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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MARY LI and REBECCA KENNEDY;
STEPHEN KNOX, M.D., and ERIC WARSHAW,
M.D.; KELLY BURKE and DOLORES DOYLE;
DONNA POTTER and PAMELA MOEN;
DOMINICK VETRI and DOUGLAS DEWITT;
SALLY SHEKLOW and ENID LEFTON; IRENE
FARRERA and NINA KORICAN; WALTER
FRANKEL and CURTIS KIEFER; JULIE
WILLIAMS and COLEEN BELISLE; BASIC
RIGHTS OREGON; and AMERICAN CIVIL
LIBERTIES UNION OF OREGON,

Plaintiffs,

and

MULTNOMAH COUNTY,

Intervenor-Plaintiff,

vs.

STATE OF OREGON; THEODORE
KULONGOSKI, in his official capacity as
Governor of the State of Oregon, HARDY
MYERS, in his official capacity as Attorney
General of the State of Oregon; GARY WEEKS,
in his official capacity as Director of the
Department of Human Services of the State of
Oregon; and JENNIFER WOODWARD, in her
official capacity as State Registrar of the State
of Oregon,

Defendants,

vs.

DEFENSE OF MARRIAGE COALITION, CECIL
MICHAEL THOMAS, NANCY JO THOMAS,
DAN MATES, and DICK OSBORNE,

Intervenors-Defendants.

Case No. 0403-03057

BRIEF OF AMICI CURIAE THE
JUVENILE RIGHTS PROJECT,
INC.; THE NATIONAL
ASSOCIATION OF SOCIAL
WORKERS; THE OREGON
CHAPTER OF THE NATIONAL
ASSOCIATION OF SOCIAL
WORKERS; OPEN ADOPTION &
FAMILY SERVICES, INC.; THE
OREGON PSYCHOLOGICAL
ASSOCIATION; AND PORTLAND
PARENTS, FAMILIES AND
FRIENDS OF LESBIANS AND
GAYS IN SUPPORT OF
PLAINTIFFS

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1 Amici curiae Juvenile Rights Project; the National Association of Social
2 Workers; the Oregon Chapter of the National Association of Social Workers; Open
3 Adoption & Family Services, Inc.; the Oregon Psychological Association; and
4 Portland Parents, Families and Friends of Lesbians and Gays present this brief in
5 support of plaintiffs' claim that Oregon's marriage statutes violate Article I, section
6 20, of the Oregon Constitution, by extending unequal privileges and immunities
7 based on sex and sexual orientation.

8 1.

9 Interest of Amici Curiae

10 **A. The Juvenile Rights Project, Inc.**

11 The Juvenile Rights Project, Inc. (JRP), is a non-profit law firm that represents
12 thousands of Oregon children each year. JRP lawyers advocate on behalf of
13 children who are involved in the child welfare and juvenile justice systems. Among
14 our clients are many children who are members of gay and lesbian biological, foster
15 and adoptive families. We also represent gay and lesbian teenagers.

16 It is our practice, as it is the practice of the juvenile court and the Oregon
17 Department of Human Services, not to discriminate against gay and lesbian families.
18 Marriage has long been recognized as a factor that stabilizes families and provides
19 them with essential legal recognition and respect.

20 **B. The National Association of Social Workers.**

21 The National Association of Social Workers (NASW), is the world's largest
22 association of professional social workers, with more than 155,000 members in fifty-
23 five chapters throughout the United States and abroad. Founded in 1955 from a
24 merger of seven predecessor social work organizations, NASW is devoted to
25 promoting the quality and effectiveness of social work practice, advancing the
26 knowledge base of the social work profession, and improving the quality of life

1 through utilization of social work knowledge and skills. The Oregon chapter of
2 NASW has more than 1,700 members. NASW and its Oregon chapter affirm its
3 commitment to work toward full social and legal acceptance and recognition of
4 lesbian, gay, and bisexual people as stated in NASW's policy statement, "Lesbian,
5 Gay, and Bisexual Issues": "To this end, NASW supports legislation, regulation,
6 policies, judicial review, political action *** and any other means necessary to
7 establish and protect the equal rights of all people without regard to sexual
8 orientation. NASW is committed to working toward the elimination of prejudice and
9 discrimination both inside and outside the profession."

10 **C. Open Adoption & Family Services, Inc.**

11 Open Adoption & Family Services, Inc. is a private, nonprofit adoption agency
12 with a progressive approach to building healthy families. We support birthparents in
13 making decisions about parenthood in an atmosphere of dignity and respect. When
14 the choice is adoption, we facilitate child-centered open adoptions. We assist
15 birthparents and adoptive parents as they create healthy, long-term relationships
16 that address the ongoing needs of the child.

17 **D. The Oregon Psychological Association.**

18 The Oregon Psychological Association is a professional association whose
19 purpose is to advance psychology as a science and a profession in order to promote
20 human knowledge and welfare, to foster and maintain high standards of practice and
21 to make information available about psychology.

22 **E. Portland Parents, Families and Friends of Lesbians and Gays.**

23 Portland Parents, Families and Friends of Lesbians and Gays (Portland
24 PFLAG) is a non-profit organization that promotes the health and well-being of gay,
25 lesbian, bisexual, and transgendered people, and their families and friends, through
26 support, education, and advocacy. Portland PFLAG believes that society at large

1 benefits from an environment that supports committed, stable relationships,
2 including same-sex relationships, that provide mutual emotional, social, financial,
3 legal, and medical support. We support the revision of federal and state law to
4 extend to persons in same-sex committed relationships the right to marry, with the
5 full rights and benefits, as well as the responsibilities and obligations, of that legal
6 status.

7 2.

8 Statement of Facts

9 This matter is being addressed on stipulated facts, declarations of fact, and
10 cross-motions for a partial summary judgment. As relevant here, plaintiff couples
11 Mary Li and Rebecca Kennedy; Stephen Cox, M.D., and Eric Warshaw, M.D.; Kelly
12 Burke and Delores Doyle; and Donna Potter and Pamela Moen, each have children
13 whom they are raising. Throughout their relationships, each of the plaintiff couples
14 has jointly supported each other and their children through work inside and outside
15 of the home, has nurtured and cared for each other and their children, has fostered
16 and created family traditions and legacies, and has planned for the future of their
17 families.

18 3.

19 Summary of Argument

20 Plaintiffs, like millions of other gay and lesbian citizens nationwide, have
21 committed, long-term relationships in which some of them are raising children.
22 Despite these facts, plaintiffs are denied the benefits and protections of the marriage
23 law, because they have no access to the civil institution of marriage.

24 The justifications advanced by opponents of marriage equality do not bear up
25 to scientific examination. On the contrary, research demonstrates that gay and
26 lesbian couples form relationships that are similar in kind and quality to those of

1 heterosexual couples. Similarly, the childrearing outcomes in families headed by
2 gay and lesbian couples are indistinguishable from those of their heterosexual
3 counterparts.

4 Ironically, the denial of civil marriage protections to gay and lesbian couples
5 more likely leads to negative outcomes than to positive ones. Marriage provides
6 social and economic support and stability to relationships. Family stability—unlike
7 parental sexual orientation—does correlate with childrearing success. And children
8 raised in homes headed by an unmarried couple are denied access to all of the
9 economic benefits and civil protections of marriage.

10 4.

11 Argument

12 A. Introduction.

13 An estimated six to 14 million children are being raised in the United States
14 by gay or lesbian parents. *Baker v. State*, 170 Vt 194, 218, 744 A2d 864, 881
15 (1999). Gay and lesbian couples “choose to become parents for many of the same
16 reasons heterosexuals do ***.” “[T]he desire for children is a basic human instinct
17 and [it] may satisfy people’s desire to provide and accept love and nurturing from
18 others.” Ellen C. Perrin, M.D. & the Committee on Psychosocial Aspects of Child
19 and Family Health, American Academy of Pediatrics, *Technical Report: Co-Parent or*
20 *Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 341, 343 (February
21 2002) [hereinafter *Pediatric Report*];¹ see also *Goodridge v. Department of Public*
22 *Health*, 40 Mass 309, 335-36, 798 NE2d 941, 963 (2003) (“These couples *** have

24 _____

25 ¹ Available at
26 <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;109/2/341>.

1 Research consistently demonstrates that stability of family is more important
2 to the well-being of children than is the sexual orientation of their parents. Permitting
3 same-sex couples to marry will foster and encourage stability in their relationships.
4 According to the American Academy of Pediatrics, the actual keys to positive
5 childrearing outcomes are the quality of the parent-child relationship and the quality
6 of the parents' own relationship. The Academy explains: "Children in all family
7 constellations have been described by parents and teachers to have more
8 behavioral problems when parents report more personal distress and more
9 dysfunctional parent-child interactions. In contrast, children are rated as better
10 adjusted when their parents report greater relationship satisfaction, higher levels of
11 love, and lower interparental conflict regardless of their parents' sexual orientation.
12 Children are apparently more powerfully influenced by family processes and
13 relationships than by family structure." *Pediatric Report, supra*, at 343. However,
14 "the task of child rearing for same-sex couples is made infinitely harder by their
15 status as outliers to the marriage laws." *Goodridge*, 798 NE2d at 963.

16 In this case, a number of plaintiffs are parents raising children. These
17 children have absolutely no access to civil marriage, and the benefits and family
18 stability it engenders, because plaintiffs are forbidden to wed. To the extent that
19 marriage as an institution serves the state's interest in the protection of children, that
20 interest can be fully realized only by allowing committed same-sex couples to marry
21 and not by excluding them or their children from the benefits and obligations of the
22 marriage law.

23 **B. Gays and lesbians enter into stable relationships similar to those**
24 **of heterosexual couples.**

25 Despite the prohibitions on same-sex marriage, and despite long-standing
26 opprobrium against gays and lesbians, the majority of gays and lesbians enter into

1 long-term relationships. See Lawrence A. Kurdek, *Lesbian and Gay Couples, in*
2 *Lesbian, Gay, Bisexual Identities Over the Lifespan: Psychological Perspectives,*
3 243, 243 (A.R. D'Augelli & C.J. Patterson eds., 1995). A recent study by University
4 of Virginia Psychology Professor Charlotte Patterson reports that "many if not most"
5 gays and lesbians live in stable, committed, long-term relationships, because they
6 "desire for an enduring love relationship with a partner of the same gender." See
7 Charlotte J. Patterson, *Family Relationships of Lesbians and Gay Men*, 62 J.
8 *Marriage & Fam* 1052, 1053 (2000) [hereinafter *Family Relationships*].

9 One study found that 78 percent of lesbian couples and 88 percent of gay
10 male couples remained together over a four-year period. See Lawrence A. Kurdek,
11 *Relationship Stability and Relationship Satisfaction in Cohabiting Gay and Lesbian*
12 *Couples: A Prospective Longitudinal Test of the Contextual and Interdependence*
13 *Models*, 9 J Soc & Pers Relationships 125, 132 (1992). Another study found that 86
14 percent of gay couples and 84 percent of lesbian couples remained together over
15 the five-year course of the study. Lawrence A. Kurdek & J. Patrick Schmitt,
16 *Relationship Quality of Partners in Heterosexual Married, Heterosexual*
17 *Cohabiting, and Gay and Lesbian Relationships*, 51 J Personality & Soc Psychol
18 711, 718 (1986) [hereinafter *Relationship Quality*].

19 In another study, among couples that had been together for less than two
20 years, it was revealed that 17 percent of unmarried heterosexual couples had
21 separated. Among gay and lesbian couples, all unmarried, of course, 22 percent of
22 lesbian couples and 16 percent of gay male couples had separated. Philip
23 Blumstein & Pepper Schwartz, *American Couples*, 307-08 (1983). Even these
24 modest distinctions disappeared among couples that had been together for 10
25 years: among those couples, the break-up rates were only 6 percent of lesbians, 4
26 percent of gay men, and 4 percent of married couples. *Id.* Except for marital status,

1 | there was no difference in durability between same-sex and opposite-sex
2 | relationships.

3 | The duration of the relationships of the couples who are plaintiffs in this action
4 | mirrors the research on the stability of the relationships of same-sex couples.
5 | Dominick Vetri and Douglas DeWitt have been in a committed, loving relationship
6 | since 1978; Walter Frankel and Curtis Kiefer since 1981; Kelly Burke and Delores
7 | Doyle since 1987; Sally Sheklow and Enid Lefton since 1987; Irene Farrera and
8 | Nina Korican since 1992; Donna Potter and Pamela Moen since 1990; Stephen
9 | Knox, M.D. and Eric Warsaw, M.D. since 1993; Julie Williams and Coleen Belisle
10 | since 1999; and Mary Li and Rebecca Kennedy since 2000.

11 | Not only are gay and lesbian relationships stable in terms of duration, but
12 | social scientists find “no differences as a function of sexual orientation on any of the
13 | measures of relationship quality.”² See *Family Relationships, supra*, at 1053
14 | (surveying literature). For example, a leading expert on relationships recently
15 | concluded a five-year study of 236 married heterosexual couples, 66 gay male
16 | couples and 51 lesbian couples. Lawrence A. Kurdek, *Relationship Outcomes and*
17 | *Their Predictors: Longitudinal Evidence from Heterosexual Married, Gay Cohabiting,*
18 | *and Lesbian Couples*, 60 *J Marriage & Fam* 553 (1998). Kurdek’s findings
19 | demonstrated a remarkable degree of consistency across all relationships,
20 | regardless of sexual orientation. *Id.* at 564. In other words, each of the three groups

21 | _____
22 | ² Opponents have claimed that there is increased violence in same-sex
23 | relationships. To the contrary, the most recent Department of Justice statistics
24 | reveal that significantly fewer women who had lived with another woman as part of a
25 | couple (11%) experienced rape, physical assault or stalking by their partner than did
26 | women who had married or lived with a man (21.7%). See P. Tjaden & N. Thonnes,
Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the
National Violence Against Women Survey, United States Department of Justice,
National Institute of Justice and Centers for Disease Control and Prevention (July
2000). The same study concluded that gay men are no more likely than
heterosexual men to perpetrate domestic violence.

1 enjoyed comparable levels of relationship satisfaction at the beginning of the study,
2 and reported similar changes in relationship quality during the five-year period.³ *Id.*;
3 *see also Relationship Quality, supra*, at 718 (in study of married couples, unmarried
4 heterosexual couples, and gay and lesbian couples, authors found that “[t]he most
5 striking finding regarding the correlates of relationship quality was the consistency
6 obtained across the four types of partners”); Sally M. Duffy & Caryl E. Rusbult,
7 *Satisfaction and Commitment in Homosexual and Heterosexual Relationships*, 12 *J.*
8 *of Homosexuality* 1, 21 (Winter 1985/86) (“The close relationships of lesbians, gay
9 men, and heterosexual women and men are really quite similar, driven by similar
10 general forces”); L. A. Peplau & Susan D. Cochran, *A Relationship Perspective on*
11 *Homosexuality*, in *Homosexuality/Heterosexuality*, 321, 333-34 (David P. McWhirter
12 et al. eds., 1990) (no differences with respect to love of partner, liking of partner, and
13 relationship satisfaction).

14 **C. Allowing same-sex marriage will increase the stability of same-**
15 **sex couples’ relationships.**

16 The observed resilience of gay and lesbian relationships is particularly striking
17 in light of the fact that they are not permitted to marry and in light of the other
18 disadvantages imposed upon the formation of such relationships in our society.
19 Social scientists have found that institutional forces that promote the stability of a
20 relationship are barriers to ending a relationship. *See, e.g., Relationship Quality,*
21 *supra*, at 717. These barriers are a significant factor affecting the level of
22

23 ³ A recent study of gay and lesbian couples conducted by the Gottman
24 Institute of the University of Washington replicated Kurdek’s research, again finding
25 that relationship satisfaction and quality are the same across gay, lesbian, and
26 heterosexual couples. *See* The Gottman Institute, *12 Year Study of Gay & Lesbian*
Couples (2002) (summary abstract of research findings to be published in *The*
Journal of Homosexuality) (available at
<http://www.gottman.com/research/projects/gaylesbian/index.php>).

1 commitment of people in relationships. *Id.* Married partners report the most barriers
2 to leaving their relationship. *Id.*

3 Gay and lesbian couples encounter few legal, religious, or social barriers to
4 leaving their relationships. *Id.* Gay and lesbian couples generally report less social
5 support for their relationships from family and society. *See, e.g., id.* at 718. Stigma
6 based on sexual orientation unfortunately has persisted in our social history. *See*
7 Gregory M. Herek, *The Psychology of Sexual Prejudice*, 9 *Current Directions in*
8 *Psychol Science* 19, 21 (2000); Stephen F. Morin & Esther Rothblum, *Removing the*
9 *Stigma*, 46 *Am Psychologist* 947, 948 (1991). The denial of the legitimacy of same-
10 sex relationships—for example, by excluding them from social institutions like
11 marriage—is “perhaps the most pervasive, persistent, and profound stressor for
12 lesbian and gay partnerships.” Janis S. Bohan, *Psychology and Sexual*
13 *Orientation—Coming to Terms*, 196 (1996). One commentator observed that “[t]he
14 message to these individuals was that marital-type commitments were not expected,
15 *** recognized, or protected.” *See* Michael S. Wald, *Same-Sex Couples: Marriage,*
16 *Families, and Children, The Stanford Institute For Research on Women And Gender*
17 *& The Stanford Center on Adolescence*, 10 (December 1999) [hereinafter *Same-Sex*
18 *Couples*].

19 Same-sex partners who are married will be more likely to receive the type of
20 social support that is given by parents, grandparents, friends and neighbors to
21 married couples. *See Same-Sex Couples, supra*, at 10. The Supreme Judicial
22 Court of Massachusetts recognized that “Excluding same-sex couples from civil
23 marriage will not make children of the opposite-sex marriages more secure, but it
24 does prevent children of same-sex couples from receiving the
25 advantages that flow from the assurance of ‘a stable family structure in which
26 children will be reared, educated and socialized.’” *Goodridge*, 798 NE2d at 964,

1 quoting Cordy, J., dissenting, 440 Mass at 381, 798 NE2d at 995. To the extent that
2 the legal protections and obligations of civil marriage are designed, at least in part,
3 to support and fortify committed relationships, same-sex partners, and ultimately the
4 children of their relationships, will benefit similarly from the same protections.⁴
5 Indeed, married people are reportedly healthier, live longer, and experience less
6 poverty than their non-married counterparts. See Leatha Lamison-White, *Poverty in*
7 *the United States: 1996, Bureau of the Census, Current Population Reports, Series*
8 *160-198, viii* (Washington, DC Sept 1997). No recognized body of social science
9 predicts that any negative consequences to individuals or society would result from
10 same-sex marriage.⁵ Amici are not aware of any research to suggest that the many

11
12 ⁴ The court in Goodridge recognized this effect:

13 Where a married couple has children, their children are also
14 directly or indirectly, but no less auspiciously, the recipients of the
15 special legal and economic protections obtain by civil marriage.
16 Notwithstanding the * * * strong public policy to abolish legal
17 distinctions between marital and nonmarital children in providing for the
18 support and care of minors * * *, the fact remains that marital children
19 reap a measure of family stability and economic security based on their
20 parents' legally privileged status that is largely inaccessible, or not as
21 readily accessible, to nonmarital children. Some of these benefits are
22 social, such as the enhanced approval that still attends the status of
23 being a marital child. Other are material, such as the greater ease of
24 access to family-based State and Federal benefits that attend the
25 presumption of one's parentage.

26 440 Mass at 325, 798 A2d at 956-57 (citations omitted).

⁵ Some opponents of marriage for same-sex couples argue that because
same-sex relationships resemble "cohabiting" relationships, they are less stable than
marital relationships. Given the current unavailability of legal marriage to gay and
lesbian couples, there is no logical basis to compare heterosexual couples who can
marry, but choose not to, with same-sex couples who live in committed relationships
and seek to marry, but cannot. In any event, the vague term "cohabitation" is not
useful in any scientific inquiry because it embraces a wide range of dissimilar
relationships and living-together arrangements, including people who ultimately plan
to marry their partner, committed gay and lesbian couples who do not have the
option to marry, roommates, people who have been previously married and
divorced, and people who plan to live together indefinitely and not marry.

1 benefits of marriage would not accrue to same-sex couples to the same extent that
2 they have to heterosexual couples. In sum, the underlying social structure of
3 marriage that benefits heterosexual couples would benefit same-sex couples in the
4 same way.

5 **D. Not permitting same-sex couples to marry deprives children of**
6 **the protections of marriage.**

7 To the extent that the state's interest in childrearing favors parents in the kind
8 of durable, committed relationships traditionally defined by marriage, exclusion of
9 same-sex parents undermines such a purpose. Marriage, by virtue of benefits
10 conferred and obligations imposed, reinforces the commitments of parents to each
11 other and supports the parents' relationship. The withholding of these supports
12 harms both same-sex parents and their children. Marriage is at the core of our
13 health care, pension, and other social safety net systems. As the Court in *Baker*
14 observed, "[t]he laudable governmental goal of promoting a commitment between
15 married couples to promote the security of their children and the community as a
16 whole provides no reasonable basis for denying the legal benefits and protections of
17 marriage to same-sex couples, who are no differently situated with respect to *this*
18 *goal* than their opposite-sex counterparts. *Baker*, 744 A2d at 884 (emphasis in
19 original).

20 The American Academy of Pediatrics has advised that children of gays and
21 lesbians need and deserve the same permanence and security in parental
22 relationships as do the children of opposite-sex parents. Perrin, *Pediatric Report* at
23 339. That parental breakup can be a difficult, and often destructive, experience for
24 between parents of the same sex and thereby enhance the stable care-taking,
25 permanence, and security that come from having two available parents. The
26

1 Supreme Judicial Court of Massachusetts recognized the legitimacy of this line of
2 reasoning: “While the enhanced income provided by marital benefits is an important
3 source of security and stability for married couples and their children, those benefits
4 are denied to families headed by same-sex couples. * * * While the laws of divorce
5 provide clear and reasonably predictable guidelines for child support, child custody,
6 and property division on dissolution of a marriage, same-sex couples who dissolve
7 their relationships find themselves and their children in the highly unpredictable
8 terrain of equity jurisdiction.” *Goodridge*, 798 NE2d at 963.

9 **E. Not permitting same-sex couples to marry continues to impose a**
10 **damaging social stigma on their children as “illegitimate.”**

11 While indifferent to the question of whether married people procreated,
12 traditional marriage law did demonstrate a state concern that procreating people
13 marry. To a large extent, the penalties for procreating out-of-wedlock were visited
14 on the resulting children rather than the parents. The English common law, and
15 early American law, distinguished children born in wedlock (lawful heirs) from
16 children born out-of-wedlock (“filius nullius”—the son of no one). *State v. McDonald*,
17 59 Or 520, 117 P 281 (1911), citing Blackstone (Lewis’ Ed.) 455, 459.

18 Not surprisingly then, Oregon has a history of treating illegitimate children as
19 less worthy of the state’s protection. An illegitimate child was regarded as “a child of
20 nobody” and could not be the heir of anyone. *Thom v. Bailey*, 257 Or 572, 580, 481
21 P2d 355 (1971), citing *McDonald*, 59 Or at 526. Illegitimate children were barred
22 from inheriting from their fathers until 1957, with only slight changes in the rules.
23 *Thom*, at 580.

24 This invidious distinction among children was derived from pre-modern times,
25 when “the honor of a line, the integrity of an inheritance, or the age and permanence
26 of a name” were more important than parents’ private relationships with their

1 children." Tamara K. Hareven, *Families, History and Social Change*, 5 (2000),
2 quoting Philippe Aries, *Centuries of Childhood*, 364 (1962). It has no vitality today.⁶
3 In 1976, the Supreme Court declared unconstitutional an Illinois statute
4 discriminating against illegitimate children's claims to intestate inheritance from their
5 fathers. *Trimble v. Gordon*, 430 US 762, 776, 97 S Ct 1459, 52 L Ed 2d 31 (1977).

6 Oregon has led the way in removing from children the burdens of illegitimacy.
7 In interpreting the state constitution, our Supreme Court has observed that all
8 children are entitled to equal privileges and immunities before the law, regardless of
9 the circumstances of their births. See Or Const Art I § 20; *State ex rel Adult and*
10 *Family Servs. Div. v. Bradley*, 295 Or 216, 219–20, 666 P2d 249 (1983). "Our laws
11 have made steady progress toward eliminating the legal disabilities under which
12 illegitimate children have labored." *Bradley*, 295 Or at 223. Our state has a
13 continuing interest in removing from children the potential stigma of illegitimacy.
14 That interest is undermined by the application of marriage laws to exclude same-sex
15 parents from wedlock.

16 As the court said in *Baker*, 170 Vt at 218–19, 744 A2d at 882:

17 "[T]o the extent that the state's purpose in
18 licensing civil marriage was, and is, to legitimize children
19 and provide for their security, the statutes plainly exclude
20 many same-sex couples who are no different from
21 opposite-sex couples with respect to these objectives. If
22 anything, the exclusion of same-sex couples from the
23 legal protections incident to marriage exposes *their*
24 children to the precise risks that the State argues the
25 marriage laws are designed to secure against."

23 ⁶ The exclusion from marriage of same-sex couples, whose sexual relations,
24 by definition, do not lead to procreation, could not have been designed in any event
25 to control extra-marital procreation. "[T]he State" cannot explain how the failure of
26 opposite-sex couples to accept responsibility for the children they create relates at
all to the exclusion of same-sex couples from the benefits of marriage." *Baker*, 170
Vt at 260, 744 A2d at 911 (Johnson, J., concurring in part and dissenting in part)
(emphasis in original).

1 The traditional preference for legitimate children, now obsolete, and the
2 contemporary interest in the welfare of non-marital children, each are consistent only
3 with removing the impediments to marriage of same-sex parents. Plaintiffs, along
4 with thousands of other gay and lesbian parents, are the only population of Oregon
5 couples who cannot raise their children in wedlock. No one else is denied this civil
6 right—not serial divorcees, not prisoners, and not even registered sex offenders.
7 Oregon's current application of the marriage law compels only gay parents to raise
8 their children under the residual stigma associated with illegitimacy. Just as plaintiffs
9 seek to marry to avoid having their relationships treated by their government as
10 substandard, their children have an "identifiable interest in not being treated by
11 [their] government as *** second-class person[s]." *Lowell v. Kowalski*, 380 Mass 663,
12 667 (1980).

13 **F. Children raised by gay and lesbian parents fare as well on all**
14 **measures of well-being, development, and adjustment as children**
15 **raised by heterosexual parents.**

16 Despite the lack of economic protections and social support that the children
17 of lesbian and gay couples endure, these children fare as well as children raised by
18 heterosexual parents in terms of their general health and well-being. Like the courts
19 in *Goodridge* and *Baker*, this court should not entertain any notion that children are
20 better off with different-sex parents than with same-sex parents. *Goodridge*, 440
21 Mass at 334–35, 798 NE2d at 963; *Baker*, 170 Vt at 222, 744 A2d at 884–885.

22 There is no valid scientific basis for such a conclusion. Every medical,
23 psychological, and child-welfare organization to have addressed the topic has
24 concluded what plaintiffs know from their own family experiences: children of same-
25 sex parents are as healthy, happy, and well adjusted as their peers. These experts
26 have meticulously examined the social science—more than 50 peer-reviewed

1 studies conducted over 25 years—to reach a (rare) consensus that there is no
2 relationship between the sex or sexual orientation of parents and the well-being of
3 their children.

4 The American Academy of Pediatrics, the nation's preeminent pediatric
5 authority with 57,000 pediatrician members, has adopted a formal policy declaring
6 that: “[C]hildren who grow up with one or two gay and/or lesbian parents fare as well
7 in emotional, cognitive, social, and sexual functioning as do children whose parents
8 are heterosexual ***. No data have pointed to any risk to children as a result of
9 growing up in a family with one or more gay parents.” *Pediatric Report, supra*, at
10 341–42; see also Ellen C. Perrin, M.D., & the Committee on Psychosocial Aspects of
11 Child and Family Health, American Academy of Pediatrics, *Policy Statement: Co-
12 parent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 339, 339
13 (February 2002) (policy statement accompanying *Pediatric Report*).

14 The American Psychological Association, representing more than 155,000
15 psychologists, concluded in a thorough research review in 1995 that: “[n]ot a single
16 study has found children of gay or lesbian parents to be disadvantaged in any
17 significant respect relative to children of heterosexual parents. Indeed, the evidence
18 suggests that home environments provided by gay and lesbian parents are as likely
19 as those provided by heterosexual parents to support and enable children's
20 psychosocial growth.” American Psychological Association, *Lesbian and Gay
21 Parenting: A Resource for Psychologists* 8 (1995).⁷

22 Similarly, the National Association of Social Workers (with nearly 150,000
23 members) has determined that: “The most striking feature of the research on
24 lesbian mothers, gay fathers, and their children is the absence of pathological
25

26 ⁷ Available at <http://www.apa.org/pi/parent.html>.

1 findings. The second most striking feature is how similar the groups of gay and
2 lesbian parents and their children are to heterosexual parents and their children that
3 were included in the studies." See National Association of Social Workers, *Policy*
4 *Statement: Lesbian, Gay, and Bisexual Issues*, in *Social Work Speaks* 193, 194
5 (1997).

6 The American Psychoanalytic Association also has been unequivocal: Gay
7 and lesbian individuals and couples are capable of meeting the best interests of the
8 child and should be afforded the same rights and should accept the same
9 responsibilities as heterosexual parents. American Psychoanalytic Association,
10 *Position Statement on Gay and Lesbian Parenting* (May 16, 2002)⁸

11 Finally, the American Academy of Child & Adolescent Psychiatry, which
12 represents over 6,500 psychiatrists, has concurred. "Outcome studies of children
13 raised by parents with a homosexual or bisexual orientation, when compared to
14 heterosexual parents, show no greater degree of instability in parental relationship or
15 developmental dysfunction in children." See American Academy of Child &
16 Adolescent Psychiatry, *Policy Statement on Gay, Lesbian and Bisexual Parents*
17 (June 1999).⁹ Indeed, Amici are unaware of any authoritative child welfare
18 organization that has taken a contrary position.¹⁰

20 ⁸ Available at <http://www.apsa-co.org/ctf/cgli/parenting.htm>.

21 ⁹ Available at <http://www.aacap.org/publications/policy/ps46.htm>.

22 ¹⁰ Some opponents of same-sex marriage allege that gay men pose a greater
23 risk of child molestation. All the available scientific data, however, indicate that gay
24 men are no more likely than heterosexual men to sexually abuse children. And
25 those who offend against children, whether the children are male or female, are no
26 more likely to be gay men than heterosexual men. In fact, among pedophiles, many
are neither, having no sexual attraction to adults of either gender. See D. Finkelhor
& S. Araji, *Explanations of Pedophilia A Four Factor Model*, 22 J. Sex Research 145,
161 (1986), cited in Gregory M. Herek, *Myths About Sexual Orientation: A Lawyer's*
Guide to Social Science Research, 1 Law & Sexuality 133, 153-54 (1991). Of those
offenders against children who also have some sexual attraction to adults, that

1 Two decades of research demonstrates uniformly that children of lesbians
2 and gays are not disadvantaged by their parents' sexual orientation. There is no
3 relationship between sexual orientation and any recognized measure of a child's
4 social and psychological adjustment or cognitive abilities. All studies show
5 conclusively, for example, that there is no relationship between parental sexual
6 orientation and children's cognitive ability or intelligence. See Judith Stacey &
7 Timothy Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am Soc
8 Rev 159, 172 (2001); David K. Flaks et al., *Lesbians Choosing Motherhood: A*
9 *comparative Study of Lesbian and Homosexual Parents and Their Children*, 31
10 *Developmental Psychol* 105, 109 (1995); Richard Green, M.D., et al., *Lesbian*
11 *Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers*
12 *and Their Children*, 15 *Archives Sexual Behav* 167, 178 (1986); Kirkpatrick, M.D. et
13 al., *supra* note 54 at 547.

16 The research demonstrates beyond dispute that children raised by gay men
17 are not disadvantaged. Julie Schwartz Gottman, *Children of Gay and Lesbian*
18 *Parents*, 14 *Marriage & Fam Rev* 177, 186 (1989); Robert L. Barrett & Bryan E.
19 Robinson, *Children of Gay Fathers*, in *Gay Fathers* 90–91 (1990). "[N]o reason
20 exists for concern about the development of children living in the custody of gay
21

22 attraction is no more likely to be same-sex attraction than different-sex attraction.
23 Indeed, a study of 175 men convicted of child sex abuse found that of the 92 who
24 had any attraction to adults, the majority were attracted to women, regardless of the
25 gender of the children these men abused. A.N. Groth & H.J. Birnbaum, *Adult Sexual*
26 *Orientation and Attraction to Underage Persons*, 7 *Archives Sexual Behav* 175, 180
(1978); see also Carole Jenny et al., *Are Children at Risk for Sexual Abuse by*
Homosexuals, 94 *Pediatrics* 41, 44 (1994) (study of children seen in one-year period
at a Denver children's hospital found that less than 1 percent of adult offenders were
"potentially" gay or lesbian). There certainly is no basis to conclude that very many
men who sexually abuse boys are gay-identified.

1 fathers; on the contrary, there is every reason to believe that gay fathers are as likely
2 as heterosexual fathers to provide home environments in which children grow and
3 flourish." Charlotte J. Patterson & Raymond W. Chan, *Gay Fathers and Their*
4 *Children, in Textbook of Homosexuality and Mental Health* 371, 388 (Robert P.
5 Cabaj & Terry Stein eds., 1996). "There is no evidence of any kind that
6 demonstrates that living with a homosexual parent has any significant negative
7 effects on children"; gay fathers are as effective "and may be even more so in some
8 ways than non-gay parents." Jerry J. Bigner & Frederick W. Bozett, *Parenting by*
9 *Gay Fathers*, 14 *Marriage & Fam Rev* 155, 163 (1990).

11 Similarly, several recent studies compared children conceived through donor
12 insemination and born to lesbian mothers or to heterosexual mothers. The research
13 found that there were no differences in behavioral adjustment or social or
14 psychological functioning among the children and, in fact, determined that "it was
15 impossible to distinguish" between the children in either group. Raymond W. Chan
16 et al., *Psychosocial Adjustment Among Children Conceived Via Donor Insemination*
17 *By Lesbian and Heterosexual Mothers*, 69 *Child Dev* 443, 445 (1998); see also A.
18 Brewaeys et al., *Donor Insemination: Child Development and Family Functioning in*
19 *Lesbian Mother Families*, 12 *Human Reproduction* 1349, 1356 (1997); Flaks et al.,
20 31 *Developmental Psychol* at 112. There is no difference in the rate of psychiatric
21 difficulty, emotional difficulty, or behavioral difficulty among children of lesbians as
22 compared with heterosexual parents. Ellen C. Perrin, M.D. & the Committee on
23 Psychosocial Aspects of Child and Family Health, American Academy of Pediatrics,
24 Technical Report: Co-Parent or Second-Parent Adoption by Same-Sex Parents;
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1 Susan Golombok et al., *Children in Lesbian and Single-Parent Households:*
2 *Psychosexual and Psychiatric Appraisal*, 24 J. Child Psychol Psychiatry 551, 565—
3 567 (1983); Fiona Tasker & Susan Golombok, *Growing Up In a Lesbian Family* 134-
4 144 (1997); Patricia J. Falk, *Lesbian Mothers: Psychosocial Assumptions in Family*
5 *Law*, 44 Am Psychologist 941, 944 (1989); Barbara McCandlish, *Against All Odds:*
6 *Lesbian Mother and Family Dynamics*, in *Gay and Lesbian Parents* 23, 24 (Frederick
7 W. Bozett ed., 1987). “[C]hildren raised by lesbians have an equally good chance of
8 developing into healthy, happy human beings as do children raised in heterosexual
9 homes.” Cheri A. Pies, *Lesbians and the Choice to Parent*, 14 Marriage & Fam Rev
10 137, 140 (1989).

12 The research also is clear that children of lesbians and gays do not suffer
13 adverse effects as a result of social reactions to homosexuality. For example, there
14 are no significant differences in the quality of peer relationships between children of
15 lesbian and heterosexual parents, see, e.g., Golombok et al., *supra*, 24 J Child
16 Psychol Psychiatry at 565-67; cf. Tasker & Golombok, *supra*, at 88 (follow-up study
17 found that children of lesbians did not recall more teasing regarding their families
18 than those raised by single heterosexual parents), and studies show strong self-
19 esteem and assessments of popularity among adolescent children of lesbians and
20 gays. Sharon L. Huggins, *A Comparative Study of Self Esteem of Adolescent*
21 *Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers*, 17 J of
22 Homosexuality 123, 131–32 (1989); Green, et al., *supra* 15 Archives Sexual Behav
23 at 174–179 (1986); and Mary E. Hotvedt & Jane B. Mandel, *Children of Lesbian*
24 *Mothers*, in *Homosexuality: Social, Psychological and Biological Issues* 275, 282
25 (1982).

1 While children whose parents are lesbian or gay “undoubtedly contend with a
2 degree of social stigma even under the best circumstance,” the similarity seen
3 repeatedly in children's outcomes suggests the presence of some compensatory
4 processes in these families. Ellen C. Perrin, M.D., *Children Whose Parent(s) Is/Are*
5 *Lesbian or Gay in Sexual Orientation in Child and Adolescent Healthcare*, 105, 129
6 (2002) [hereinafter *Children Whose Parents*]; cf. Stacey & Biblarz, *supra*, 66 Am
7 Soc Rev at 172 (“children in these studies seem to exhibit impressive psychological
8 strength”). Importantly, “if ostracism, isolation, and teasing are problems for those
9 children, neither the problem nor the solution can appropriately be located within
10 these children or their families.” *Children Whose Parents, supra*, at 124. The same
11 is true when children are subjected to ignorance or bias based on race, religion, or
12 other factors. Eliminating the exclusion of same-sex parents from marriage will help
13 eliminate stigma, not augment it.

14 Opponents of same-sex marriage sometimes claim that children of lesbians
15 and gays are more likely to be lesbian or gay themselves. There is, however, no
16 scientific basis to conclude that same-sex parents somehow “cause” children who do
17 not otherwise feel same-sex attraction to have such feelings, or to enter romantic
18 relationships with members of the same sex. See *Pediatric Report, supra*, at 342.
19 (“No differences have been found in the *** sexual orientation of adults who had a
20 divorced homosexual parent (or parents), compared with those who had divorced
21 heterosexual parents.”)

22 Moreover, the supposed influence of parents' sexual orientation on that of
23 their children as a reason for concern simply restates the bias of some against gays
24 and lesbians as a class. The psychiatric, psychological, and social work
25 professions, including the American Psychological Association, the National Association of Mental Health, the National

1 Association of Social Workers, and others—have long rejected the suggestion that a
2 same-sex sexual orientation is a disorder. See Stephen F. Morin & Esther
3 Rothblum, *Removing the Stigma*, 46 Am Psychologist, 947, 948 (1991). Social
4 science research demonstrates that "lesbians and gay men, as a group, do not differ
5 in significant ways from heterosexuals except in terms of their sexual orientation."
6 Gregory M. Herek, *Myths About Sexual Orientations: A Lawyer's Guide to Social
7 Science Research, Law & Sexuality*, 133, 153 (1991). Social science research has
8 also established that same-sex sexual orientation is neither uncommon nor
9 unnatural and has been expressed throughout history and in all cultures. *Id.*

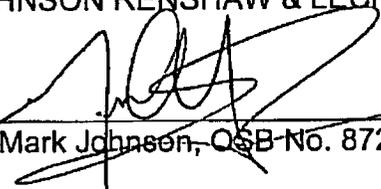
10 5.

11 Conclusion

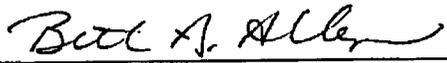
12 Amici submit that marriages between same-sex partners would provide the
13 children raised by the individuals in those relationships, as well as society as a
14 whole, with the same critical benefits and protections that are provided by opposite-
15 sex marriages.

16 Dated this 9 day of April 2004.

17 JOHNSON RENSHAW & LECHMAN-SU PC

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ATTORNEY CERTIFICATE OF SERVICE

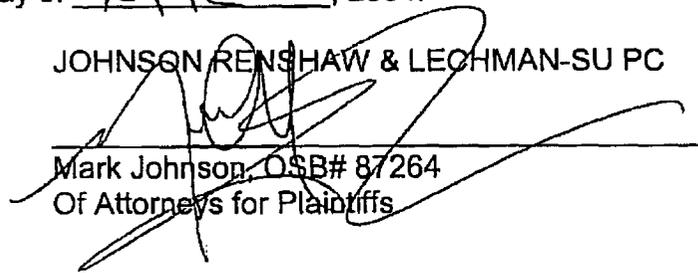
I hereby certify that I have made service of the foregoing BRIEF OF AMICI CURIAE THE JUVENILE RIGHTS PROJECT, INC.; THE NATIONAL ASSOCIATION OF SOCIAL WORKERS; THE OREGON CHAPTER OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS; OPEN ADOPTION & FAMILY SERVICE, INC.; THE OREGON PSYCHOLOGICAL ASSOCIATION; AND PORTLAND PARENTS, FAMILIES AND FRIENDS OF LESBIANS AND GAYS IN SUPPORT OF PLAINTIFFS on the parties listed below in the manner indicated:

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DATED this 9 day of APR, 2004.

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