

No. 1140460

IN THE SUPREME COURT OF ALABAMA

EX PARTE STATE EX REL. ALABAMA POLICY INSTITUTE and
ALABAMA CITIZENS ACTION PROGRAM,
Petitioner,

v.

ALAN L. KING, IN HIS OFFICIAL CAPACITY AS JUDGE OF
PROBATE FOR JEFFERSON COUNTY, ALABAMA, ROBERT M. MARTIN, IN
HIS OFFICIAL CAPACITY AS JUDGE OF PROBATE FOR CHILTON
COUNTY, ALABAMA, TOMMY RAGLAND, IN HIS OFFICIAL CAPACITY AS
JUDGE OF PROBATE FOR MADISON COUNTY, ALABAMA, STEVEN L.
REED, IN HIS OFFICIAL CAPACITY AS JUDGE OF PROBATE FOR
MONTHGOMERY COUNTY, ALABAMA, AND JUDGE DOES ##1-63,
EACH IN HIS OR HER OFFICIAL CAPACITY AS AN ALABAMA
JUDGE OF PROBATE,
Respondents.

EMERGENCY PETITION FOR WRIT OF MANDAMUS

**MOTION FOR LEAVE TO FILE BRIEF FOR AMICUS CURIAE
THE AMERICAN COLLEGE OF PEDIATRICIANS
IN SUPPORT OF PETITIONER**

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Introduction

Pursuant to Rule 27, the American College of Pediatricians ("Movant" or the "College") respectfully seeks this Court's leave to file the accompanying *amicus curiae* brief in support of Petitioner and Relators pursuant to Rule 29.

On June 29, 2015, three days after the Supreme Court of the United States issued their opinion in Obergefell v. Hodges, this Court issued a Corrected Order inviting the parties in this action "to submit any motions or briefs addressing the effect of the Supreme Court's decision in Obergefell on this Court's existing orders." In response thereto, and in the five months following that request, this Court has received briefs, motions, and petitions and the case is still pending. Concerned by the delay of the Alabama Supreme Court and the immediate threat of Obergefell to the stability of families, the safety of children and our constitutional republic, the College files this motion for permission to submit this Amicus Brief in support of relators ALABAMA POLICY INSTITUTE and ALABAMA CITIZENS ACTION PROGRAM.

Interest of Amici

The American College of Pediatricians is a non-profit organization of pediatricians and healthcare professionals dedicated to the health and well-being of children, with members

in 44 states and in several countries outside the United States. The College's Mission is to enable all children to reach their optimal physical and emotional health and wellbeing. To this end, the College recognizes the basic father/mother family unit, within the context of marriage, as the optimal setting for childhood development, but also pledges its support to all children, regardless of their circumstances. The College encourages mothers, fathers and families to advance the needs of their children above their own, and is committed to fulfilling its mission by encouraging sound public policy, based upon the best available research, to assist parents and influence society in the endeavor of childrearing.

The following Amici are highly-esteemed scholars who have studied and published on parental and household distinctions and their association with developmental outcomes in children. Their expertise in these fields would assist the Court's consideration of the issues presented by these cases. The Amici scholars include:

- Loren D. Marks (Ph.D., Family Studies, University of Delaware), Program Director and Professor of Child and Family Studies, School of Social Work, Louisiana State University.
- Mark D. Regnerus (Ph.D., Sociology, University

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- Donald Paul Sullins (Ph.D., Sociology, Catholic University of America), Associate Professor, Department of Sociology, Catholic University of America.

CONCLUSION

The College respectfully requests that this Court grant its Motion for Leave to File the Accompanying *Amicus* brief in this action.

Dated: November 6, 2015

Respectfully submitted,

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I hereby certify that on the 6th day of November, 2015, I electronically filed the foregoing motion, with its accompanying *amicus* brief, with the Clerk of the Supreme Court of Alabama using the ACIS filing system, and will mail hard copies of the Motion and Brief to the following:

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**BRIEF FOR AMICUS CURIAE
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Summary of Argument

Marriage between one man and one woman has long been recognized as the bedrock of society - predating all political and ecclesiastical institutions. The marriage relationship has been acknowledged by the state because of its singular ability to procreate, maintain a family structure where children can thrive, and insure the continuity of civilization.

Overwhelming evidence from large, nationally-representative studies has affirmed that this relationship is still best for society and that children unequivocally do better with both a mother and a father. The studies further demonstrate that children raised by same-sex parents, particularly those who identify as married, do not fare as well as those with opposite-sex parents, and many experience substantial harm in addition. Rigorous examination of any current study reaching the consensus that having two parents of the same sex is innocuous for child well-being finds that the claim is almost wholly without basis. Intense political bias has suppressed any

findings which would have undoubtedly changed the discussion about same-sex marriage and parenting on a national level.

In Obergefell v. Hodges, the Supreme Court of the United States deviated from its own concessions about the enduring nature of man/woman marriage and purported to create a new right for same-sex couples to enter the world of legal marriage and family - with no apparent thought to the inevitable problems children of those relationships will face. If accepted, Obergefell's policy implementation will deliberately and intentionally deny children the father or the mother so essential to their well-being.

It is in the best interest of children and this State to preserve the fundamental and immutable nature of marriage between one man and one woman. Tomorrow's children should not be subject to a novel social experiment that only insures higher chances of failure, confusion, and harm.

Further, the preservation of our constitutional republic and the preeminence of the rule of law are

threatened by any acceptance of Obergefell. Thus, not only is there a pressing social duty to ignore the opinion of the Supreme Court in Obergefell, there is a constitutional duty that requires this Court to uphold their injunction from 3 March 2015.

Argument

I. THIS COURT SHOULD CONSIDER THE EXCLUSIVE AND IMMUTABLE NATURE OF MAN/WOMAN MARRIAGE AS THE BEDROCK OF SOCIETY

Since the beginning of time, the marriage relationship between one man and one woman has been the bedrock of society and is acknowledged by the state because of the relationship's singular ability to insure the continuity of civilization by procreation and to maintain a family structure where children can thrive. Even the majority opinion in Obergefell concedes that "the ancient origins of marriage confirm its centrality," and further acknowledges that the institution of marriage has been "confined to opposite-sex relationships." Obergefell v. Hodges, 576 U.S. ____ (2015), 2015 WL 2473451, at 6 (2015). Chief Justice Roberts expounded upon this acknowledgement stating that, "This universal definition of marriage as the union of a man and a woman is no historical coincidence. Marriage did not come about as a result of a political movement, discovery, disease, war, religious doctrine, or any other moving force of world history - and certainly not as a result of a prehistoric decision to exclude gays and lesbians. It arose in the nature of things to meet a vital

need: ensuring that children are conceived by a mother and father committed to raising them in the stable conditions of a lifelong relationship.” Id. at 43-44 (Roberts, C.J., dissenting).

The Supreme Court of the United States has historically based 200 years of countless legal precedent upon what this Court has called the “axiomatic nature of marriage.” Petition for Writ of Mandamus at 16-17, Ex parte State ex rel. Alabama Policy Institute, _____ So. 3d _____ (Ala. 2015) (No.1140460). “[Marriage] is...the foundation of the family and of society, without which there would be neither civilization nor progress.” Maynard v. Hill, 125 U.S. 190, at 211 (1888). “[The family] consist[s] in and spring[s] 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.” Murphy v. Ramsey, 114 U.S. 15, at 45 (1885). The Supreme Court has more recently “described marriage as ‘fundamental to our very existence and survival,’ an understanding that necessarily implies a procreative component. Loving v. Virginia, 388 U.S. 1, 12 (1967); see Skinner v. Oklahoma ex rel. Williamson, 316 U. S. 535, 541 (1942).” (Obergefell v.

Hodges, 2015 WL 2473451, at 46 (2015) (Roberts, C.J., dissenting).

This Court exhibited a profound understanding of marriage as the "foundation of the family" and thus, the "fundamental unit of society" *Petition for Writ of Mandamus* at 14, *Ex parte State ex rel. Alabama Policy Institute*, ___ So. 3d ___ (Ala. 2015) (No.1140460). "Men and women complement each other biologically and socially. Perhaps even more obvious, the sexual union between men and women (often) produces children. Marriage demonstrably channels the results of sex between members of the opposite sex - procreation—in a socially advantageous manner. It creates the family, the institution that is almost universally acknowledged to be the building block of society at large because it provides the optimum environment for defining the responsibilities of parents and for raising children to become productive members of society." *Petition for Writ of Mandamus* at 104-105, *Ex parte State ex rel. Alabama Policy Institute*, ___ So. 3d ___ (Ala. 2015) (No.1140460) (internal footnotes omitted).

If accepted, the majority opinion in Obergefell will deal a crippling and unprecedented blow to society's foundational institution, the family. Because the majority opinion in Obergefell wanted to find a right to same-sex marriage in the Constitution, they were forced to vacate the robust definition of marriage that has stood for millennia and instead embrace the preposterous conclusion that: "The nature of marriage is that, through its enduring bond, two persons together can find other freedoms, such as expression, intimacy, and spirituality." Obergefell v. Hodges, 2015 WL 2473451, at 13 (2015). This Court's reaction is no doubt similar to Justice Scalia's: "Really? Who ever thought that intimacy and spirituality [whatever that means] were freedoms? And if intimacy is, one would think that Freedom of Intimacy is abridged rather than expanded by marriage..." Id. at 8 (Scalia, J., dissenting) (brackets in original). "The Supreme Court of the United States has descended from the legal reasoning of John Marshall and Joseph Story to the mystical aphorisms of the fortune cookie." Id. at 8 (see footnote) (Scalia, J., dissenting).

As this Court knows, court precedent is no requisite to preserve the immutable, natural, and self-preserving nature of marriage. Similarly, the majority opinion in Obergefell did nothing to negate it.

II. THIS COURT SHOULD CONSIDER THE OVERWHELMING EVIDENCE THAT A FAMILY STRUCTURE INVOLVING BOTH A MOTHER AND A FATHER IS IN THE BEST INTEREST OF CHILDREN

A. Children Do Best With Both a Father and a Mother

It will come as no surprise to this Court that "[o]ne legitimate interest behind the [marriage laws of Alabama] (among others) is recognizing and encouraging the ties between children and their biological parents." Mandamus Order at 88. Over thirty years of research confirms that children fare best when reared by their two biological parents in a loving, low conflict marriage. Children navigate developmental stages more easily, are more solid in their gender identity, perform better academically, have fewer emotional disorders, and become better functioning adults when reared within their natural family. Heuveline, Patrick, et al. "Shifting Childrearing to Single Mothers: Results from 17 Western Countries," *Population and Development Review* 29, no.1 (March 2003) p. 48. Kristen Andersen Moore, et al. "Marriage from a Child's Perspective: How Does Family Structure Affect Children and What Can We Do About It?" (Washington, D.C.: Child Trends,

Research Brief, June 2002) pp.1-2. Sara McLanahan and Gary Sandfeur, *Growing Up with a Single Parent: What Hurts, What Helps* (Cambridge: Harvard University Press, 1994), p. 45. Sotirios Sarantakos, "Children in Three Contexts: Family, Education, and Social Development," *Children Australia*, vol. 21 (1996): 23-31. Jeanne M. Hilton and Esther L. Devall, "Comparison of Parenting and Children's Behavior in Single-Mother, Single-Father, and Intact Families," *Journal of Divorce and Remarriage* 29 (1998): 23-54. Elizabeth Thomson et al., "Family Structure and Child Well-Being: Economic Resources vs. Parental Behaviors," *Social Forces* 73 (1994): 221-42. David Popenoe, *Life Without Father* (Cambridge: Harvard University Press, 1996), pp. 144, 146. This is, in part, because biology contributes to parent-child bonding. Glenn Stanton *Why Marriage Matters* (Colorado Springs: Pinon Press, 1997) p. 97-153.

There are significant innate differences between male and female that are mediated by genes and hormones and go well beyond basic anatomy. These biochemical differences are evident in the development of male and female brain anatomy, psyche, and even learning styles. Sax, Leonard. *Why Gender Matters: What Parents and Teachers Need to Know*

About the Emerging Science of Sex Differences (New York: Doubleday, 2005). Consequently, mothers and fathers parent differently and make unique contributions to the overall development of the child. Sax, Leonard. *Why Gender Matters: What Parents and Teachers Need to Know About the Emerging Science of Sex Differences* (New York: Doubleday, 2005); Blankenhorn, David. *Fatherless America*. (New York: Basic books, 1995); Byrd, Dean. "Gender Complementarity and Child-rearing: Where Tradition and Science Agree," *Journal of Law & Family Studies*, University of Utah, Vol. 6 no. 2, 2005. <http://narth.com/docs/gendercomplementarity.html> (Accessed on October 26, 2015).

Psychological theory of child development has always recognized the critical role that mothers play in the healthy development of children. More recent research reveals that when fathers are absent, children suffer as well. Girls without fathers perform more poorly in school, are more likely to be sexually active and become pregnant as teenagers. Boys without fathers have higher rates of delinquency, violence, and aggression. Blankenhorn, David. *Fatherless America*. (New York: Basic books, 1995); Byrd, Dean. "Gender Complementarity and Child-rearing: Where

Tradition and Science Agree," *Journal of Law & Family Studies*, University of Utah, Vol. 6 no. 2, 2005.

<http://narth.com/docs/gendercomplementarity.html> (Accessed October 26, 2015).

Gender-linked differences in child rearing styles between parents are complementary and protective for children. Erik Erikson was among the first to note that mother-love and father-love are qualitatively different. Mothers are nurturing, expressive, and more unconditional in their love for their children. Father-love, by contrast, often comes with certain expectations of achievement. Byrd, Dean.

"Gender Complementarity and Child-rearing: Where Tradition and Science Agree," *Journal of Law & Family Studies*, University of Utah, Vol. 6 no. 2, 2005.

<http://narth.com/docs/gendercomplementarity.html> (Accessed October 26, 2015). Subsequent research has consistently proven that parenting is most effective when it is both highly expressive and highly demanding. This approach to parenting "provides children with a kind of communion characterized by inclusiveness and connectedness, as well as the drive for independence and individuality [which is] virtually impossible for a man or woman alone to combine

effectively." Byrd, Dean. "Gender Complementarity and Child-rearing: Where Tradition and Science Agree," *Journal of Law & Family Studies*, University of Utah, Vol. 6 no. 2, 2005. <http://narth.com/docs/gendercomplementarity.html> (Accessed October 26, 2015).

Gender differences are also reflected in the way mothers and fathers use touch with their children. Mothers frequently soothe, calm, and comfort with touch. Fathers are more likely to use touch to stimulate or excite their children during play. Mothers tend to engage with children on their level providing opportunities for children to take charge and proceed at their own pace. As fathers engage in rough and tumble play, they take on a teaching role like that of a coach. Roughhousing between fathers and sons is associated with the development of greater self-control in adolescent boys. Byrd, Dean. "Gender Complementarity and Child-rearing: Where Tradition and Science Agree," *Journal of Law & Family Studies*, University of Utah, Vol. 6 no. 2, 2005 <http://narth.com/docs/gendercomplementarity.html> (Accessed October 26, 2015).

Gender-linked diversity is also observed in parental approaches to discipline. "The disciplinary approaches of fathers tend toward firmness, relying on rules and principles. The approach of mothers tends toward more responsiveness, involving more bargaining, more adjustment toward the child's mood and context, and is more often based on an intuitive understanding of the child's needs and emotions of the moment." Byrd, Dean. "Gender Complementarity and Child-rearing: Where Tradition and Science Agree," *Journal of Law & Family Studies*, University of Utah, Vol. 6 no. 2, 2005
<http://narth.com/docs/gendercomplementarity.html> (Accessed October 26, 2015). Consequently, being reared by a mother and a father helps sons and daughters moderate their own gender-linked inclinations. Boys generally embrace reason over emotion, rules over relationships, risk-taking over caution, and standards over compassion. Girls generally place greater emphasis on emotional ties, relationships, caution, and compassion. Over time opposite-sexed parents demonstrate to their children the value of opposing tendencies.

In 2012, Dr. Mark Regnerus, an associate professor of sociology at the University of Texas at Austin conducted the New Family Structures Study. See New Family Structures Study, "About the Study," Population Research Center, University of Texas at Austin, <http://www.prc.utexas.edu/nfss/> (Accessed October 25, 2015). Dr. Regnerus's conclusions come as no surprise. Based on a representative national sample of 2,988 adults, Regnerus found that well-being for the adults who reported a parent having been in a same-sex relationship (during the respondent's childhood) was significantly lower than in the general population, particularly when compared to persons who had grown up with parents who are still married or were married until one of them died. The differences were striking. For example, persons with lesbian mothers were, as adults, over three times more likely to be unemployed and receiving public assistance, or to have had a marital affair. They were more likely to be depressed, smoke, use marijuana, to have been arrested and to have pled guilty when they were arrested. Some of the largest, and most sensitive, differences were in reported childhood sexual abuse. The children of lesbian mothers were, as children,

ten times more likely to have been sexually touched by a parent or other adult and four times more likely to have been forced to have sex against their will. As adults, they had a significantly larger number of sexual partners and were twice as likely to be cohabiting.

The Regnerus study was limited in that few of the reported same-sex parents had been in a same-sex relationship for very long. Critics correctly point out that factors other than parental sexual orientation may account for the differences observed. However, the burden to prove that other factors (rather than exposure to or residence with a same-sex parent) account for the great difference lies with the critics, not with Dr. Regnerus. So far, those critics have been unable to prove differently.

In 2013, Dr. Douglas W. Allen of Simon Fraser University in Vancouver published a study based on the Canadian census that showed that children raised by same-sex parents were 35% less likely to graduate from high school. Douglas W Allen, High school graduation rates among children of same-sex households, 11 REVIEW OF ECONOMICS OF THE HOUSEHOLD

(2013) at 635. Girls did worse with two fathers than with two mothers; boys did worse with two mothers than with two fathers. *Id.* at 649-50 Allen suggested that fathers and mothers may not be substitutable, and concluded "it is time to investigate the difference." *Id.* at 654.

In a study published in early 2015 examining the National Health Interview Survey (NHIS), a large sample public health survey (1.6 million cases during the period examined) administered by the Centers for Disease Control (CDC), Dr. Donald Paul Sullins found that the risk of child emotional and developmental problems was at least twice as high for children with same-sex parents than for those with opposite-sex parents on a range of related outcomes, including predicted risk of psychological disorders, learning disability, and attention deficit hyperactivity disorder (ADHD). Sullins, *Emotional*, at 109.

Serious emotional problems and/or elevated risk of an emotional disorder was reported for 17.4 percent of children with same-sex parents, compared to only 7.4 percent of children with opposite-sex parents. Children with same-sex parents were almost twice as likely to have a

developmental disability and much more likely to have received medical treatment for an emotional or mental health problem. *Id.* at 109, Table 3. Most of the differences are statistically significant at .001, meaning there is a less than one chance in a thousand that the findings are due to sample variability.

Tradition and science agree that biological ties and dual gender parenting are protective for children. The family environment in which children are reared plays a critical role in forming a secure gender identity, positive emotional well-being, optimal academic achievement and secure adult life. Decades of social science research confirms that children develop optimally when reared by their two biological parents in a low conflict marriage.

B. There are Great Risks for Children Exposed to the Homosexual Lifestyle

Not only does research prove that children do better with both a mother and a father, data on the long-term outcomes of children placed in same-sex households, though sparse, gives compelling reason for concern. Research has revealed that children reared in same-sex households are more likely to experience sexual confusion, engage in risky sexual experimentation, and later adopt a same-sex identity. F. Tasker and S. Golombok, "Adults Raised as Children in Lesbian Families," *American Journal of Orthopsychiatric Association*, 65 (1995): 213; J. Michael Bailey et al., "Sexual Orientation of Adult Sons of Gay Fathers," *Developmental Psychology* 31 (1995): 124-129; *Ibid.*, pp.127,128; F. Tasker and S. Golombok, "Do Parents Influence the Sexual Orientation of Their Children?" *Developmental Psychology* 32 (1996): 7; Judith Stacey and Timothy J. Biblarz, "(How) Does the Sexual Orientation of Parents Matter," *American Sociological Review* 66 (2001): 174, 179; Nanette K. Gartrell, Henny M. W. Bos and Naomi G. Goldberg, "Adolescents of the U.S. National Longitudinal

Lesbian Family Study: Sexual Orientation, Sexual Behavior, and Sexual Risk Exposure" *Archive of Sexual Behavior*, 40 (2011):1199-1209, p. 1205. This is troubling since adolescents and young adults who adopt the homosexual lifestyle are at increased risk for mental health problems, including major depression, anxiety disorders, conduct disorders, substance dependence, and especially suicidal ideation and suicide attempts. Neil Whitehead, "Homosexuality and Co-Morbidities Research and Therapeutic Implications," *Journal of Human Sexuality* 2 (2010): 125-167) accessed November 2, 2015 from <http://www.scribd.com/doc/115506183/Journal-of-Human-Sexuality-Vol-2#scribd>. Recent studies confirm that children reared by same-sex couples fare worse in a multitude of outcome categories than those reared by heterosexual, married couples. Mark Regnerus, How Different are the Adult Children of Parents who have Same-Sex Relationships? Findings from the New Family Structures Study 41 *Social Science Research* 752 (2012); Daniel Potter, Same-Sex Parent Families and Children's Academic Achievement 74 *Journal of Marriage & Family* 556 (2012).

Research has further shown that children growing up under exposure to the homosexual lifestyle are at a greater risk for being exposed and subjected to mental, physical, and sexual harm. Violence between same-sex partners is two to three times more common than among married heterosexual couples. Gwat Yong Lie and Sabrina Gentlewarrier, "Intimate Violence in Lesbian Relationships: Discussion of Survey Findings and Practice Implications," *Journal of Social Service Research* 15 (1991): 41-59.; D. Island and P. Letellier, *Men Who Beat the Men Who Love Them: Battered Gay Men and Domestic Violence* (New York: Haworth Press, 1991), p. 14.; Lettie L. Lockhart et al., "Letting out the Secret: Violence in Lesbian Relationships," *Journal of Interpersonal Violence* 9 (1994): 469-492.; "Violence Between Intimates," *Bureau of Justice Statistics Selected Findings*, November 1994, p. 2.; *Health Implications Associated With Homosexuality* (Austin: The Medical Institute for Sexual Health, 1999), p. 79. Same-sex partnerships are significantly more prone to dissolution than heterosexual marriages with the average same-sex relationship lasting only two to three years. David P. McWhirter and Andrew M. Mattison, *The Male Couple: How*

Relationships Develop (Englewood Cliffs: Prentice-Hall, 1984), pp. 252-253.; M. Saghir and E. Robins, Male and Female Homosexuality (Baltimore: Williams & Wilkins, 1973), p. 225; L.A. Peplau and H. Amaro, "Understanding Lesbian Relationships," in Homosexuality: Social, Psychological, and Biological Issues, ed. J. Weinrich and W. Paul (Beverly Hills: Sage, 1982).; Schumm, Walter R. (2010) 'Comparative Relationship Stability of Lesbian Mother and Heterosexual Mother Families: A Review of Evidence', Marriage & Family Review, 46:8,299-509.; M. Pollak, "Male Homosexuality," in Western Sexuality: Practice and Precept in Past and Present Times, ed. P. Aries and A. Bejin, translated by Anthony Forster (New York, NY: B. Blackwell, 1985), pp. 40-61, cited by Joseph Nicolosi in Reparative Therapy of Male Homosexuality (Northvale, New Jersey: Jason Aronson Inc., 1991), pp. 124, 125. Homosexual men and women are reported to be promiscuous, with serial sex partners, even within what are loosely-termed "committed relationships." A. P. Bell and M. S. Weinberg, Homosexualities: A Study of Diversity Among Men and Women (New York: Simon and Schuster, 1978), pp. 308, 309; See also A. P. Bell, M. S. Weinberg, and S. K. Hammersmith, Sexual Preference

(Bloomington: Indiana University Press, 1981).; Paul Van de Ven et al., "A Comparative Demographic and Sexual Profile of Older Homosexually Active Men," *Journal of Sex Research* 34 (1997): 354.; A. A. Deenen, "Intimacy and Sexuality in Gay Male Couples," *Archives of Sexual Behavior*, 23 (1994): 421-431.; "Sex Survey Results," *Genre* (October 1996), quoted in "Survey Finds 40 percent of Gay Men Have Had More Than 40 Sex Partners," *Lambda Report*, January 1998, p. 20.; Marie Xiridou, et al., "The Contribution of Steady and Casual Partnerships to the Incidence of HIV infection among Homosexual Men in Amsterdam," *AIDS* 17 (2003): 1029-1038. [Note: one of the findings of this recent study is that those classified as being in "steady relationships" reported an average of 8 casual partners a year in addition to their partner (p. 1032) Individuals who practice a homosexual lifestyle are more likely than heterosexuals to experience mental illness, A. P. Bell and M. S. Weinberg, *Homosexualities: A Study of Diversity Among Men and Women* (New York: Simon and Schuster, 1978), pp. 308, 309; See also A. P. Bell, M. S. Weinberg, and S. K. Hammersmith, *Sexual Preference* (Bloomington: Indiana University Press, 1981).; An

Ethnographic Study of Health Care Expectations," *Nursing Research* 43 (1994): 238-244.) suicidal tendencies, (R. Herrell et al., "Sexual Orientation and Suicidality, Co-twin Study in Adult Men," *Archives of General Psychiatry* 56 (1999): 867-874.; Vickie M. Mays, et al., "Risk of Psychiatric Disorders among Individuals Reporting Same-sex Sexual Partners in the National Comorbidity Survey," *American Journal of Public Health*, vol. 91 (June 2001): 933-939.) and shortened life spans. Robert S. Hogg et al., "Modeling the Impact of HIV Disease on Mortality in Gay and Bisexual Men," *International Journal of Epidemiology* 26 (1997): 657. Although some would claim that these dysfunctions are a result of societal pressures in America, the same dysfunctions exist at inordinately high levels among homosexuals in cultures where the practice is more widely accepted. Sandfort, T.G.M.; de Graaf, R.; Bijl, R.V.; Schnabel. Same-sex sexual behavior and psychiatric disorders. *Arch. Gen. Psychiatry*. 58 (2001): 85-91.

"If the roster of harm denial [/no difference] studies ever reflected the true state of knowledge in the study of same-sex parenting, it emphatically does so no longer. The longer social scientists study the question, the more

evidence of harm is found, and the fact that children with same-sex parents suffer significant harm in that condition, compared to children with opposite-sex parents, particularly among same-sex parents who identify as married, has been established beyond reasonable doubt.” American College of Pediatricians Brief in Obergefell v. Hodges at 46.

When considering the current research on various family structures, it is assumed that this Court will agree that having both a father and a mother is unequivocally optimal for the well-being and future success of a child. While there is a lack of conclusive research addressing children who have grown up under the rainbow, the current trajectory of relevant studies predicts a growing black cloud of difficulty for those children who are deliberately deprived of either the father or the mother so crucial to their societal well-being. This Court should take care that innocent and helpless Alabama children are not sacrificed on the altar of adult passions, judicial will, or politically correct opinion. Children possess an inherent human dignity. They are not laboratory rats, upon whom the state or federal courts can force a novel social experiment

that only promises them higher chances of failure,
confusion, and harm.

III. THIS COURT SHOULD CONSIDER THAT THE RESEARCH CLAIMING CHILDREN ARE UNAFFECTED BY SAME-SEX PARENTING IS A PRODUCT, NOT OF OBJECTIVE SCIENTIFIC INQUIRY, BUT OF INTENSE POLITICIZATION OF RESEARCH AGENDAS IN SOCIAL SCIENCE ASSOCIATIONS

Proponents of same-sex marriage and parenting boast a "consensus" of research that shows "no difference" in the outcomes of children based on whether or not they grew up with their biological father and mother or with two same-sex "parents". Such sentiments are trumpeted daily in the media and never fail to find a prominent place in briefs submitted to courts across this country. Not only are such statements false, they are the result of a biased political agenda that sidesteps objective scientific research.

A. Research Claiming that Children are Unaffected and Unharmed by Same-Sex Parenting Has Methodological Flaws

In 2004, the American Psychological Association (APA) wrote a summary of the studies related to same-sex parenting: "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." American

Psychological Association, "Sexual Orientation, Parents, and Children," July 28 and 30, 2004, <http://www.apa.org/about/policy/parenting.aspx> [accessed October 22, 2015]. Quotes and "conclusions" from this statement have appeared multiple times in the press and in briefs submitted to the Supreme Court of the United States throughout the past decade, most recently in Obergefell v. Hodges Brief of the American Psychological Association, Kentucky Psychological Association, Ohio Psychological Association, American Psychiatric Association, American Academy of Pediatrics, American Association for Marriage and Family Therapy, Michigan Association for Marriage and Family Therapy, National Association of Social Workers, National Association of Social Workers Tennessee Chapter, National Association of Social Workers Michigan Chapter, National Association of Social Workers Kentucky Chapter, National Association of Social Workers Ohio Chapter, American Psychoanalytic Association, American Academy of Family Physicians, and American Medical Association as Amici Curiae in Support of Petitioners, *Obergefell v. Hodges* (6th Cir. 2015), <http://www.apa.org/about/offices/ogc/amicus/obergefel>

l-supreme-court.pdf (accessed October 22, 2015). with a curious neglect as to the merits of the studies themselves.

Rigorous scientific research is generally understood to include three main components: a blind experiment, on a representative sample, using a statistically powerful hypothesis test. The early studies relied upon by the APA all lack one of the three criteria and most of them lack all three. Loren Marks, "Same-Sex Parenting and Children's Outcomes: A Closer Examination of the American Psychological Association's Brief on Lesbian and Gay Parenting," *Social Science Research*, Vol. 41, No. 4 (July 2012), pp. 735-751, <http://www.sciencedirect.com/science/article/pii/S0049089X12000580> (accessed October 22, 2015).

The studies cited by APA have been critically analyzed by social science experts and have been found to suffer from a host of flaws, including insufficient sample sizes, Norval D. Glenn, *The Struggle for Same Sex Marriage*, 41 *Soc'y* 25, 26-27 (2004); Ellen C. Perrin et al., *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341, 343 (2002); Walter R. Schumm, *What Was*

Really Learned from Tasker and Golombok's (1995) Study of Lesbian and Single Parent Mothers?, 94 Psychol. Rep. 422, 423 (2004) self-selecting participants, George W. Dent, Jr., *No Difference?: An Analysis of Same-Sex Parenting* (May 20, 2011), Ave Maria L. Rev., Forthcoming: Case Legal Studies Research Paper No. 2011-11, at 2-3, available at <http://ssrn.com/abstract=1848184>) , premature conclusions based upon one-time self-reported snapshots rather than sustained temporal monitoring, Robert Lerner & Althea K. Nagai, *No Basis: What the Studies Don't Tell us About Same-Sex Parenting*, Washington DC: Marriage Law Project 6 (2001) at 6, failure to control for pertinent variables, a paucity of studies looking at gay fathers (*Id.* at 29-34), and politicized methodology that casts doubt on the validity of the conclusions presented by those who authored or managed the studies. Fiona Tasker, *Lesbian Mothers, Gay Fathers and Their Children; A Review*, 26 Dev. & Behav. Pediatrics 224, 225 (2005).

The various studies that formed the basis for APA's 2004 statement simply fail to pass the test of rigorous scrutiny and have been found to contain significant shortcomings

that only discredit the research and the ability of the APA to analyze that research.

While it is true that no study is purely objective and that critics of every study will no doubt find flaws in the research, to make the remarkable claim that the research on the question of same-sex parenting has terminated in a "consensus," see Brief of Amicus Curiae American Sociological Association in Support of Petitioners 2 (Obergefell v. Hodges) "that children raised by same-sex parents fare just as well as children raised by different-sex parents," does not reflect the actual state of research in this area. These studies have, in fact, proven nothing except that in the name of "scientific research" misleading data can rapidly delude the public and the judiciary, expediting the plunge of an entire nation into a dangerous and novel social experiment. Perhaps this was the idea?

B. Research Claiming that Children are Unaffected and Unharmed by Same-Sex Parenting Has Been Politicized

. Dr. Nicholas Cummings, past-President of the American Psychological Association, documents a radically liberal political bias within the field of Mental Health since 1974, particularly with regard to homosexuality. [DESTRUCTIVE TRENDS IN MENTAL HEALTH: THE WELL-INTENTIONED PATH TO HARM. eds: R. Wright & N. A. Cummings ed., (2005) p. xv] The severity of this bias is blatantly displayed in the APA Guidelines for the Prevention of Homophobic Research. These guidelines were drafted by the APA's

Task Force on Non-Homophobic Research established in 1985 by the APA's Committee on Lesbian, Gay and Bisexual Concerns. . This committee produced a shockingly close-minded set of guidelines on avoiding research determined to be "heterosexist" - "conceptualizing human experience in strictly heterosexual terms and consequently ignoring, invalidating, or derogating homosexual behaviors and sexual orientation, and lesbian, gay, and bisexual relationships and lifestyles." Gregory M Herek & Douglas C Kimmel, Avoiding Heterosexist Bias in Psychological Research, 46

THE AMERICAN PSYCHOLOGIST 957, 957 (1991). The guidelines are prominently displayed on the APA website:

<http://www.apa.org/pi/lgbt/resources/policy/index.aspx>

(Accessed October 27, 2015). Some may deem such a goal laudable, but, political or social predispositions should never be lauded to the extent that the objective pursuit of knowledge becomes unavoidably biased - which is exactly what happened.

In practice, the LGB Concerns Committee has consistently rejected as "heterosexist" any research using married, biological parents as a comparison group. Such a restriction eliminates the most widely observed cause of differences in child outcomes, and relativizes family structure *a priori*. When same-sex couples, as a group, are compared to opposite-sex couples as a group - lumping together married, divorced, cohabiting, step-families, and often even single parents - most differences between the groups pertinent to the question of marriage are blurred. Yet, this has become APA policy and practice.

Additionally, studies contrary to the predetermined outcome have been excluded, ignored, or marginalized. Dr.

Mark Regnerus's aforementioned study employed strong data and sound scientific research and found negative outcomes among children with parents who have been in a same-sex relationship. See Mark Regnerus, *How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study*, 41 *Social Science Research* 752 (2012). "Both Regnerus and the journal editor were widely vilified by scholars." American College of Pediatricians Brief in Obergefell v. Hodges at 9. <http://www.acped.org/wordpress/wp-content/uploads/Amici-Brief-FINAL.pdf>) Dr. Regnerus and the journal editor received a barrage of responses that were not "the measured, thoughtful response[s] of scientists encountering a contrary finding, but of ideologues repudiating a doctrinal heresy." (*Id.* at 10) Considering their stated predispositions, it is no wonder that the APA and ASA attempted to discredit such research. A response to their opposition was effectively and thoroughly addressed in a brief submitted by the American College of Pediatricians to the Supreme Court of the United States in Obergefell v. Hodges. *Id.* at 20-29

(<http://www.acped.s.org/wordpress/wp-content/uploads/Amici-Brief-FINAL.pdf>).

Notwithstanding the Regnerus, Allen, and Sullins studies (to name a few), the APA continues to claim a research monopoly and "consensus" on this issue: "Not a single study has found children of lesbian or gay parents to be disadvantaged..." Patterson, Charlotte, Lesbian and Gay Parenting (1999) at 15. Such results and statements are not a result of disinterested science or academic precision; rather, much like the majority opinion in Obergefell, they are the imposition of political will on an otherwise open discussion.

IV. THIS COURT SHOULD CONSIDER THAT OBERGEFELL DELIBERATELY AND INTENTIONALLY DEPRIVES CHILDREN OF EITHER THE MOTHER OR THE FATHER SO ESSENTIAL TO THEIR WELL-BEING

A recent statement published by renowned legal scholars from across the country and encouraging constitutional resistance to Obergefell echoed the current sentiment of the American College of Pediatricians: "If Obergefell is accepted as binding law...society will be harmed by being denied the right to hold out as normative, and particularly desirable, the only type of human relationship that every

society must cultivate for its perpetuation. This compelling interest is strengthened by the fact that there is strong evidence to support what common sense suggests, namely, that children fare best when raised by their married mother and father who are both responsible for bringing them into the world and who provide maternal and paternal influences and care." American Principles Project, Statement Calling for Constitutional Resistance to Obergefell v. Hodges. (2015)

<https://americanprinciplesproject.org/founding-principles/statement-calling-for-constitutional-resistance-to-obergefell-v-hodges%E2%80%AF/>

Accepting Obergefell v. Hodges as legitimate policy would deliberately deprive children of the mother and the father so essential - not only to their conception - but to their well-being. It would intentionally subject children to an unnatural environment that only promises greater risk of failure, confusion, and harm. This is no policy at all - only confused perversion of policy and justice. Policy making is not within the purview of the judicial branch.

V. THIS COURT SHOULD CONSIDER THAT THERE IS LEGAL AND CONSTITUTIONAL RECOURSE SUPPORTING THEIR DUTY TO RESIST OBERGEFELL

As this Court considers the information contained in this brief, there is no doubt that resisting the implementation of the majority's reasoning (or lack thereof) in Obergefell will be the desire of all who want to see the marriage relationship preserved and children protected. Gratefully, this Court can base that desired resistance upon the rule of law, unlike the majority in Obergefell who imposed their desire to ignore these ideas without "even a thin veneer of law" (Obergefell v. Hodges, 2015 WL 2473451, at 4 (2015) (Scalia, J., dissenting) and with supposed "law" that had "nothing to do with [the Constitution]." *Id.* at 29. (Roberts, C.J., dissenting).

A. Foundations of American Jurisprudence

It is not beyond the scope of this Court to acknowledge the moral foundation of God's law when considering the institution of marriage: "But from the beginning of creation, 'God made them male and female.' 'Therefore a man shall leave his father and mother and hold fast to his wife, and the two shall become one flesh.' So they are no

longer two but one flesh. What therefore God has joined together, let not man separate." Holy Bible, English Standard Version (ESV) Mark 10:6-8

It has long been established that an essential cornerstone of American jurisprudence and constitutional interpretation is an acknowledgement of a higher law and the moral code given by the Judeo-Christian God of the Bible. The Declaration of Independence, part of the organic law of our nation, acknowledges the facts that our rights come from God and that the "laws of Nature and of Nature's God" laid the groundwork for the independent nation and constitutional republic that America would become. See Declaration of Independence, US, 1776.

It is also recognized across this nation, and specifically by the State of Alabama, that America's common law tradition finds its basis in English common law, "The common law of England, so far as it is not inconsistent with the Constitution, laws and institutions of this state, shall, together with such institutions and laws, be the rule of decisions, and shall continue in force, except as from time to time it may be altered or repealed by the

Legislature." (Ala. Code 1-3-1) English jurist, William Blackstone in his Commentaries on the Laws of England wrote, "This law of nature, being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original. (Blackstone, Commentaries on the Laws of England, Intro:2.41) He continued, "Upon these two foundations, the law of nature and the law of revelation depend all human laws; that is to say, no human laws should be suffered to contradict these." *Id.*

The founders of our nation never contradicted this premise. "[Freedoms] may be best understood by reading and carefully studying the institutes of the great Law Giver and Head of the Christian Church, which are to be found clearly written and promulgated in the New Testament." (Samuel Adams "Rights of Colonists as Christians") "Can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of

the people that these liberties are of the gift of God? That they are not to be violated but with his wrath?" (Thomas Jefferson, Notes on the State of Virginia) "While we are contending for our own Liberty, we should be very cautious of violating the Rights of Conscience in others, ever considering that God alone is the Judge of the Hearts of Men, and to him only in this Case, they are answerable." (George Washington, Letter to Benedict Arnold, September 17, 1775) "The knowledge of God and his truths have from the beginning of the world been chiefly, if not entirely confined to those parts of the earth where some degree of liberty and political justice were to be seen, and great were the difficulties with which they had to struggle, from the imperfection of human society, and the unjust decisions of usurped authority." (John Witherspoon)

It was upon this foundation that the Constitution of the United States was crafted and it is upon this foundation that the concept of a constitutional republic that thrives under the rule of law will be restored before being buried in the ashes of the whims and wills of men and women.

B. The Supremacy of the U.S. Constitution

This Court should be reminded that the Supreme Court of the United States is a Court of limited jurisdiction (see U.S. Const, Art. III) whose interpretive exercise of that jurisdiction cannot be read to "discover" a right to redefine marriage for all fifty states in a broken-down penumbra of Amendment 14. This Court should also be reminded that the Constitution of the United States is the "supreme law of the land" and is never trumped by an opinion that ignores the text, structure, and delegated jurisdictions of that document.

The Constitution of the United States limits the scope of the federal judiciary to "all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--

between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects. (U.S. Const., Art. III, Sect. II)

The power and jurisdiction of the Supreme Court of the United States is limited by the Constitution of the United States which is the "supreme law of the land."

"This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." U.S. Const. Art. VI, § II.

The supremacy of the Constitution of the United States is established by the document itself in the "Supremacy Clause" and this principle was affirmed by the Supreme Court of the United States in Marbury v. Madison:

"It is also not entirely unworthy of observation that, in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned, and not the laws

of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank. Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument." Marbury v. Madison 5 U.S. 137 at 180.

<https://www.law.cornell.edu/supremecourt/text/5/137>

The Constitution of the United States also limits the scope of the federal government to matters specifically delegated to them by the Constitution. The Constitution of the United States contains an enumeration of powers expressly granted by the people to the federal government and power to craft or tamper with marriage and family policy is not included in that delegation. See U.S. Const. Art. I §8. Pursuant to the Tenth Amendment, marriage and family policy falls under the purview of the states.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are

reserved to the States respectively, or to the people.”

(U.S. Const. Amend. X)

Alabama Constitution

The principle enshrined in the Tenth Amendment was recognized by the Supreme Court of the United States just two years ago in United States v. Windsor: “[b]y history and tradition,’ and one should add, by the text of the Constitution, ‘the definition and regulation of marriage ... has been treated as being within the authority and realm of the separate States.’ _____ U.S. at _____, 133 S. Ct. at 2689-90.” Petition for Writ of Mandamus at 132, Ex parte State ex rel. Alabama Policy Institute, _____ So. 3d _____ (Ala. 2015) (No.1140460). Windsor purported to strike down two sections of the Defense of Marriage Act (DOMA) but, correctly maintained that states retain authority over marriage and family policy. This Court correctly recognized that, “this fact does not change simply because the new definition of marriage has gained ascendancy in certain quarters of the country, even if one of those quarters is the federal judiciary.” *Id.* at 132.

It has been brought to the attention of this Court numerous times that Alabama's Sanctity of Marriage Amendment reads: "Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting this unique relationship in order to promote, among other goals, the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state." Ala. Const. Amend. 774. § B. That Amendment was approved in 2006 by an 81% margin of Alabama voters. There has yet been no law - enacted by Congress or the Alabama Legislature to overturn or nullify that Amendment.

"As it has done for approximately two centuries, Alabama law allows for 'marriage' between only one man and one woman. Alabama probate judges have a ministerial duty not to issue any marriage license contrary to this law. Nothing in the United States Constitution alters or overrides this duty." at 133, *Ex parte State ex rel. Alabama Policy Institute*, ___ So. 3d ___ (Ala. 2015) (No.1140460). There has been neither legislation nor a

legitimate opinion that affects the efficacy of these statements from this Court.

C. Wisconsin Supreme Court Precedent

As this Court has been informed, see Brief of Liberty Counsel, Addressing Effect of Obergefell v. Hodges (<https://www.liberty.edu/media/9980/attachments/2015/070715> - Brief - [Addressing Effect of Obergefell \(as filed 07062015\).pdf](#) (Accessed October 27, 2015). The Wisconsin Supreme Court acted to defend and restore the principles outlined above when those principles were challenged on a national level by the opinion of the Supreme Court of the United States in Dred Scott.

"In holding the detention of Booth illegal, Justice Smith did not espouse rejection of federal authority *per se*; rather he espoused rejection of the exercise of federal authority which is unlawful under the United States Constitution:

'The constitution of the United States is the fundamental law of the land. It emanated from the very source of sovereignty as the same is recognized in this country. It is the work of our fathers, but adopted and perpetuated by all the people, through their respective state organizations, and thus becomes our own...He has, by his vote, mediate or immediate, established it as the great charter of his rights, and by which all agents or representatives in the conduct of the government, are required to square their

actions. By the standard of the constitution, he has a right to judge of the acts of every officer or body whose existence as such is provided for by it.

I recognize most fully the right of every citizen to try every enactment of the of the legislature, every decree or judgment of a court, and every proceeding of the executive or ministerial department, by the written, fundamental law of the land. ... [N]o law is so sacred, no officer so high, no power so vast, that the line and the rule of the constitution may not be applied to them. It is the source of all law, the

limit of all authority, the primary rule of all conduct, private as well as official, and the citadel of personal security and liberty.' (*Booth I*, 3 Wis. At 13)" Liberty Counsel Brief at 20 and 21.

Liberty Counsel also noted that Justice Smith

"recognized that state judges are duty bound to resist unconstitutional federal usurpations of authority by their solemn oath to their states" and one might add, to the United States Constitution. Liberty Counsel Brief at 21.

This Court should recognize the remarkable case before them as their Booth moment to acknowledge the supremacy of the Constitution and refuse to accept an opinion that ranks with Dred Scott in repugnance to nature and law.

D. Statement from Scholars

Such a sentiment was recently encouraged by over sixty respected legal scholars from a broad range of academic

institutions: “[Any decision] lacking anything remotely resembling a warrant in the text, logic, structure, or original understanding of the Constitution must be judged anti-constitutional and illegitimate. Obergefell should be declared to be such, and treated as such, by the other branches of government and by citizens of the United States.” (Statement Calling for Constitutional Resistance to *Obergefell v. Hodges*, available at <https://americanprinciplesproject.org/founding-principles/statement-calling-for-constitutional-resistance-to-obergefell-v-hodges> / (Accessed on October 23, 2015.))

The statement further reminded “all officeholders in the United States that they are pledged to uphold the Constitution of the United States, not the will of five members of the Supreme Court.” It further called on “all federal and state officeholders to refuse to accept *Obergefell* as binding precedent for all but the specific plaintiffs in that case”, to “recognize the authority of the states to define marriage, and the right of federal and state officeholders to act in accordance with those definitions,” and concluded by stating, that “the proper understanding and definition of marriage is self-evidently

a vital question affecting the whole people. To treat as 'settled' and 'the law of the land' the decision of five Supreme Court justices who, by their own admission, can find no warrant for their ruling in the text, logic, structure, or original understanding of the Constitution, would indeed be to resign our government into the hands of that eminent tribunal. That is something that no citizen or statesman who wishes to sustain the great experiment in ordered liberty bequeathed to us by our Founding Fathers should be willing to do." (Statement Calling for Constitutional Resistance to Obergefell v. Hodges, available at <https://americanprinciplesproject.org/founding-principles/statement-calling-for-constitutional-resistance-to-obergefell-v-hodges> / (Accessed on October 23, 2015.)

CONCLUSION

Substantive evidence for the necessity of preserving natural marriage, the family, and the rule of law has been brought to the attention of this Court through various briefs, motions, and petitions in API. The College has outlined for this Court evidence from large, nationally-

representative studies demonstrating that children raised by same-sex parents, particularly those who identify as married, do not fare as well as those with opposite-sex parents, and many experience substantial harm. It has further warned this Court that research claiming "no difference" between children raised by a parent and their same-sex partner and children raised by a biological mother and father has methodological flaws and has been subject to bias and politicization of research criteria.

For these reasons, among others, Alabama law restricting marriage to opposite sex partners has a rational basis. Accepting Obergefell v. Hodges as legitimate policy would deliberately deprive children of the mother and the father so essential - not only to their conception - but to their well-being. It would intentionally place children in an unnatural environment that has only proven to insure a greater chance of failure, confusion, and harm. It would further acknowledge a falsehood about the jurisdiction of the judicial branch.

Gratefully, there is legal, constitutional, and historical recourse to address the social injustice and

constitutional travesty outlined in Obergefell. The unassailable forces of God, truth, nature, reason, millennia, social science, English and American common law precedent, the Constitution of the United States, the Alabama Constitution, and conscience unite as witnesses against the majority opinion in Obergefell. It remains only for this Court to join them; the immutable nature of marriage, the protection of Alabama's children, and the welfare and continuity of society demand it.

Dated: November 6, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November, 2015, I electronically filed the foregoing motion, with its accompanying *amicus* brief, with the Clerk of the Supreme Court of Alabama using the ACIS filing system, and will mail hard copies of the Motion and Brief to the following:

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