater than any suffered by every other group in history, implying that enslaved African-Americans, exterminated Jewish people in Nazi Germany, women denied economic and political power, and other persecuted minorities were not as mistreated as were homosexuals who had enjoyed all of the rights of citizenship, economic power and liberty.

Because homosexuality is not a voluntary condition and homosexuals are among the most stigmatized, misunderstood, and discriminated-against minorities in the history of the world, the disparagement of their sexual orientation, implicit in the denial of marriage rights to same-sex couples, is a source of continuing pain to the homosexual community.

Id. Judge Posner further claimed that granting marriage rights to homosexual couples would help convince the opponents of same-sex “marriage” that “homosexual married couples are in essential respects...like other married couples.” *Id.* Notably, the California Supreme Court has not been convinced, as it has concluded that heterosexual intercourse is fundamentally different from other sexual conduct and therefore can be differentially treated in sex offender statutes. *Johnson v. Dep’t. of Justice*, 60 Cal.4th 871, 884 (2015).

Neither should this Court be convinced to adopt Kinsey’s ideology that “there [are] no grounds for placing heterosexual intercourse in a privileged position.”²³⁶ Instead, this Court

²³⁶ Robinson, at 59.

should approve the legislative proposal and thereby affirm the child-centric and child-protective view of marriage as the union of one man and one woman, *i.e.*:

“...[T]he idea of the family, as consisting in and springing from union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement.”

Ex Parte Alabama, 2015 WL 892752 at *6 (citing *Murphy v. Ramsey*, 114 U.S. 15, 45 (1885)).

Government is concerned with public effects, not private wishes. The new definition of marriage centers on the private concerns of adults, while the traditional definition focuses on the benefits to society from the special relationship that exists between a man and a woman, *i.e.*, the effects for care of children, the control of passions, the division of wealth in society, and so on.

Id. at *36. This Court should affirm precedent based on millennia of human history by approving the proposed referendum and prevent Romanians from being forced to embrace a Kinseyan-based artificial construct.

3. Behavioral Scientists Use Kinsey Reports To Steer Away From Morality-based Standards.

Touting Kinsey’s reports as “praiseworthy efforts to study the problems of human sexuality more objectively and scientifically,”²³⁷ leaders in the behavioral sciences met with Kinsey to devise a new paradigm based on his “science” and rejected “subjective” standards of morality and natural law. Acknowledging that “Kinsey’s findings were the points by which we steered,”²³⁸ leading professional associations sought to de-stigmatize illicit sexual behavior and offenders.

In 1949 the Group for the Advancement of Psychiatry (“GAP”) published a paper on deviant sex offenders in which it echoed Kinsey’s claims that sex offenders “are not involved in

²³⁷ Vernon A. Rosario, *An Interview with Judd Marmor*, 7 J. OF GAY & LESBIAN PSYCHOTHERAPY 26 (2003).

²³⁸ Manfred Guttmacher, *The Kinsey Report and Society*, 70 SCIENTIFIC MONTHLY 291-94 (May 1950).

behavior fundamentally different from that commonplace in the population.”²³⁹ It “urged a general decriminalization of illicit sexual behavior, saying that ‘some laws should be revised and perhaps some entirely abandoned.’”²⁴⁰ GAP called for reconsideration of the age of consent (then 21) for child sexual relations with adults:

In general, persons under the age of 7 are legally regarded as not responsible. On the one hand this age group stands at the extreme in the scale of age disparity. On the other hand the legal definition of the minor ignores the intervening events of puberty and the large variations in physical and emotional maturity observed in many persons stamped as minors. It may be true that such persons cannot enter into contracts, but **many are by endowment and training fully capable of part or exceptionally even full responsibility for sexual behavior.** Thus, in the later years of childhood age disparity may diminish to a point of a day or even hours. By the same token **in the later age levels the legal concepts of rape and of contributing to delinquency become increasingly untenable.**²⁴¹

A National Institute of Mental Health (NIMH) Task Force on Homosexuality comprised of Kinsey associates and proponents²⁴² offered another virtually verbatim recitation of Kinsey’s “findings,” stating, *inter alia*, that sexuality was a continuum from heterosexuality (“0”) to homosexuality (“6”) and that any mental health issues and diseases related to homosexual conduct were *caused* by societal stigma.²⁴³ Kinsey’s data were also used to pressure the American Psychiatric Association (“APA”) to drop homosexuality as a psychiatric disorder from the Diagnostic and Statistical Manual (DSM) in 1973,²⁴⁴ because:

²³⁹ Allyn at 420, citing Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry, *Psychiatrically Deviated Sex Offenders, Report No. 9* (May 1949).

²⁴⁰ *Id.*

²⁴¹ Committee on Forensic Psychiatry of the Group for the Advancement of Psychiatry, *Psychiatrically Deviated Sex Offenders, Report No. 9 2* (May 1949 revised and republished February 1950). [http://ourgap.org/publications/publist.aspx?Category=Archived Reports](http://ourgap.org/publications/publist.aspx?Category=Archived%20Reports) (emphasis added).

²⁴² Jeffrey Satinover, *The “Trojan Couch:” How the Mental Health Associations Misrepresent Science 2*, <http://narth.org/docs/TheTrojanCouchSatinover.pdf>.

²⁴³ *Id.* at 2.

²⁴⁴ *Id.* at 3-4.

...exclusive homosexuality was a normal part of the human condition and homosexuality did not meet the requirements of a psychiatric disorder because the “data” prove it doesn’t “cause subjective distress or is regularly associated with some generalized impairment in social effectiveness or functioning.”²⁴⁵

The American Psychological Association, National Association of Social Workers and other professional organizations have similarly acted to normalize homosexuality and thereby give it legitimacy to further attempt to justify creation of an artificial social construct called same-sex “marriage.”²⁴⁶

GAP president Manfred Guttmacher predicted that: “The debt that society will owe to Kinsey and his co-workers for their research on sexual behaviour will be immeasurable.”²⁴⁷ The increasingly crushing debt of cultural dysfunction being experienced by countries that have adopted the Kinseyan based worldview is indeed immeasurable.

III. DISMANTLING MARRIAGE WILL EXACERBATE THE CULTURAL DAMAGE CAUSED BY KINSEYAN PHILOSOPHY.

Nearly seven decades of Kinseyan cultural transformation have shown that Kinsey’s promises of a freer, more enlightened and safer society were, at best, illusory, and at worst, deceptive and should not be adopted in Romania. All of the cultural indicators that Kinsey and his supporters said should have improved have in fact declined, in some cases, precipitously, in those countries that have adopted the changes and are experiencing the full effects.

Kinsey claimed that fornication and adultery were widespread and not harmful. If anything, according to Kinsey, such experiences actually strengthened marriages. Therefore, laws against fornication and adultery were unjust, unfair and unconstitutional.²⁴⁸ Drafters of the United States’ Model Penal Code took Kinsey’s advice and decriminalized those sexual

²⁴⁵

Id.

²⁴⁶

Id. at 4.

²⁴⁷

Allyn, at 420, citing Guttmacher.

²⁴⁸

Reisman, *STOLEN HONOR*, at 216-19.

offenses.²⁴⁹ However, instead of strengthening marriages, the decriminalization and destigmatization of adultery, fornication and other non-marital conduct have greatly weakened the institution. Illegitimacy rates in the United States have skyrocketed from 4 percent in 1940 to 41 percent overall, with 72.3 percent of non-Hispanic blacks; 66.2 percent of American Indians/Alaska Natives; 53.3 percent of Hispanics; 29.1 percent of non-Hispanic whites; and 17.2 percent of Asians/Pacific Islanders now born out-of-wedlock in the United States.²⁵⁰ Divorce rates have risen by more than 40 percent.²⁵¹

The same is true in European Union countries that have adopted the Kinsey-inspired changes in the law. In Belgium, the divorce rate has increased from .5 per 1,000 people in 1960 to 2.7 in 2010 and 2.3 in 2012.²⁵² In Denmark, the divorce rate has increased from 1.5 per 1,000 people in 1960 to 2.6 in 2010 and 3.4 in 2013.²⁵³ In the Netherlands, the divorce rate has climbed from .5 per 1,000 people in 1960 to 2 in 2010 and 2013.²⁵⁴ In Sweden, the divorce rate was 1.2 per 1,000 people in 1960, but 2.5 in 2010 and 2.8 in 2013.²⁵⁵ By contrast, in Romania, which has not adopted the Kinseyan based marriage model, the divorce rate has decreased, from 2 per 1,000 in 1960 to 1.6 in 2010 and 1.4 in 2013.²⁵⁶

²⁴⁹

Id.

²⁵⁰

Roger Clegg, Latest Statistics on Illegitimate Births, NATIONAL REVIEW (OCTOBER 4, 2012). http://www.national_review.com/corner/329432/latest-statistics-illegitimate-births-roger-clegg

²⁵¹

Sheela Kennedy & Steven Ruggles, *Breaking Up Is Hard to Count: The Rise of Divorce in the United States, 1980–2010*, 51 DEMOGRAPHY, 587-98 (April 2014).

²⁵²

Eurostat, Crude Divorce Rate, Selected Years, 1960-2013 (European Union 2015) [http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Crudedivorce_rate_selected_years,_1960-2013_\(1\)_\(per_1_000_inhabitants\)_YB15.png](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:Crudedivorce_rate_selected_years,_1960-2013_(1)_(per_1_000_inhabitants)_YB15.png) &oldid=245811 last visited July 6, 2016.

²⁵³

Id.

²⁵⁴

Id.

²⁵⁵

Id.

²⁵⁶

Id.

Similarly, Romania has seen a much lower increase in the percentage of babies who are born out of wedlock than have EU nations that have adopted the Kinseyan marriage model.²⁵⁷ In 2000, the first year for which the EU reports statistics for Romania, out of wedlock births represented 25.5 percent of total births.²⁵⁸ By 2013, the total was 30.5 percent, an increase of 20 percent.²⁵⁹ By contrast, in Belgium, there was a 190 percent increase in the same time period, from 28 percent to 52.3 percent.²⁶⁰ The out of wedlock birth rate in 1960 in Belgium was 2.1 percent.²⁶¹ In the Netherlands, there was also a 190 percent increase, from 24.9 percent to 47.4 percent.²⁶² The out of wedlock birth rate in the Netherlands in 1960 was 1.4 percent.²⁶³

The studies showing the significant advantages in health and well-being of children raised by two biological parents as opposed to other households, illustrate the substantial benefits that Romania's continuing recognition of marriage as the union of one man and one woman has for the future of the country. Adopting the Kinseyan model for marriage as have Belgium, the Netherlands and other EU countries, is likely to increase the number of Romanian children deprived of these substantial benefits, which will detrimentally affect the entire nation. As one American judge noted in an opinion upholding state laws defining marriage as the union of one man and one woman:

Imagine a society without marriage. It does not take long to envision problems that might result from an absence of rules about how to handle the natural effects of male-females intercourse: children. May men and women follow their procreative urges wherever they take them? Who is responsible for the children

²⁵⁷ Eurostat, Live Births outside of Marriage, Selected Years 1960-2013 (European Union 2015), [http://ec.europa.eu/eurostat/statisticsexplained/index.php?title=File:Live_births_outside_marriage,_selected_years,_1960%E2%80%932013_\(share_of_total_live_births,_%25\)_YB15.png&oldid=245809](http://ec.europa.eu/eurostat/statisticsexplained/index.php?title=File:Live_births_outside_marriage,_selected_years,_1960%E2%80%932013_(share_of_total_live_births,_%25)_YB15.png&oldid=245809)

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

that result? How many mates may an individual have? How does one decide which set of mates is responsible for which set of children?”²⁶⁴

These questions being faced by the United States, Canada and the EU nations that have second guessed millennia of human experience need not become an issue in Romania if the legislative proposal before this Court is approved.

CONCLUSION

Sixty-eight years of Kinseyan-based social change has not lived up to its promises, but has led to an accelerating cultural decline that has already wreaked havoc on other European Union members, the United States and Canada. Romania should not become the next casualty and need not be if this Court approves the legislative proposal. Amicus respectfully requests that the Court approve the proposal and permit the referendum supported by a record 3 million Romanians to be placed on the ballot.

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²⁶⁴ *DeBoer v. Snyder*, 772 F.3d 388, 404 (6th Cir. 2014), reversed by *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015).