**REPUBLIC OF ECUADOR**

**CONSTITUTIONAL COURT**

**Reference:** Case Number 1035-14-EP

Petition of Acción Extraordinaria de Protección y de Auto de Admisión arising from violations of petitioner's rights under Articles 66, 22, and 67 of the Ecuadorian Constitution.

Plaintiff: Pamela Karina Troya Báez y Gabriela Jannine Correa Véjar

Judge: Patricio Pazmiño Freire

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# AMICUS BRIEF OF THE ASSOCIATION *OF THE BAR OF THE CITY OF NEW YORK*

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## INTRODUCTION

*The Association of the Bar of the City of New York* is a voluntary association of lawyers in the City of New York and it has the great honor of accepting the invitation of this distinguished Constitutional Court, ordered by judicial decree on July 11, 2014, in which this Honorable Court invited several organizations to offer their opinion concerning this case.[1]

*The Association of the Bar of the City of New York* was founded in 1870 and it currently has more than 24,000 volunteer-based members in the New York area, around the United States, and in more than fifty different countries. The Bar Association was founded to and has always been committed to the promotion of the rule of law throughout the world. In the long term, the Association has dedicated itself to fight against the denial of basic human rights on both a national and international level. It has published numerous reports and *amicus curiae* briefs in cases in which people have been denied rights on the basis of sexual orientation, including the right of people to marry whomever they wish, whether of the same sex or of the opposite sex.

The New York City Bar Association Committee on Inter-American Affairs includes as members some of the most distinguished lawyers in the world, working in matters concerning business, the environment, litigation and arbitration, and human rights in this hemisphere. This committee has organized international conferences and has closely collaborated with the *Cyrus R. Vance Center for International Justice* (The "*Vance Center"*) of the New York City Bar Association. The *Vance Center* is a non-profit organization of the Bar Association that advances global justice by engaging lawyers across borders to support civil society and an ethically active

[1] The signing attorney, Hunter T. Carter, is a partner in the New York office of Arent Fox LLP. He graduated from the University of Virginia Law School in 1988 and is licensed to practice law in the State of New York, the State of Virginia, and the District of Colombia, as well as the Supreme Court, the Court of Appeals of the Second Circuit, and the United States District Court for the District of Colombia. On April 17, 2013, Mr. Carter was invited to present before the Honorable Senate of the Republic of Colombia about civil marriages for partners of the same sex. He was the co-author of the *Report and Recommendations of the Lawyers of the State of New York about the Right of Marriage for Same-Sex Couples*, dated May 4, 2009.

legal profession. The *Vance Center* spearheaded the drafting and the implementation of the Pro Bono Declaration of the Americas, which has been signed by more than 500 law firms from 21 different countries, accounting for more than 10,000 lawyers who have all committed to providing at least 20 hours of pro bono service annually. The International Pro Bono Network, which the Vance Center and the Fundacion Pro Bono Chile co-lead, promotes and supports the pro bono initiatives of private lawyers throughout the Americas. Currently, the *Vance Center* provides pro bono legal representation to dozens of civil society organizations across Central America, South America, and the Caribbean, with the participation of more than 250 private attorneys. An important theme in this legal representation is protecting the rights of lesbian, gay, bisexual, transgender and intersex ("LGBTI") persons, including the right to marriage equality.

In this brief, the *Association of the Bar of the City of New York* presents its report on court cases in the United States that have dealt with the rights of same-sex couples concerning their fitness as parents.

## A. SAME-SEX COUPLES ARE GAINING THE RIGHT TO A FAMILY UNDER THE INSTITUTION OF MARRIAGE AROUND THE WORLD

In the entire world, and in the United States, several countries and political subdivisions have enacted laws, and several courts have ruled that LGBTI people deserve access to the institution of marriage. This progress in legislation and case law is substantial, and allows full respect to a basic characteristic of LGBTI people, which is the enjoyment and full recognition of their family. In the United States, the courts (both federal and state) have very closely scrutinized all of the evidence and expert testimony supporting the arguments for and against same-sex couples having the right to build families, including the right to adopt children. Currently, same-sex couples enjoy these rights in 20 states in the United States, as well as the District of Columbia.

## B. THE UNITED STATES SUPREME COURT HAS REJECTED OBSTACLES TO THE FULL RIGHT TO A FAMILY OF SAME-SEX COUPLES

### 1. ***United States v. Windsor***

On June 26, 2013, in *United States v Windsor*,[2] the U.S. Supreme Court ruled that section three of the so-called "Defense of Marriage Act" (DOMA)—a law that, on a federal level, prohibited the recognition of same-sex marriages, even if individual states recognized these marriages as legitimate--was unconstitutional. Therefore, the Supreme Court decided that the United States federal government could not discriminate against married homosexual couples (by the States that allow same-sex marriages) for the purposes of determining federal benefits and protections, for homoparental families.

### 2. ***Hollingsworth v. Perry***

On the same day that the Supreme Court released its decision in *Windsor,* the Court also issued its decision in *Hollingsworth v. Perry*.[3] In that case, both the trial court and the Ninth Circuit Court of Appeals had concluded that a ballot measure in California to define marriage as between one man and one woman, known as Proposition 8, was unconstitutional. The Court of Appeals stated that, "Proposition 8 serves no purpose, and has no effect, other than to lessen the

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[2] 570 U.S. ___ (2013) (Docket No. 12-307), 133 S.Ct. 2675 (2013).

[3] 570 U.S. ___ (2013) (Docket No. 12-144), 133 S.Ct. 2652 (2013). The case was known as *Perry v. Schwarzenegger* at the trial court level. *See Perry v. Schwarzenegger*, 704 F.Supp.2d 921 (N.D. Cal., 2010). At the Court of Appeals, the case was known as *Perry v. Brown*. *Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012).

status and human dignity of gays and lesbians in California, and to officially reclassify their relationships and families as inferior to those of opposite-sex couples."[4]

At the Supreme Court, no statewide elected officer of California would defend Proposition 8. As a result, the Supreme Court held that no one, not even the individuals responsible for getting the ballot measure, had legal standing to challenge the lower court's opinion. The Supreme Court did not review the trial court's opinion, hence, civil marriage in California continued to be available for same-sex couples in the same way as heterosexual couples.

## C. BASED ON THE DECISIONS FROM THE SUPREME COURT IN WINDSOR, FEDERAL COURTS HAVE STEADILY MOVED IN FAVOR OF MARRIAGE EQUALITY

The Supreme Court's decision in *Windsor* opened the doors to a series of decisions recognizing the rights of same-sex couples to full marriage equality.

In *Windsor*, the Supreme Court held that the federal government could not refuse to recognize or provide benefits to couples in same-sex marriages conducted in states that permit such marriages.[5] Many federal district and state courts nationwide have interpreted this opinion to mean that state bans violate the United States Constitution as well. The U.S. Courts of Appeals for the Fourth[6], Seventh[7], and Tenth[8] Circuits struck down state laws barring same sex marriage. These cases were appealed to the Supreme Court, which after granting stays, denied the respective petitions for certiorari. As a result, the Circuit Court opinions were final and allowed same sex marriages in these jurisdictions to proceed. On October 7th, 2014, a day after

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[4] *Perry v. Brown*, 671 F.3d 1052, 1063 (9th Cir. 2012) *cert. granted*, 133 S. Ct. 786, 184 L. Ed. 2d 526 (U.S. 2012) *and vacated and remanded sub nom. Hollingsworth v. Perry*, 133 S. Ct. 2652, 186 L. Ed. 2d 768 (U.S. 2013)

[5] *United States v. Windsor*, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013)

[6] *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir.), *cert. denied sub nom. Rainey v. Bostic*, 135 S. Ct. 286, 190 L. Ed. 2d 140 (2014)

[7] *Baskin v. Bogan*, 766 F.3d 648 (7th Cir.), *cert. denied*, 135 S. Ct. 316, 190 L. Ed. 2d 142 (2014)

[8] *Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir.), *cert. denied*, 135 S. Ct. 265, 190 L. Ed. 2d 138 (2014)

the Court denied review of those petitions, the Ninth Circuit ruled in favor of same-sex couples' freedom to marry.[9] The U.S. Supreme Court initially stayed implementation of that decision,[10] and then lifted the stay two days later allowing same sex marriages to continue.[11] Similarly, all States within the Second and Third Circuits allow same sex marriages. On February 9, 2015 same sex couples in the Eleventh Circuit begun to marry, following the Circuit's denial of the Alabama attorney general's motion for a stay of the district court's opinion striking down marriage bans.[12] The U.S. Supreme Court also denied a request to issue an order to suspend enforcement of the district court's order allowing same sex marriages, and marriages have now proceeded in Alabama. In dissent to the denial by the U.S. Supreme Court, Justice Thomas indicated for a minority of two that the Court's decision signaled the direction of the majority toward allowing same sex marriages.[13]

Four states within the First Circuit allow same-sex marriages, including Massachusetts, which was the first state in the United States to legalize it in 2003.[14] However, a decision upholding a marriage ban by the U.S. District Court of Puerto Rico is currently on appeal before the First Circuit.[15] On January 9th, 2015, the Fifth Circuit heard oral arguments in three separate challenges to same-sex marriage bans and has not yet issued a decision.[16] On February 3rd, 2015,

[9] *Latta v. Otter*, 771 F.3d 456 (9th Cir. 2014)
[10] http://sblog.s3.amazonaws.com/wp-content/uploads/2014/10/14A374-Kennedy-order.pdf
[11] http://sblog.s3.amazonaws.com/wp-content/uploads/2014/10/Idaho-marriage-SCt-stay-denial-10-10-14.pdf
[12] The Eleventh Circuit acted on its own to hold the cases "in abeyance." *See* Alabama order at http://sblog.s3.amazonaws.com/wp-content/uploads/2015/02/Alabama-marriage-Searcy-11th-CA-hold-order.pdf and Florida order at http://sblog.s3.amazonaws.com/wp-content/uploads/2015/02/Florida-marriage-11th-CA-on-hold-order1.pdf.
[13] http://www.supremecourt.gov/opinions/14pdf/14a840_gol1.pdf
[14] *Goodridge v. Dep't of Pub. Health*, 440 Mass. 309, 798 N.E.2d 941 (2003)
[15] *Conde-Vidal v. Garcia-Padilla*, No. 14-cv-1253, 2014, 2014 U.S. Dist. LEXIS 150487 (D. P.R. Oct. 21, 2014)
[16] *DeLeon v. Perry*, No. 14-50196 (C.A.5)

the Eighth Circuit granted a request to consider the constitutionality of state laws barring same-sex marriage and to issue a ruling by May 2015.[17]

The Sixth Circuit is the only Circuit Court of Appeals to have upheld same-sex marriage bans to date.[18] Writing for the majority, Judge Jeffrey Sutton held that the issue of marriage belongs in the hands of the State voters, and that Michigan's ban on same-sex marriage does not violate the U.S. Constitution. Judge Sutton relied on a 1972 U.S. Supreme Court decision, *Baker v. Nelson*, which dismissed a same-sex couple's marriage claim "for want of a substantial federal question." The Supreme Court has granted certiorari on this appeal from the Sixth Circuit, held oral argument on April 28, 2015, and is expected to settle the question of whether the Constitution requires that same-sex couples be allowed to marry by June 2015.

## D. THE UNITED STATES CASES DEMONSTRATE THAT ARGUMENTS AGAINST FAMILY RIGHTS OF SAME-SEX COUPLES ARE NOT BASED IN SCHOLARLY ANALYSIS OR RELIABLE METHODOLOGY

The evolution of cases challenging anti-marriage legislation in the United States has made clear that the great weight of scientific authority is in favor of permitting same-sex couples to enjoy all of the rights of marriage, including parental rights. The cases also demonstrated that the arguments against same-sex marriage are easily debunked, because they are often based in disproven science, animus, or religious beliefs that should not be considered in establishing public policy. The majority of the arguments that have been scrutinized and rejected concern the

[17] Kevin Burbach, *In unexpected move, appeals court to hear South Dakota, Arkansas, Missouri gay marriage cases*, DAILY JOURNAL (Feb. 6, 2015); http://www.dailyjournal.net/view/story/94287352dcb9465387096fda8c23a311/SD--Gay-Marriage-8th-Circuit/

[18] *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014) *cert. granted sub nom. Obergefell v. Hodges*, No. 14-556, 2015 WL 213646 (U.S. Jan. 16, 2015) and *cert. granted sub nom. Tanco v. Haslam*, No. 14-562, 2015 WL 213648 (U.S. Jan. 16, 2015) and *cert. granted*, No. 14-571, 2015 WL 213650 (U.S. Jan. 16, 2015) and *cert. granted sub nom. Bourke v. Beshear*, No. 14-574, 2015 WL 213651 (U.S. Jan. 16, 2015)

ability of same-sex couples to have families and are directly applicable to the relevant issues of this adoption case.

### 1. The Battle of the Experts I: The Case of *Perry v. Schwarzenegger*

The prime example is the case of *Perry v. Schwarzenegger*[19] in which all of the arguments for and against state recognition of same-sex marriages were carefully analyzed. There, scientific evidence and other expert testimony convincingly demonstrated that the arguments against same-sex marriage have no basis.

At *Perry*'s trial, the court heard witnesses from both sides. Both sides were led by well known and very skillful legal teams. The team that challenged *Proposition 8* was led by Theodore Olsen and David Boies, who famously were on opposite sides of the case before the U.S. Supreme Court called *Bush v. Gore*, in which the Supreme Court decided the end of vote-counting in the 2000 Presidential elections.

The team that defended *Proposition 8* was also notable. That team was led by Charles Cooper, who clerked for the late U.S. Supreme Court Chief Justice William Rehnquist, and was appointed by Ronald Reagan to be Assistant Attorney General for the prestigious Office of Legal Counsel.

The team of David Boies and Theodore Olsen presented a broad range of experts - nine in total, in addition to fact witnesses. Relevant to this case are the following:

- Lee Badgett, a professor of Economics at the University of Massachusetts Amherst, testified as an expert on demographic information concerning gays and lesbians, same-sex couples and children raised by gays and lesbians, the effects of

[19] *See Perry v. Schwarzenegger*, 704 F.Supp.2d 921 (N.D. Cal., 2010).

the exclusion of same-sex couples from the institution of marriage and the effect of permitting same-sex couples to marry on heterosexual society and the institution of marriage.

- Michael Lamb, a professor and Head of the Department of Social and Developmental Psychology at Cambridge University, testified as an expert on the developmental psychology of children, including the developmental psychology of children raised by gay and lesbian parents. He testified about a substantial body of evidence documenting that children raised by gay and lesbian parents are just as likely to be well adjusted as children raised by heterosexual parents. He noted that for significant numbers of these children, allowing their parents to marry would promote their wellbeing.

At the same time, the court granted several opportunities to call for testimonies against marriage by same-sex couples. However, there are only few experts whose research and professional experience can support the opposition to same-sex marriage. Only two experts testified against marriage equality--David Blankenhorn and Thomas P. Miller--and neither of them even tried to offer testimony that fathers and mothers who are gay or lesbians are not suitable to be parents.

The evidence and testimony of witnesses in this trial are a reflection of the scholarly consensus in favor of marriage equality and against discrimination, which extends well beyond California. From this evidence, the Court in *Perry* made several findings of facts and conclusions of law that led to the overturning of Proposition 8, including:

- Same sex couples are identical to opposite sex couples in terms of characteristics relevant to successful marriage and union.

- A parent's sexual orientation is not a factor in a child's adjustment. An individual's sexual orientation does not determine whether that individual can be a good parent. Children raised by gay or lesbian parents are as likely as children raised by heterosexual parents to be healthy, successful and well-adjusted.
- Gay and lesbian adoption is widespread and is supported and encouraged in California law, providing evidence concerning same sex couples and parenting, with around 18% of same sex couples in California raising children.

Several of the Court's well-reasoned conclusions in *Perry* defy traditional stereotypes about LGBTI individuals and are discussed more fully below.

### 2. The Battle of the Experts II: Amicus Briefs in *Perry* and *Windsor* before the Supreme Court

In relation to the analysis by the Supreme Court of both cases, in both *Perry* and *Windsor*, a great range and number of experts submitted research related to same-sex marriage through *amicus curiae* briefs, which supported the position in favor a marriage equality with the experience and credibility of the respective areas of specialization. With respect to same-sex couples' parenting and adoption rights, it is worth mentioning the following:

#### a. About Homosexuality

The American Medical Association[20] filed an amicus brief before the Supreme Court stating that: "scientific evidence supports the conclusion that homosexuality is a normal expression of human sexuality; that most gay, lesbian, and bisexual adults do not experience

[20] In cooperation with The American Psychiatric Association, The American Academy of Pediatrics , American Psychological Association, The American Psychoanalytic Association , and The National Association of Social Workers.

their sexual orientation as a choice; that gay and lesbian people form stable, committed relationships that are equivalent to heterosexual relationships in essential respects; and that same-sex couples are no less fit than heterosexual parents to raise children and their children are no less psychologically healthy and well-adjusted than children of heterosexual parents." Brief of the American Psychological Association et al as Amici Curiae on the Merits in Support of Affirmance, at *4, *Hollingsworth v. Perry*, 2013 WL 769316 (U.S.,2013) (No. 12-144)

The scientific consensus comes from empirical research carried out by doctors, psychiatrists, psychologists, social workers, among others, evaluated and audited by experts, and published in scientific journals and academic books. The brief brings together the conclusions of hundreds of studies done in the last thirty years, highlighting the collective knowledge of the community of experts about this matter.

The Gay and Lesbian Medical Association also filed a brief before the Supreme Court presenting sexual orientation as an innate, biological and immutable human feature.

### b. About Pediatrics, Anthropology, and History

The American Academy of Pediatrics and the American Anthropological Association filed a brief before the Supreme Court in which they state that the stigma created by the differential treatment of gays and lesbians create severe psychosocial impacts, invite the public to discriminate against them and affect their children. The brief also stated that children of same-sex couples are benefitted of the advantages associated with the institution of marriage: financial and legal security, psychosocial stability, and support and acceptance of society.

### 3. The Battle of the Experts III: The Case in 2014 of *DeBoer* v *Snyder*

The testimonial experience in *Hollingsworth v. Perry* is getting repeated. In March of 2014, a Federal Court of the State of Michigan invited and listened to experts in the defense for the Government of the State of Michigan regarding the prohibition of marriage for same-sex couples.

In the trial, the expert testimony only supported the concept that gay fathers and lesbian mothers are fit to raise children, rejecting false stereotypes, according to the decision of the judge:

> [Brodzinsky] testified that decades of social science research studies indicate that there is no discernible difference in parenting competence between lesbian and gay adults and their heterosexual counterparts. Nor is there any discernible difference in the developmental outcomes of children raised by same-sex parents as compared to those children raised by heterosexual parents…
> Contrary to the state defendants' position, Brodzinsky testified that there is no body of research supporting the belief that children require parent role models of both genders to be healthy and well adjusted. What matters is the "quality of parenting that's being offered" to the child…
> These studies, approximately 150 in number, have repeatedly demonstrated that there is no scientific basis to conclude that children raised by same-sex parents fare worse than those raised by heterosexual parents.
>
> The Court found Brodzinsky's testimony to be fully credible and gave it considerable weight.
>
> Sociologist Michael Rosenfeld supported this conclusion.
>
> The Court found Rosenfeld's testimony to be highly credible and gave it great weight. His research convincingly shows that children of same-sex couples do just as well in school as the children of heterosexual married couples, and that same-sex couples are just as stable as heterosexual couples. The Court noted that the testimony of Brodzinsky and Rosenfeld is in line with a strong "no differences" consensus within the professional associations in the psychological and sociological fields. Brodzinsky made the following statement in his expert witness report, which [the Government of Michigan] did not challenge:
>
> > Every major professional organization in this country whose focus is the health and well-being of children and families has reviewed the data on outcomes for children raised by lesbian and gay couples, including the methods by which the data were collected, and have concluded that these children are not disadvantaged

> compared to children raised in heterosexual parent households. Organizations expressing support for parenting, adoption, and/or fostering by lesbian and gay couples include (but are not limited to): American Medical Association, American Academy of Pediatrics, American Psychiatric Association, American Academy of Child and Adolescent Psychiatry, American Psychoanalytic Association, American Psychological Association, Child Welfare League of America, National Association of Social Workers, and the Donaldson Adoption Institute.
>
> In fact, the 2004 Council of Representatives of the American Psychological Association ("APA") unanimously voted in favor of issuing a position statement that "research has shown that the adjustment, development, and psychological well-being of children is unrelated to parental sexual orientation and that the children of lesbian and gay parents are as likely as those of heterosexual parents to flourish." [21]

In comparison with this high quality expert testimony and exhaustive analysis of all the psychological and sociological bodies, the testimony offered against marriage between same-sex persons—primarily based on the assumption that same-sex couples were not fit to raise children-- was of so low quality and, therefore, lacking grounds, that it was rejected as inadmissible by the federal Judge. Rejecting the expert testimony offered by the Government of Michigan to justify the prohibition against same-sex marriage, the Judge concluded:

> The Court finds [Mark] Regnerus [Assistant Professor of the University of Texas]'s testimony entirely unbelievable and not worthy of serious consideration. The evidence adduced at trial demonstrated that his 2012 "study" was hastily concocted at the behest of a third-party funder, which found it "essential that the necessary data be gathered to settle the question in the forum of public debate about what kinds of family arrangement are best for society" and which "was confident that the traditional understanding of marriage will be vindicated by this study." In the funder's view, "the future of the institution of marriage at this moment is very uncertain" and "proper research" was needed to counter the many studies showing no differences in child outcomes. The funder also stated that "this is a project where time is of the essence."
>
> Additionally, [the analysis of Prof. Regnerus] is flawed on its face, as it purported to study "a large, random sample of American young adults (ages 18-39) who were raised in

[21] *DeBoer v. Snyder*, 973 F. Supp. 2d 75

7, 761-763 (E.D. Mich. 2014)

> different types of family arrangements", but in fact it did not study this at all, as Regnerus equated being raised by a same-sex couple with having ever lived with a parent who had a "romantic relationship with someone of the same sex" for any length of time. Whatever Regnerus may have found in this "study," he certainly cannot purport to have undertaken a scholarly research effort to compare the outcomes of children raised by same-sex couples with those of children raised by heterosexual couples. It is no wonder that [his analysis] has been widely and severely criticized by other scholars, and that Regnerus's own sociology department at the University of Texas has distanced itself from [his analysis] in particular and Dr. Regnerus's views in general and reaffirmed the aforementioned [American Psychological Association] position statement.[22] *Id.* at 766.

Therefore, even with the economic support of the government of a State compelled and dedicated to oppose same-sex marriages, in a legal case of high public profile, the opponents to same-sex marriage were not able to support with expert testimonies any of the arguments usually invoked regarding that same-sex couples are not equally able to establish a family.

### E. THE EVIDENCE REJECTS STEREOTYPICAL ARGUMENTS THAT LGBTI PARENTS ARE NOT CAPABLE PARENTS

According to expert testimony, no statistically significant differences exist between psychological, sexual development, or social development of children raised by lesbian or gay parents and children raised by heterosexual parents. This is the scientific consensus based on extensive research conducted by leading pediatricians, psychologists, psychiatrists, social workers and academics.

In addition, the state of knowledge has reached a scientific consensus that there are no statistically significant differences between the parenting skills of gay or lesbian parents and heterosexual parents, or in the quality and nature of parent-child relationships.

It is important to note that empirical research and widely accepted scientific standards, are the standard for analyzing and evaluating the satisfaction of the needs of children. There is no

[22] *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 766.

room for stereotypes. Scientific evidence has reached a consensus that lesbians and gay parents can be as fit as heterosexual parents.

Organizations specializing in child health and welfare have issued statements in favor of parenting by lesbians and gays. The Child Welfare League of America – the largest and oldest organization of child welfare- for example says "gay, lesbian and bisexual parents are as well suited to raise children as their heterosexual counterparts." Moreover, it stated that "research comparing gay and lesbian parents to heterosexual parents, and children of lesbian and gay parents with children of heterosexual parents, shows that common negative stereotypes are not supported." *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults,* http://www.cwla.org/programs/culture/glbtqposition.htm.

The American Academy of Pediatrics, an organization representing approximately 60,000 pediatricians, has acknowledged that a considerable body of professional literature provides evidence that children with parents who are homosexual can have the same advantages and the same expectations of health, adjustment and development as children whose parents are heterosexual.

Studies have considered a wide range of variables, including mental health, psychological and emotional adjustment, self-esteem, academic performance, behavioral problems and moral judgment, among others. Research on these psychological and personal development measures reveal no significant differences between children of lesbian and gay parents and heterosexual parents: children of both types of families are comparable in terms of the main results of psychological development. In addition, research refutes the assumption that gay or lesbian parents affect or jeopardize the development of the gender of their children.

Diligent research consistently shows that children and adolescents raised by lesbian and gay parents report normal social relationships with peers, family and adults outside their family.

The American Sociological Association ("ASA"), the national professional and scholarly association of sociologists in the United States, recently filed a friend of the court brief in the 10th Circuit, drawing several important conclusions based on its diligent review of methodologically sound social science research. The American Sociological Association stated:

> "[T]he claim that same-sex parents produce less positive child outcomes – either because such families lack both a male and female parent, or because both parents are not the biological parents of their children – is contradicted by abundant social science research. . . Whether a child is raised by same-sex or different-sex parents has no bearing on a child's wellbeing."[23]

The ASA also concluded:

> As the overwhelming body of social science research confirms, whether a child is raised by same-sex or different-sex parents has no bearing on a child's wellbeing. Instead, the consensus is that the key factors affecting child wellbeing are stable family environments and greater parental socioeconomic resources, neither of which is related to the sex or sexual orientation of a child's parents.[24]

The ASA also reviewed and evaluated the social science evidence that had been presented by those who sought to deny same-sex couples from marriage based on claims that children fair better in opposite-sex households. The ASA concluded that the arguments submitted by the opponents was "contradicted by abundant social science research"[25]and that the studies the opponents attempted to rely upon "do not examine same-sex parents or their

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[23] Amicus Curiae Brief of the American Sociological Association in Support of Plaintiffs-Appellees, at 2, *Bostic v. Rainey*, 2014 WL 1483612 (4th Cir. Apr. 16, 2014) (Nos. 14-1167(L), 14-1169, 14-1173)

[24] *Id.* at 12-13.

[25] *Id* at 2.

children,"[26] "draw inappropriate apples-to-oranges comparisons,"[27] are "mischaracterized by Appellants"[28] or were so methodologically unsound that even the journal that published it later concluded that the "paper should not have been published."[29]

Confirming the position that it took in these briefs, the ASA has recently (July 23, 2014) submitted an *amicus curiae* brief before this Honorable Constitutional Court under files T-4.167.863 y T-4.189.649 AC.

In sum, the clear outcome of well-conducted research is the conclusion that same-sex couples are just as capable of raising well-adjusted children as opposite-sex couples.

### F. ARGUMENTS BASED ON THE PROCREATION OR RAISING OF CHILDREN DOES NOT JUSTIFY EXCLUDING SAME-SEX COUPLES FROM FULLY ENJOYING THEIR MATRIMONIAL RIGHTS INCLUDING THEIR PARENTAL RIGHTS

Same-sex couples are not only able to procreate but are already procreating, through children coming from prior heterosexual relationships, by artificial insemination or surrogacy. These homoparental families – parents of the same-sex and their children – already exist, but do not have access to marital status.

The exclusion of same-sex couples from marriage and all of their parental rights only disfavors the procreation and protection of children of same-sex couples. Therefore, these children suffer from the stigma that their parents cannot marry and have children. These children are always going to feel like second-class individuals. The best interests of these children are compromised with the exclusion of same-sex marriage.

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26 *Id.* at 13.

27 *Id.* at 14.

28 *Id.*

29 *Id.* at 23.

As the Supreme Court observed in *Windsor*, the government's failure to recognize marriages for same-sex couples "humiliates tens of thousands of children now being raised by same-sex couples," making it "even more difficult for the children to understand the integrity and closeness of their own family and it concord with other families in their community and in their daily lives."[30]

Further, this discrimination is arbitrary and should be condemnable. If the only criteria imposed by the law to raise children are race, ethnicity, national origin, religion, or another prohibited cause, it would be immediately evident that these distinctions are inadmissible. However, there appears to exist impunity in maintaining discrimination based on sexual orientation, as it is not condemned with the same force.

## CONCLUSION

U.S. courts have taken conscience of the long history and various aspects of the current state of arbitrary and prejudicial discrimination against members of the LGBTI community. It is clear the perspective that motivates the mistreatment: arbitrary but deep stereotypes that have considered that homosexual persons are supposedly inferior, immoral, unacceptable, repugnant and abominable, particularly in terms of their fitness to raise children. This community suffered extensive marginalization and humiliation which, even, they ways of founding families, loving each other, was prohibited socially and legally.

For millenniums this marginalization has not been scrutinized. However, nowadays a rapid transformation is happening in the United States and the rest of the world precisely because the courts are fulfilling their obligations of scrutinizing discrimination against same-sex couples,

through rational and calm examinations, based on evidence (particularly expert testimony), and logic.

The scrutiny reveals that these are only false stereotypes that indicate that members of that community do not deserve family protection. The scientific consensus of the most distinguished pediatricians and sociologists, among others, established that family made up by same-sex couples are equal, in all relevant categories, to families made up by heterosexual couples. They are equal in general and also with respect to raising children, among others. Given this, the only just and logical conclusion, based on evidence, is one that that favors that same-sex couples will have exactly the same rights to adoption as heterosexual couples.

[signatures in the next page]

Date: Junio 15, 2015

Respectfully,

*/s/ Hunter T. Carter*

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