IN THE SUPREME COURT OF IOWA

Supreme Court Case No. 07-1499

KATHERINE VARNUM, et al.

Plaintiffs-Appellees,

v.

TIMOTHY J. BRIEN, in his official capacities as the Polk County Recorder and Polk County Registrar,

Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
THE HONORABLE ROBERT B. HANSON

BRIEF OF AMICI CURIAE THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, THE NATIONAL ASSOCIATION OF SOCIAL WORKERS – IOWA CHAPTER, YOUTH AND SHELTER SERVICES, and MIDDLETON CENTER FOR CHILDREN'S RIGHTS AT DRAKE UNIVERSITY LAW SCHOOL

In Support of Plaintiffs-Appellees

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I. INTERESTS OF AMICI CURIAE

Amicus National Association of Social Workers ("NASW") was established in 1955 as a non-profit professional association dedicated to the practice and interests of the social work profession. It is the largest social work association in the world, with 145,000 members in fifty-six chapters across the U.S. and internationally. The NASW – Iowa Chapter has 1,079 members.

In furtherance of its purposes to develop and disseminate high standards of social work practice, NASW promulgates professional standards and criteria, conducts research, publishes studies of interest to the profession, provides continuing education, and enforces the NASW Code of Ethics. NASW's family policy recognizes that gay and lesbian people are a part of existing families and provide important caregiving to children, as well as other family members. The policy further identifies discrimination against lesbian and gay parents as undermining the survival of their families.

Consistent with the NASW Code of Ethics and NASW national policies, the NASW – Iowa Chapter issued a Position Statement in 2008 advocating that same-sex couples be allowed to marry and receive all the accompanying rights, privileges and protections. The Position Statement enumerates the various benefits and protections available exclusively through marriage, including those enjoyed only by children whose parents are allowed to marry.

Amicus Youth and Shelter Services ("YSS") was formed in 1976 to meet the needs of runaways and homeless youth in central Iowa. Since that time, YSS has grown to nineteen facilities and serves youth and families throughout the State. YSS provides a wide range of services, including prevention and

education programs, homeless shelters for youth, crisis intervention, family counseling, chemical dependency treatment, and foster care and adoption services. YSS recently received the Aurora Outstanding Non-Profit Award from the Des Moines Register.

Amicus Middleton Center for Children's Rights at Drake University Law School (the "Center") was established to advance children's rights. The Center has four components: the legal process; multi-disciplinary training; public information; and public policy formation. Through the Center, law school students provide legal services to children in the juvenile court system. As part of its training effort, the Center trains attorneys, judges, social workers, teachers, and other professionals working in the juvenile justice system. The Center also compiles information regarding children in families in need of assistance. In 2003, the Center implemented a new program to improve legislation affecting children. Through this program, law school students identify issues, draft legislation, and work with lobbyists to pass the legislation.

Amici NASW, NASW – Iowa Chapter, YSS, and the Middleton Center for Children's Rights are devoted to the improvement of child and family welfare. As such, Amici have a strong interest in promoting the welfare of all children in Iowa, including children raised by same-sex couples.

II. PRELIMINARY STATEMENT

Amici respectfully submit this brief on behalf of the interest of children, including children whose same-sex parents are barred from marriage by section 595.2(1). This brief focuses on three issues. First, section 5.95.2(1) fails the rational basis test on a number of grounds, not the least of which is that it fails to

protect the interests of children whose parents are in a same-sex relationship. Second, the district court properly admitted into evidence reliable expert testimony based on established social science and excluded evidence which was not reliable. Finally, based on the admitted evidence, and consistent with the findings of other courts and established research, the district court properly found that children of same-sex couples would benefit from the marriage of their parents.

III. ARGUMENT

A. In evaluating the constitutional challenge to Iowa Code § 595.2(1), the Court must consider and protect the interests of children of same-sex couples, as well as the interests of children of opposite-sex couples.

Defendant asserts, and the district court accepted for purposes of its summary judgment analysis, that the State of Iowa has a legitimate interest in promoting procreation, child rearing by a father and mother in a marriage relationship, and stability of opposite-sex relationships that may bear children. Ruling on Pls.' and Def.'s Mots. for Summ. J. ("Ruling") at 50. Defendant contends that the statutory ban on same-sex marriage imposed by section 595.2 of the Iowa Code is rationally related to these three interests, which the district court grouped under the category of "responsible procreation." Id. at 51. The district court disagreed and held that section 595.2 was not rationally related to such interests. Id. at 60, 61. Amici urge the Court to affirm the district court's conclusion that section 595.2(1) is not rationally related to the asserted State interests because (1) children of same-sex couples are significantly harmed by the denial of marriage rights to their parents, and (2) prohibiting same-sex

couples from marrying will not promote the asserted State interests.[1]

In deciding whether section 595.2(1) violates the Equal Protection or Due Process provisions of the Iowa Constitution, the Court must take into account its role of parens patriae because the asserted State interests implicate the best interests of children in Iowa. The Court should examine the challenged statute in light of the best interests of all children in Iowa, not merely children of opposite-sex parents, as Defendant has urged.

As more fully discussed below, the social science evidence relied on by the district court, and by other courts in this country, overwhelmingly demonstrates that (1) children in households with same-sex parents form loving, familial bonds like those between opposite-sex parents and their children; (2) the gender or sexual orientation of parents does not affect child development or whether a child is well-adjusted; and (3) children of same-sex couples would benefit from stable, married households in the same way as children of opposite-sex married parents. Thus, section 595.2(1) is unconstitutional because a statute that purports to safeguard the well-being of children and promote their upbringing in stable environments by parents in long-term, committed relationships cannot be rational when it withholds those same benefits from an

[1] Amici take no position in this brief on the issue of whether heightened scrutiny should be applied to Plaintiffs' claims. As demonstrated herein, even if rational basis is applied, section 595.2(1) is unconstitutional. See Romer v. Evans, 517 U.S. 620, 633 (1996) (stating that a rational basis test must ensure that classifications are not drawn to disadvantage the group that is burdened by the law). It should be noted, however, that under federal equal protection standards, differential treatment of children based upon their parents' unmarried status triggers heightened scrutiny, under which the State must show at least that the classification is substantially related to an important and legitimate State interest. See Pickett v. Brown, 462 U.S. 1, 8 (1983).

entire segment of children on the basis of their parents' sexual orientation.

1. Iowa courts are uniquely positioned to protect the interests of children, and have a duty to protect all children in the State.

Iowa courts have long played a critical role in preserving and protecting the interests of Iowa's children. See Helton v. Crawley, 41 N.W.2d 60, 71 (Iowa 1950). State statutes and the common law doctrine of parens patriae require courts to determine what is in the best interests of children when adjudicating a variety of matters, including adoption, divorce, custody, and child support. See, e.g., In re Marriage of Hansen, 733 N.W.2d 683, 700 (Iowa 2007) (applying statutory authority to determine child custody); Hodson v. Moore, 464 N.W.2d 699, 700 (Iowa Ct. App. 1990) (court granted lesbian mother joint custody, noting that the "critical issue in determining the best interest of the child is which parent will do better in raising the child; gender is irrelevant"); Schott v. Schott, 744 N.W.2d 85, 88-89 (Iowa 2005) (applying statutory authority to determine best interests of adoptees).

State courts have recognized their obligation to vigilantly protect children's interests even in the face of contrary pronouncements from other branches of government. See, e.g., In the Interest of K.C., 660 N.W.2d 29, 34-35 (Iowa 2003) (juvenile court has obligation to act in the best interests of the child even where executive branch has exercised its authority to act).

2. When the interests of the children of same-sex couples are considered, section 595.2(1) clearly is not rationally related to providing support for the State's children.

Section 595.2(1) places children of same-sex couples at a severe disadvantage because it denies those children the legal, economic, and

psychological benefits that are enjoyed by children of married couples and places a state-sanctioned badge of inequality on the households where those children live. By protecting only some of Iowa's children but refusing to protect others, section 595.2(1) fails the rational basis test. See Lewis v. Harris, 908 A.2d 196, 218 (N.J. 2006) ("There is no rational basis for visiting on those children a flawed and unfair scheme directed at their parents. To the extent that families are strengthened by encouraging monogamous relationships, whether heterosexual or homosexual, we cannot discern any public need that would justify the legal disabilities that now afflict same-sex domestic partnerships."); Goodridge v. Massachusetts, 798 N.E.2d 941, 964 (Mass. 2003) ("It cannot be rational under our laws, and indeed it is not permitted, to penalize children by depriving them of State benefits because the State disapproves of their parents' sexual orientation."); see also Baker v. Vermont, 744 A.2d 864, 882 (Vt. 1999) ("If anything, the exclusion of same-sex couples from the legal protections incident to marriage exposes their children to the precise risks that the State argues the marriage laws are designed to secure against") (emphasis in original). Furthermore, there is no rational basis for the conclusion that opposite-sex couples will be encouraged to marry and procreate because same-sex couples are denied the right to marry.

(a) Section 595.2(1) cannot pass the rational basis test because it protects some children while directly harming others.

Same-sex couples in Iowa are foster parents and also raise children who were either conceived by one of the partners in the relationship or were adopted. Ruling at 16-18. It is wholly irrational for the State to enact a law that is intended to promote child-rearing in a married household yet denies the right to marry to an

entire class of couples who have children. Ruling at 59-60. Denying marriage rights to same-sex couples deprives the children of these couples the protections and added stability of the institution of marriage. If the State truly desires to promote procreation and child rearing only within a marital environment, the right to marry should extend to same-sex parents. Indeed, the willingness of same-sex couples to invest the time, money, and energy needed to have children of their own by employing alternative means of conception demonstrates that they are the type of stable and committed parents that the State seeks to support. Accordingly, the district court properly exercised its authority as guardian of the interests of all of the State's children, including those with same-sex parents. Ruling at 46-47, 49.

(b) Prohibiting same-sex couples from marrying has not promoted "responsible procreation" among opposite-sex couples.

Excluding same-sex couples from marriage will not advance the interests of opposite-sex couples or their children and will not encourage opposite-sex couples to marry and have children. Section 595.2(1) has no effect on opposite-sex couples one way or another, and it certainly does not prevent opposite-sex couples from having children, planned or unplanned, outside the State's "ideal" setting of stable opposite-sex marriages. See Lawrence B. Finer & Stanley K. Henshaw, Disparities in Rates of Unintended Pregnancy in the United States, 1994 and 2001, 38 PERSPS. ON SEXUAL & REPRO. HEALTH 90, 93 (June 2006) (approximately 75 percent of pregnancies among women who have never married were unplanned). Nor has Defendant demonstrated how the ban on same-sex marriage encourages opposite-sex couples, more than before, to have children within a marital relationship.

Research has found little or no correlation between unintended pregnancy and marriage. Rather, the prevailing research shows a causal link between unintended pregnancies and social and cultural factors such as poverty. See Dep't of Health & Human Servs., Center for Disease Control and Prevention, Pregnancy Risk Assessment Monitoring Systems (PRAMS): PRAMS and Unintended Pregnancy 3, http://www.cdc.gov/PRAMS/UP.htm (last modified Apr. 17, 2006). Research also has found "government policies that promote marriage for unwed mothers as a way to boost disadvantaged women out of poverty and off welfare are likely to have mixed results at best." See Ohio State Research Commc'ns, Government's Marriage Promotion Policies Likely to Fall Short Without Emphasis on Reducing Unwed Childbearing, Study Suggests, para. 1, http://researchnews.osu.edu/archive/promarry.htm (last updated May 5, 2003). The same research has shown that hasty marriages motivated by unplanned pregnancy are highly unstable and have divorce rates well above the national average. Id., para. 12.

Moreover, section 595.2(1) does not advance "responsible procreation" because childless opposite-sex couples and couples who are incapable of reproduction due to age or infertility are not barred from marriage. Similarly, opposite-sex couples who choose not to procreate are not barred from marriage. Accordingly, the Court should affirm the district court's finding that section 595.2(1) is unconstitutionally overinclusive. Ruling at 56.

Defendant also claims that the ban on same-sex marriage is rationally related to "responsible procreation" because only opposite-sex couples can conceive accidentally, and such unplanned children are more likely to be raised in

unstable environments and, therefore, have greater need for State protection. This argument fails, however, because there is no conceivable set of facts under which the care received by accidentally conceived children would be improved by denying same-sex couples the right to marry. In addition, there is no rational basis to favor unplanned children to the detriment of planned children of same-sex couples.

Finally, Defendant contends that the State has an interest in "children being raised by their biological parents" and seeing "living models of what both a man and woman are like." Proof Br. of Defendant-Appellant at 38. This argument is akin to the "moral disapproval" argument that the district court properly rejected as unconstitutional. Ruling at 52-53. This argument also should be rejected for at least three additional reasons. First, it directly contradicts the State's long-standing recognition that biology alone is not the harbinger of good parenting. For example, Iowa Code § 600.4 provides for the adoption of children by unmarried adults who are not biologically related to the child. Second, the argument ignores the fact that many children of same-sex couples, including those of some of the Plaintiffs, are biologically related to one of their parents. See Ruling at 16-18. Finally, the U.S. Supreme Court has held that laws which attempt to dictate which family living arrangements are appropriate are unconstitutional. See Moore v. City of East Cleveland, 431 U.S. 494, 506 (1977); see also Troxel v. Granville, 530 U.S. 57, 63 (2000) ("The composition of families varies greatly from household to household.").

Defendant has placed at issue the best interests of the State's children. When the Court considers such interests, it should find that section 595.2(1) fails the rational basis test because it denies the children of same-sex couples the

greater stability and legal, economic, psychological, and other benefits enjoyed by the children of married couples.

B. The district court properly admitted reliable expert testimony based on established social science research in its examination of section 595.2(1).

The district court admitted certain expert testimony and excluded other testimony after reviewing the qualifications of the experts and the relationship of the purported expertise to the testimony.[2] Now, on appeal, Defendant and certain amici curiae attack both the expert testimony proffered by Plaintiffs and the underlying social science that supports the testimony. Defendant also suggests that the excluded expert testimony would have created a genuine issue of material fact. Defendant and amici, however, fail to demonstrate that the district court manifestly abused its discretion in admitting Plaintiffs' expert testimony or excluding certain expert testimony offered by Defendant.

1. The district court's rulings on admissibility should not be disturbed absent a manifest abuse of discretion.

In Iowa, determination of the admissibility of expert evidence is left to the discretion of the district court. Leaf v. Goodyear Tire & Rubber Co., 590 N.W.2d 525, 531 (Iowa 1999). Iowa appellate courts will not reverse a district court's admission of expert testimony "absent a manifest abuse of that discretion to the

[2] In several instances, Defendant's objections to testimony offered by Plaintiffs' experts challenged the weight to be given to the testimony, but did not challenge the admissibility of the testimony itself. Admissibility of evidence and the weight to be given to admissible evidence are distinct issues. See, e.g., Williams v. Hedican, 561 N.W.2d 817, 823 (Iowa 1997) ("An expert's lack of absolute certainty goes to the weight of this testimony, not admissibility."); Hunter v. Bd. of Trs. of Broadlawns Med. Ctr., 481 N.W.2d 510, 520 (Iowa 1992) ("Any asserted deficiencies in scope or breadth are considerations that go to the weight of the testimony, not its admissibility.").

prejudice of the complaining party." Id. Deference is afforded to a district court's decisions regarding both acceptance and exclusion of expert evidence. Schlader v. Interstate Power Co., 591 N.W.2d 10, 13-14 (Iowa 1999) (companion case to Leaf). Here, the district court did not abuse its discretion in excluding Defendant's proffered expert testimony.

Expert opinions, including expert opinions in the social sciences, are admissible if they "will assist the trier of fact to understand the evidence or to determine a fact in issue. . . ." Iowa R. Evid. 702. Expert opinion can only be helpful if it meets a threshold level of reliability, "because unreliable evidence cannot assist a trier of fact." Williams, 561 N.W.2d at 823; see also Jenson v. Eveleth Taconite Co., 130 F.3d 1287, 1298 (8th Cir. 1997) (reversing lower court's exclusion of expert testimony by psychologists where the expert opinions were "thoroughly and meticulously presented," arrived at by methodology "laid out clearly" by the witness, and "relevant to the issue before the court").[3] Here, the district court did not accept or reject on a wholesale basis either party's witnesses; rather, the district court appropriately undertook an analysis of the credentials of each proposed witness in light of the subject matter in which each witness was going to offer testimony. The district court's sound discretion should not now be disturbed by the Court.

Defendant makes the novel argument that when constitutional issues are

[3] In Williams, the Court reversed the lower court's exclusion of the plaintiffs' expert witness, and held that the expert's testimony was admissible under Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993), because it was based on a study published in a reputable journal, supported by the expert's experience, and reached through reasoning and methodology based on "scientifically valid principles and therefore sound and reliable . . . evidentiary

involved, the rejection of expert witness' affidavits should be reviewed de novo. Proof Br. of Defendant-Appellant at 44. Not one of the three cases on which Defendant relies discusses the admissibility of evidence, much less the rejection of expert testimony; instead, each stands for the unremarkable proposition that the standard of review of constitutional claims is de novo. See In re Detention of Hodges, 689 N.W.2d 467 (Iowa 2004); Norland v. Grinnell Mut. Reins. Co., 578 N.W.2d 239 (Iowa 1998); Lumbermens Mut. Cas. Co. v. Dep't of Revenue & Fin., 564 N.W.2d 431 (Iowa 1997). Courts only need review the admissibility of evidence de novo where the objection to the admissibility, or lack thereof, is based on an alleged constitutional violation. See State v. Mitchell, 568 N.W.2d 493, 499 (Iowa 1997) (de novo review of district court exclusion of sexually transmitted disease evidence in a sex abuse case to determine if exclusion violated defendant's Sixth Amendment rights); State v. Rains, 574 N.W.2d 904, 912 (Iowa 1998) (admissibility of evidence reviewed for errors of law if based on statute; de novo review for constitutional objections). Here, because Defendant does not claim a constitutional violation with respect to the district court's rulings on the admissibility of the proffered expert testimony, the Court should apply the abuse of discretion standard of Leaf and Schlader.[4]

A similarly misguided effort is made by amicus The National Legal Foundation (the "NLF"), which argues that the Court need not give deference to undisputed material facts because they are nothing more than "ultimate facts" and

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purposes." Williams, 561 N.W.2d at 831.

[4] Even if the Court were to determine otherwise and review de novo the admissibility issue, Amici respectfully submit that the excluded testimony does not meet the admissibility requirements for expert testimony under Iowa law.

sociological judgments, rather than "true facts." Br. Amicus Curiae of the NLF at 3-9. Relying on a vacated case and inapplicable case law mostly from outside of Iowa, NLF argues in disregard of sixty-five years of Iowa case law and the Iowa Rules of Evidence. See id. (citing to Equality Found. v. City of Cincinnati, 54 F.3d 261 (6th Cir. 1995), vacated by 518 U.S. 1001 (1996)). As the Court explained in In re Detention of Palmer, 691 N.W.2d 413, 418 (Iowa 2005), the ultimate issue rule, which prohibits testimony on ultimate issues in a case, was abandoned by the Court in 1942; see Grismore v. Consol. Prods. Co., 5 N.W.2d 646 (Iowa 1942); and that abandonment later was codified in the Iowa Rules of Evidence; see Iowa R. Evid. 704 ("Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." (emphasis added)). Thus, even assuming, arguendo, that any proffered expert testimony contained opinion on the ultimate issues, the district court's admissibility ruling is still entitled to deference.

2. The social science research relied on by the district court meets the standards for admission.

The district court properly considered the admissibility of the testimony regarding social science proffered by Plaintiffs and concluded that the testimony met both the liberal admissibility test of Iowa law and the more stringent test of Daubert.[5] As set forth above, these conclusions are entitled to deference by the Court. Hunter, 481 N.W.2d at 519 ("Rulings on the admission of expert testimony are for the most part committed to the sound discretion of the trial court.").

[5] Under Daubert, courts determining whether to allow an expert to testify to scientific knowledge must assess whether the testimony is based on valid scientific reasoning or methodology. 509 U.S. at 592-93.

As an initial matter, there can be no doubt that reliable social science is properly the subject of expert testimony. Iowa courts routinely have used social science research to assist in their decision-making. See In re Marriage of Hansen, 733 N.W.2d at 693-95 (assessing studies concerning strength of children's "psychological" connection with their natural parents, potential benefits of joint physical care by divorced parents, and potential links between parental contacts and a child's well-being); see also State v. Griffin, 564 N.W.2d 370, 374 (Iowa 1997). In addition, the Court has established various task forces to conduct social science research and advise on legal remedies for various issues. See Final Report of the Equality in the Courts Task Force, State of Iowa (Feb. 1993); Final Report of the Supreme Court Task Force on Courts' and Communities' Response to Domestic Abuse (Aug. 1994); Ensuring Access to Justice for Non-English Speaking Persons in Iowa's Courts (Oct. 8, 2001).

Nor is there serious discussion by Defendant that the testimony of Plaintiffs' experts should not have been admitted. Instead, in an apparent effort to create a genuine issue of material fact, Defendant argues that the district court should have used certain of Defendant's admitted expert testimony to draw into question one piece of research on which one of Plaintiffs' experts relied. See Proof Br. of Defendant-Appellant at 51-52 ("Dr. Quick's direct observations on Dr. Lamb's affidavit certainly demonstrates that Dr. Lamb's reliance on some research is misplaced." (emphasis added)). Even assuming, arguendo, that Dr. Quick's challenge to "some" of the research relied on by Dr. Lamb had merit, Defendant does not identify a single undisputed material fact that would be affected by such a conclusion.

The actions of other courts lend further support to the district court's admission of Plaintiffs' expert witnesses' testimony, because testimony by these same experts has been admitted by other courts – often accompanied by high praise for the candor and quality of the testimony. See, e.g., Howard v. Child Welfare Agency Review Bd., No. CV 1999-9881, 2004 WL 3154530, at *5-8 (Ark. Cir. Dec. 29, 2004) (Dr. Pepper Schwartz admitted as expert in sociology with expertise in relationships of opposite-sex and same-sex couples; Dr. Michael Lamb qualified as expert in developmental psychology and specifically in parenting and children's adjustment, including the adjustment of children raised by gay parents), aff'd, 238 S.W.3d 1 (Ark. 2006); Baehr v. Miike, No. 91-1394, 1996 WL 694235, at *8, 10-12 (Haw. Cir. Ct. Dec. 3, 1996) (Dr. Schwartz recognized as expert in the field of same-sex couples), aff'd, 950 P.2d 1234 (Haw. 1997). Other courts have relied on the writings of these same experts. See, e.g., Andersen v. King County, 138 P.3d 963, 1031 (Wash. 2006) (Bridge, J., concurring in dissent) (citing to writings of M.V. Lee Badget with respect to economic power of gay men relative to their straight counterparts).

The underlying social research on which Plaintiffs' experts relied also has been used and approved by other courts. See Aff. of Dr. Gregory Herek, ¶¶ 6, 23-29 (citing studies by Stacey & Biblarz) and Snetsinger v. Montana Univ. Sys., 104 P.3d 445, 455 (Mont. 2004) (Nelson, J., concurring) (citing same studies); Aff. of Michael Lamb, ¶ 32 (citing article on same-sex parents from American Academy of Pediatrics) and Snetsinger, 104 P.3d at 455 (Nelson, J., concurring) (citing same article).

The Court should affirm the district court's admissibility rulings regarding

Plaintiffs' expert witnesses because the district court did not abuse its discretion, as further supported by the rulings of other courts.

3. The social science evidence rejected by the district court does not meet the standards for admission.

The district court also acted properly within its discretion when it rejected testimony proffered by Defendant's experts that did not meet the reliability threshold required for the evidence to be "helpful" and, thus, admissible. The liberal standards of Iowa evidentiary law have boundaries. In an age of "exploding technical and scientific developments and claims of 'junk science,' other 'expertise' might be proffered that will . . . have the potential to achieve an exaggerated impact on the fact-finding process. Such evidence might be so novel or complex that the court . . . will require proof of acceptance of the theory or technique in the scientific community. . . ." Leaf, 590 N.W.2d at 534. Although Iowa courts are not required to apply the Daubert analysis, they may find it helpful to use one or more of the Daubert "considerations." See Williams, 561 N.W.2d at 827 (accepting district court's use of the Daubert analysis "without deciding whether such an analysis is called for under the facts"). In addition, Iowa courts may consider the qualifications of the purported expert and the expert's familiarity with the subject at issue. Bingham v. Marshall & Huschart Mach., 485 N.W.2d 78, 82 (Iowa 1992) ("The exclusion or admission of certain expert testimony, based upon the court's determination of the qualification of the witness, was well within its discretion. The court can properly consider the experience and familiarity with the subject, or the lack thereof, in assessing the witness' qualifications."); see Gerischer v. Snowstar Corp., No. 05-0241, 2006 WL 1278732, at **2-3 (Iowa Ct. App. May 10, 2005) (court did not abuse its discretion by excluding expert with limited experience,

education, or training in subject of testimony).

The testimony of the experts proffered by Defendant and excluded by the district court was not reliable because it was not based on proper "principles and methodology."[6] The district court found that Ms. Somerville "eschews empirical research and concedes her views are outside the mainstream," Dr. Young "pulls factors" from academic disciplines where she does not profess to have expertise, Dr. Nathanson's methodology is based on "what people say about religion," and Dr. Rhoads "wanders" into the disciplines of others in order to reach his conclusions. Ruling at 7-8. Under either Daubert or the more liberal rule of Leaf, the district court's determination that such testimony was not sufficiently reliable to be admissible should be affirmed by the Court. See, e.g., United States v. Mamah, 332 F.3d 475, 477-78 (7th Cir. 2003) (although social scientists and their opinions are "an integral part of many cases," the district court properly excluded proposed testimony where there was no empirical link between the research and the underlying opinion) (citing Gen. Elec. Co. v. Joiner, 522 U.S. 136, 146 (1997) ("Nothing in either Daubert or the Federal Rules of Evidence requires a district court to admit opinion evidence which is connected to existing data only by the ipse dixit of the expert.")).

The district court also concluded that Defendant failed to demonstrate that these four "experts," as well as the testimony of another of Defendant's proffered

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[6] One amici curiae brief – for United Families International, Family Watch International, and Family Leader Foundation – attempts to provide a broad description of contemporary marriage in Iowa and across the nation regarding "social institutional realities" but does so without relying on peer-reviewed journals and without any indication that any of the studies on which the amici rely was offered or relied upon by Defendant's experts.

experts, Dr. Carlson, were experts in the fields about which they intended to testify. Although Defendant was not required to show that the witnesses were specialists, Defendant was required to show that their testimony fell "within the witness' general area of expertise." Hunter, 481 N.W.2d at 520. Merely listing a witness' academic credentials in fields other than the area of alleged expertise is insufficient. See Schlader, 591 N.W.2d at 13 ("Academic background does not however alone qualify an expert witness."); Oldham v. Shenandoah Cmty. Sch. Dist., 461 N.W.2d 207, 208 (Iowa 1990) ("Expert witnesses may not give opinions outside of their scope of knowledge simply because they are designated to be experts."). Thus, the district court properly exercised its discretion to exclude the proffered testimony because Defendant did not demonstrate that the testimony was reliable. Because Defendant cannot show now that the district court's exclusion of its purported experts was a "manifest abuse of discretion" that resulted in prejudice to Defendant, the district court's evidentiary rulings should be affirmed by the Court.

C. Based on the admitted social science evidence, the district court properly found that denying same-sex couples the right to marry significantly harms their children.

1. The district court's findings that marriage would benefit the well-being of children of same-sex couples are consistent with the findings of sister courts.

In examining the relevant social science research, other courts have concluded that "children raised by gay and lesbian parents have been found to develop no differently than children raised by heterosexual parents in terms of self-esteem, psychological well-being, cognitive functioning and social adjustment, despite claims to the contrary." Snetsinger, 104 P.3d at 454-55 (Nelson, J.,

concurring). Protecting the welfare of children and providing secure and stable family environments are clearly paramount State policies. "Restricting marriage to opposite-sex couples, however, cannot plausibly further this policy." Goodridge, 798 N.E.2d at 962.

The district court recognized that Plaintiffs and their families are harmed in numerous tangible and intangible respects by their exclusion from the right to marry in Iowa. The district court's findings are consistent with a long line of cases recognizing the benefits that marriage confers on the well-being of children. See, e.g., Turner v. Safley, 482 U.S. 78, 96 (1987) (acknowledging intangible benefits of marriage, including the "legitimation of children"); Zablocki v. Redhail, 434 U.S. 374, 386 (1978) (recognizing "the myriad social, if not economic, disabilities that the status of illegitimacy brings"); Irizarry v. Bd. of Educ., 251 F.3d 604, 607 (7th Cir. 2001) (marriage "provides a stable and nourishing framework for child rearing").

Excluding same-sex couples from marrying prevents the children of such couples from enjoying the immeasurable advantages that flow from the assurance of a stable family structure in which children will be reared, educated, and socialized. See Goodridge, 798 N.E.2d at 956-57 ("marital children reap a measure of family stability and economic security based on their parents' legally privileged status that is largely inaccessible, or not as readily accessible, to nonmarital children" including "enhanced approval that still attends the status of being a marital child"). Courts have acknowledged that the children of same-sex couples are harmed when their parents suffer disparate treatment under the law:

> Significantly, the economic and financial inequities that are borne by same-sex domestic partners are borne by their children too.

> With fewer financial benefits and protections available, those children are disadvantaged in a way that children in married households are not. Children have the same universal needs and wants, whether they are raised in a same-sex or opposite-sex family, yet under the current system they are treated differently.

Lewis, 908 A.2d at 216-17. This disparate treatment of same-sex couples occurs regardless of their ability to provide stable and secure environments for their children. Snetsinger, 104 P.3d at 455 (Nelson, J., concurring) ("gay and lesbian parents are frequently denied custody of their children or are subjected to burdensome restrictions because of their sexual orientation and irrespective of their parenting ability").

Courts have recognized that marriage fortifies a commitment between two adults, lending added stability and legal certainty to a relationship. Lewis, 908 A.2d at 218 ("to the extent that families are strengthened by encouraging monogamous relationships . . . we cannot discern any public need that would justify the legal disabilities that now afflict same-sex partnerships"). The ban on same-sex marriage, however, seeks to undermine that stability by imposing specific parameters on how families may live. By prohibiting the family structure that has been chosen by the parents, the prohibition on same-sex marriage results in a stigma harmful to the children. See Goodridge, 798 N.E.2d at 962 ("the State's action [of basing marital rights on procreation] confers an official stamp of approval on the destructive stereotype that same-sex relationships are inherently unstable and inferior to opposite-sex relationships and are not worthy of respect"); see also Lawrence v. Texas, 539 U.S. 558, 574-75 (2003) (recognizing significance of stigma attached to criminalization of sexual relations between same-sex couples).

2. The district court's findings are consistent with established social science research that demonstrates marriage would benefit the well-being of children of same-sex couples by securing greater personal dignity and social legitimacy for them and their families.

The district court's finding that the institution of marriage confers social and economic benefits on children was well supported by established social science research proffered by Plaintiffs and their experts. The social science on which the district court relied is consistent with other accepted studies on the benefits of marriage to children. Research has shown that, all else being equal, marriage provides a more secure environment for children than cohabitation. William Meezan & Jonathan Rauch, Gay Marriage, Same-Sex Parenting, and America's Children, 15 THE FUTURE OF CHILDREN 97, 108 (2005), available at http://www.futureofchildren.org/information2826/information_show.htm?doc_id=290831. Marriage strengthens committed relationships for parents raising children, which leads to more stable child rearing, permanency, and the security that comes from having two married parents. Researchers have noted that the long-term time frame implicit in marriage encourages the couple to work together on their relationship and on developing their individual skills with respect to parenting. Id.

Scholars also point out that the act of marriage itself, and the social implications conveyed by such a public commitment, encourage couples to stay together and drive family and friends of the couple to assist and encourage them to work out problems and remain together despite obstacles. Id. at 109. Married couples have reported receiving support from the larger community, including extended families and religious and other community-based institutions,

regardless of the couple's gender makeup. David Popenoe & Barbara Dafoe Whitehead, Should We Live Together? What Young Adults Need to Know About Cohabitation Before Marriage 7, 9 (2d ed. 2002), available at http://marriage.rutgers.edu/Publications/swlt2.pdf.

Marriage for same-sex couples demonstrates to children that marriage is a primary normative model for adult relationships.

> Gay children, of course, benefit directly from knowing that their future holds the prospect of marriage, with all the blessings that go with it. . . . Straight children benefit when they look all around and see marriage as the norm. . . . [T]hat sends a positive and reassuring message to children about both the importance of marriage and the stability of their community.

Jonathan Rauch, Family's Value: Why Gay Marriage Benefits Straight Kids, THE NEW REPUBLIC, para. 28-29 (May 30, 2005), available at http://www.indegayforum.org/news/show/26888.html. Some stigmatization remains associated with mere cohabitation, which, for children of same-sex parents, may be compounded by homophobia. Legal marriage for same-sex couples would provide for increased visibility in the opposite-sex–dominated parenting world, where homophobia endures, partially due to the invisibility of such parents and their relationships. April Martin, Same-Sex Marriage & Parenting, para. 13 (1996), http://www.buddybuddy.com/martin-1.html.

Allowing their parents to marry will benefit children of same-sex couples by letting those children know that the State does not consider their families and/or parents' relationship to be second-class or inferior to opposite-sex relationships. "Indeed, the very existence of same-sex marriage may reduce the stigmatization or perceived peculiarity of same-sex families, which would presumably reduce the social pressure on the children." Meezan & Rauch at 109. According to Dr. Ellen

Perrin, a leading expert in the field of child development who specializes in the development and well-being of children with same-sex parents:

> If there is a problem with being a child in a family made up of same-sex parents, it doesn't come from the child or the family but from the society around them . . . The stigma that still surrounds homosexuality, even now, makes life more difficult for these families which are otherwise quite able to nurture and care for their children.

Tufts E-News, Same-Sex Parenting OK, Says Prof., para. 6-7 (Apr. 23, 2004), available at http://enews.tufts.edu/stories/042304SameSexParenting.htm.

Children of same-sex parents are entitled to be treated like their peers and to have the State recognize the family structure in which they live. The State's recognition of their parents' union will aid significantly in removing the social stigma still attached to same-sex relationships and will move toward fulfilling the children's best interests by promoting the formation of a secure and stable family unit in which they can grow and mature.

3. The district court properly found that marriage would benefit the well-being of children of same-sex couples by providing them with economic and legal security.

As the district court noted, Iowa reserves an unparalleled array of rights and benefits to married couples and their families, benefits that are being denied to same-sex couples and their children. In addition, a number of social, recreational, and cultural organizations, as well as most employers, offer benefits specifically and exclusively to married couples.[7]

Marriage confers significant protections on families deciding to conceive,

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[7] See Partners Task Force for Gay & Lesbian Couples, Marriage: What's it to ya? Here's what money you lose when you can't be legally married!, para. 8 (Apr. 7, 2005), http://www.buddybuddy.com/mar-cash.html (married couples are

adopt or raise a child. For instance, children of married parents benefit from their ability automatically to secure disability benefits and health care coverage from either parent, enabling his or her parents to choose from the time the child is born whose coverage would better suit his or her needs. Lisa Bennett & Gary J. Gates, The Cost of Marriage Inequality to Children and Their Same-Sex Parents 9 (Apr. 13, 2004), available at http://www.hrc.org/documents/costkids.pdf.

The benefits flowing to children from the marital status of their parents are well established by Iowa statute. For example, if a worker dies from an injury compensable under workers' compensation, the surviving spouse and/or minor children are statutorily entitled to weekly cash benefits. See Iowa Code §§ 85.31, 85.42 (defining dependent child as any natural child whether born or unborn, adopted children, and stepchildren). Since disability benefits are limited to spouses and legally recognized children, a child of a same-sex couple would not be entitled to disability benefits resulting from the death of a person not legally recognized by the State of Iowa as the child's parent. As a result, a family headed by a same-sex couple is less secure in the event of an unexpected death than a family headed by a married couple.

Children of married couples are also better protected under Iowa law upon possible dissolution of the relationship due to death or divorce. Marriage eliminates the danger of disinheritance under the laws of intestate succession for children born while their parents are married and secures a child's right to support from both parents. See Iowa Code §§ 633.221, 633.222 (unless child has been adopted, a biological child inherits from the child's biological parent); § 252A.3

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able to pool resources more efficiently due to the structuring of private benefits).

(charging parents with duty to support children under age 18 and deeming child born during a marriage to be the presumptively legitimate child of both parents). Extending marriage to same-sex couples would enable their children automatically to claim child support from both parents in the event that their relationship ends. See, e.g., Bruce v. Sarver, 522 N.W.2d 67, 69 (Iowa 1994) (non-biological father who voluntarily provided medical insurance and child support was not required to continue support after relationship ended because he had not adopted the child). These are but some of the many protections under law denied to children of same-sex parents. See Ruling at 23-27.

As a direct result of the denial of the right to marry, the children of same-sex couples are concurrently being denied the full range of benefits the State has concluded children are entitled to. These children, similarly situated to the children of opposite-sex parents, are being deprived of the full benefit of laws that bestow legal and economic security to Iowa's children.

IV. CONCLUSION

Based on the social science properly admitted by the district court, section 595.2(1) does not serve to protect or help Iowa's children. Instead, the statute harms a certain class of children – those with same-sex parents. Therefore, section 595.2(1) serves no legitimate governmental interest, and should not survive rational basis review. For the above reasons, Amici respectfully request that the Court affirm the decision of the district court.