IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

KYLE LAWSON, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 4:14-cv-00622-ODS
	)	
ROBERT KELLY,	)	
In his official capacity as	)	
Director of the Jackson County	)	
Recorder of Deeds	)	
	)	
Defendant	)	
	)	
and	)	
	)	
STATE OF MISSOURI,	)	
	)	
Intervenor.	)	

SUGGESTIONS OF AMICUS CURIAE
MISSOURI FAMILY POLICY COUNCIL
IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF INTERVENOR'S MOTION FOR JUDGMENT ON THE PLEADINGS

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus Curiae Missouri Family Policy Council seeks to preserve and advance a culture where religious liberty flourishes, families prosper, and every human life is valued. It promotes its core values of faith, family, and freedom through policy research, public education, and grassroots mobilization. Missouri Family Policy Council believes that strong families are founded on the ideal of a lifelong marriage of one man and one woman, and is firmly committed to preserving marriage as an institution inherently linked to procreation and childrearing—an institution that connects children to their mothers and fathers, for the good of children and society as a whole. Because this case directly questions the constitutionality of Missouri's sovereign decision to preserve marriage as the union between one man and one woman, Amicus has a significant interest in responding to the constitutional claims that Plaintiffs assert.

SUMMARY OF ARGUMENT

As a bedrock social institution, marriage has always existed to channel the presumptive procreative potential of man-woman relationships into committed unions for the benefit of children and society. But some now seek to redefine marriage from a union between a man and woman to a union between any two people, which obscures marriage's animating purpose and thereby undermines marriage's social utility. The Fourteenth Amendment does not compel States to redefine marriage and the Tenth Amendment reserves the ability to define marriage to the States. Hence, Missouri may constitutionally retain marriage as being between a man and a woman.

Moreover, Plaintiffs' constitutional arguments are foreclosed by a proper understanding of the enduring public purpose of marriage. Marriage is inextricably linked to the fact that man-woman couples, and only such couples, are capable of naturally creating new life together, therefore furthering society's interests in responsibly creating and rearing the next generation. That

fact alone bars Plaintiffs' claims because Supreme Court precedent makes clear that a classification will be upheld when "the inclusion of one group promotes a legitimate governmental purpose, and the addition of other groups would not[.]" *Johnson v. Robison*, 415 U.S. 361, 383 (1974).

Marriage laws have been, and continue to be, about serving society's child-centered purposes, like connecting children to their biological mother and father, and avoiding the negative outcomes often experienced by children raised outside a stable family unit led by their biological parents. Redefining marriage would transform the institution, thereby threatening its ability to serve those interests. Faced with these concerns, Missourians are free to "shap[e] the destiny of their own times," *United States v. Windsor*, 133 S. Ct. 2675, 2692 (2013) (quotation marks omitted), by affirming the man-woman marriage institution, believing that, in the long run, it will best serve the well-being of the State's children and society as a whole.

ARGUMENT

I. The Fourteenth Amendment Does Not Forbid the Domestic-Relations Policy Reflected in Missouri's Marriage Laws.

A. The Public Purpose of Marriage in Missouri Is to Channel the Presumptive Procreative Potential of Man-Woman Couples into Committed Unions for the Good of Children and Society.

Evaluating the constitutionality of Missouri's Marriage Laws begins with an assessment of the government's interest in (or purpose for) those laws. Indeed, from the State's perspective, marriage is "an institution more basic in our civilization than any other[,]" *Williams v. North Carolina*, 317 U.S. 287, 303 (1942), "fundamental to the very existence and survival of the [human] race." *Zablocki v. Redhail*, 434 U.S. 374, 384 (1978) (quotations omitted); *see also Loving v. Virginia*, 388 U.S. 1, 12 (1967). "It is an institution, in the maintenance of which . . . the public is deeply interested, for it is the foundation of the family and of society[.]" *Maynard v. Hill*, 125 U.S. 190, 211 (1888).

By channeling sexual relationships between a man and a woman into a committed setting, marriage encourages mothers and fathers to remain together and care for the children born of their union. Marriage is thus "a socially arranged solution for the problem of getting people to stay together and care for children that the mere desire for children, and the sex that makes children possible, does not solve." James Q. Wilson, *The Marriage Problem* 41 (2002).

B. *Windsor* Emphasizes the State's Authority to Define Marriage and Thus Supports the Propriety of Missouri's Marriage Laws.

Three principles from the *Windsor* decision, which at its heart calls for federal deference to the States' marriage policies, directly support the right of Missourians to define marriage as they have.

First, the central theme of *Windsor* is the right of States to define marriage for their community. *See, e.g.*, 133 S. Ct. at 2689-90 ("the definition and regulation of marriage" is "within the authority and realm of the separate States"); *id.* at 2691 ("The definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations"); *id.* at 2692 (discussing the State's "essential authority to define the marital relation").

Second, the Court in *Windsor* recognized that federalism provides ample room for variation between States' domestic-relations policies concerning which couples may marry. *See id.* at 2691 ("Marriage laws vary in some respects from State to State."); *id.* (acknowledging that state-by-state marital variation includes the "permissible degree of consanguinity" and the "minimum age" of couples seeking to marry).

Third, *Windsor* stressed federal deference to the public policy reflected in state marriage laws. *See id.* at 2691 ("[T]he Federal Government, through our history, has deferred to state-law policy decisions with respect to domestic relations[,]" including decisions concerning citizens'

"marital status"); *id.* at 2693 (mentioning "the usual [federal] tradition of recognizing and accepting state definitions of marriage").

These three principles—that States have the right to define marriage for themselves, that States may differ in their marriage laws concerning which couples are permitted to marry, and that federalism demands deference to state marriage policies—lead to one inescapable conclusion: that Missourians (no less than citizens in States that have chosen to redefine marriage) have the right to define marriage for their community. Any other outcome would contravene *Windsor* by federalizing a definition of marriage and overriding the policy decisions of States like Missouri that have chosen to maintain the man-woman marriage institution.

Moreover, Plaintiffs' reliance on *Windsor*'s equal-protection analysis is misplaced. *Windsor* repeatedly stressed DOMA's "unusual character"—its novelty—in "depart[ing] from th[e] history and tradition of [federal] reliance on state law to define marriage." 133 S. Ct. at 2692-93 (referring to this feature of DOMA as "unusual" at least three times). Missouri's Marriage Laws, in contrast to DOMA, are neither unusual nor novel intrusions into state authority, but a proper exercise of that power; for Missouri, unlike the federal government, has "essential authority to define the marital relation[.]" *Id*. at 2692. Missouri's Marriage Laws are not an unusual departure from settled law, but a reaffirmation of that law; for they simply enshrine the definition of marriage that has prevailed throughout the State's history and that continues to govern in the majority of States. Unusualness thus does not plague Missouri's Marriage Laws or suggest any improper purpose or unconstitutional effect.

C. Rational-Basis Review Applies to Plaintiffs' Claims.

Equal-protection analysis requires the reviewing court to precisely identify the classification drawn by the challenged law. *See Califano v. Boles*, 443 U.S. 282, 293-94 (1979)

("The proper classification for purposes of equal protection analysis . . . begin[s] with the statutory classification itself."). Defining marriage as the union of man and woman is the precise classification at issue here, and it is based on an undeniable biological difference between man-woman couples and same-sex couples—namely, the natural capacity to create children.

This biological distinction, as explained above, relates directly to Missouri's interests in regulating marriage. And this distinguishing characteristic establishes that Missouri's definition of marriage is subject only to rational-basis review, for as the Supreme Court has explained:

> [W]here individuals in the group affected by a law have distinguishing characteristics relevant to interests the State has the authority to implement, the courts have been very reluctant, as they should be in our federal system and with our respect for the separation of powers, to closely scrutinize legislative choices as to whether, how, and to what extent those interests should be pursued. In such cases, the Equal Protection Clause requires only a rational means to serve a legitimate end.

City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 441-42 (1985). Relying on this Supreme Court precedent, New York's highest court and the Eighth Circuit "conclude[d] that rational basis scrutiny is appropriate]" when "review[ing] legislation governing marriage and family relationships" because "[a] person's preference for the sort of sexual activity that cannot lead to the birth of children is relevant to the State's interest in fostering relationships that will serve children best." *Hernandez v. Robles*, 855 N.E.2d 1, 11 (N.Y. 2006); *see also Citizens for Equal Protection v Bruning*, 455 F.3d 859, 866-67 (8th Cir. 2006) (quoting *Cleburne*, 473 U.S. at 441).

Even if this relevant biological difference between man-woman couples and same-sex couples were characterized as a sexual-orientation-based distinction rather than the couple-based procreative distinction that it is, this Court, like many others, has concluded that sexual orientation is not a suspect or quasi-suspect classification. *Bruning*, 455 F.3d at 867 ("[T]he Supreme Court has never ruled that sexual orientation is a suspect classification for equal protection purposes.).

Rational-basis review is therefore appropriate here. *See Gallagher v. City of Clayton, et al.*, No. 11-3880, 8th Cir. 2012; U.S. App. Lexis 23050 (indicating rational-basis review applies where a law does not infringe a fundamental right or distinguish based on a suspect or quasi-suspect classification).

D. Missouri's Marriage Laws Satisfy Rational-Basis Review.

"A statutory classification fails rational-basis review only when it rests on grounds wholly irrelevant to the achievement of the State's objective." *Heller v. Doe*, 509 U.S. 312, 324 (1993) (quotation marks omitted). Thus, Missouri's Marriage Laws "must be upheld . . . if there is any reasonably conceivable state of facts that could provide a rational basis for" them. *FCC v. Beach Communications, Inc.*, 508 U.S. at 313. And because "marriage has always been, in our federal system, the predominant concern of state government . . . rational-basis review must be particularly deferential" in this context. *Bruning*, 455 F.3d at 867.

1. Missouri's Marriage Laws Further Compelling Interests.

By providing special recognition and support to man-woman relationships, the interests that Missouri furthers are at least threefold: (1) providing stability to the types of relationships that result in unplanned pregnancies, thereby avoiding or diminishing the negative outcomes often associated with unintended children; (2) encouraging the rearing of children by both their biological mother and father; and (3) encouraging men to commit to the mothers of their children and jointly raise the children they beget. These interests promote the welfare of children and society, and thus they are not merely legitimate but compelling, for "[i]t is hard to conceive an interest . . . more paramount for the state than promoting an optimal social structure for educating, socializing, and preparing its future citizens to become productive participants in civil

society[.]"*Lofton v. Secretary of the Department of Children & Family Services*, 358 F.3d 804, 819 (11th Cir. 2004).

Unintended Children. Missouri has a compelling interest in addressing the particular concerns associated with the birth of unplanned children. Nearly half of all pregnancies in the United States, and nearly 70 percent of pregnancies that occur outside marriage, are unintended. Lawrence B. Finer & Mia R. Zolna, *Unintended Pregnancy in the United States: Incidence and Disparities, 2006*, 84 Contraception 478, 481 Table 1 (2011). Yet unintended births out of wedlock "are associated with negative outcomes for children." Elizabeth Wildsmith et al., *Childbearing Outside of Marriage: Estimates and Trends in the United States*, Child Trends Research Brief 5 (Nov. 2011).

In particular, children born from unplanned pregnancies where their mother and father are not married to each other are at a significant risk of being raised outside stable family units headed by their mother and father jointly. *See* William J. Doherty et al., *Responsible Fathering: An Overview and Conceptual Framework*, 60 J. Marriage & Fam. 277, 280 (1998) ("In nearly all cases, children born outside of marriage reside with their mothers" and experience "marginal" father presence). And unfortunately, on average, children do not fare as well when they are raised outside "stable marriages between [their] biological parents," as a leading social-science survey explains:

> Children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes than do children in intact families headed by two biological parents. . . . There is thus value for children in promoting strong, stable marriages between biological parents.

Kristin Anderson Moore et al., *Marriage from a Child's Perspective: How Does Family Structure Affect Children, and What Can We do About It?*, Child Trends Research Brief 6 (June 2002).

In short, unintended pregnancies—the frequent result of sexual relationships between men and women, but never the product of same-sex relationships—pose particular concerns for children and, by extension, for society. And the State has a compelling interest in maintaining an institution like marriage that specifically addresses those concerns.

Biological Parents. Missouri also has a compelling interest in encouraging biological parents to join in a committed union and raise their children together. Indeed, the Supreme Court has recognized a constitutional "liberty interest" in "the natural family," a paramount interest having "its source . . . in intrinsic human rights[.]" *Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 845 (1977). While that right vests in natural parents, *id.* at 846, "children [also] have a reciprocal interest in knowing their biological parents." *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552, 2582 (2013) (Sotomayor, J., dissenting).

"[T]he biological bond between a parent and a child is a strong foundation" for "a stable and caring relationship[.]" *Adoptive Couple*, 133 S. Ct. at 2582 (Sotomayor, J., dissenting). The law has thus historically presumed that these "natural bonds of affection lead parents to act in the best interests of their children." *Parham v. J.R.*, 442 U.S. 584, 602 (1979); *accord Troxel v. Granville*, 530 U.S. 57, 68 (2000); *see also* 1 William Blackstone, *Commentaries* *435 (recognizing the "insuperable degree of affection" for one's natural children "implant[ed] in the breast of every parent").

Social science has proven this presumption well founded, as the most reliable studies have shown that, on average, children develop best when reared by their married biological parents in a stable family unit. As one social-science survey has explained, "research clearly demonstrates that family structure matters for children, and the family structure that helps children the most is a family headed by two biological parents in a low-conflict marriage." Moore, *supra*, at 6. "Thus, it

is not simply the presence of two parents . . . , but the presence of *two biological parents* that seems to support children's development." *Id.* at 1-2.[1]

In addition to these tangible deficiencies in development, children deprived of their substantial interest in "know[ing] [their] natural parents," as the Supreme Court has recognized, experience a "loss [that] cannot be measured," one that "may well be far-reaching." *Santosky v. Kramer*, 455 U.S. 745, 760 n.11 (1982). Indeed, studies reflect that "[y]oung adults conceived through sperm donation" (who thus lack a connection to, and often knowledge about, their biological father) "experience profound struggles with their origins and identities." Elizabeth Marquardt et al., *My Daddy's Name is Donor: A New Study of Young Adults Conceived Through Sperm Donation*, Institute for American Values, at 7, *available at* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=&cad=rja&uact=8&ved=0CE0QFjAG&url=http%3A%2F%2Famericanvalues.org%2Fcatalog%2Fpdfs%2FDonor_FINAL.pdf&ei=AgNxU4KAGMTboATs94LACA&usg=AFQjCNEjpcOSw1MetxzHT7cBcmkaDXgElA&bvm=bv.66330100,d.cGU.

[1] *See also* W. Bradford Wilcox et al., eds., *Why Marriage Matters* 11 (3d ed. 2011) ("***The intact, biological, married family remains the gold standard for family life in the United States,*** insofar as children are most likely to thrive—economically, socially, and psychologically—in this family form."); Wendy D. Manning & Kathleen A. Lamb, *Adolescent Well Being in Cohabiting, Married, and Single-Parent Families*, 65 J. Marriage & Fam. 876, 890 (2003) ("Adolescents in married, two-biological-parent families generally fare better than children in any of the family types examined here, including single-mother, cohabiting stepfather, and married stepfather families. The advantage of marriage appears to exist primarily when the child is the biological offspring of both parents. Our findings are consistent with previous work[.]"); Sara McLanahan and Gary Sandefur, *Growing Up with a Single Parent: What Hurts, What Helps* 1 (1994) ("*Children who grow up in a household with only one biological parent are worse off, on average, than children who grow up in a household with both of their biological parents, regardless of the parents' race or educational background, regardless of whether the parents are married when the child is born, and regardless of whether the resident parent remarries*.").

Children thus have weighty tangible and intangible interests in being reared by their biological mother and father in a stable home. But they, as a class of citizens unable to advocate for themselves, must depend on the State to protect those interests for them.

Fathers. Missouri also has a compelling interest in encouraging fathers to remain with their children's mothers and jointly raise the children they beget. "The weight of scientific evidence seems clearly to support the view that fathers matter." Wilson, *supra*, at 169; *see, e.g.*, Elrini Flouri and Ann Buchanan, *The role of father involvement in children's later mental health*, 26 J. Adolescence 63, 63 (2003) ("Father involvement . . . protect[s] against adult psychological distress in women."); Bruce J. Ellis et al., *Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?*, 74 Child Dev. 801, 801 (2003) ("Greater exposure to father absence [is] strongly associated with elevated risk for early sexual activity and adolescent pregnancy."). Indeed, President Obama has observed the adverse consequences of fatherlessness:

> We know the statistics—that children who grow up without a father are five times more likely to live in poverty and commit crime; nine times more likely to drop out of schools and twenty times more likely to end up in prison. They are more likely to have behavioral problems, or run away from home, or become teenage parents themselves. And the foundations of our community are weaker because of it.

Barack Obama, *Obama's Speech on Fatherhood* (Jun. 15, 2008), *transcript available at* http://www.realclearpolitics.com/articles/2008/06/obamas_speech_on_fatherhood.html.

The importance of fathers reflects the importance of gender-differentiated parenting. "The burden of social science evidence supports the idea that gender-differentiated parenting is important for human development[.]" David Popenoe, *Life Without Father* 146 (1996). Recognizing the child-rearing benefits that flow from the diversity of both sexes is consistent with our legal traditions. *See Bowen v. Gilliard*, 483 U.S. 587, 614 (1987) (Brennan, J., dissenting) (acknowledging that "children have a fundamental interest in sustaining a relationship with their

mother . . . [and] father" because, among other reasons, "the optimal situation for the child is to have both an involved mother and an involved father" (quotation marks and alterations omitted)). Our constitutional jurisprudence acknowledges that "[t]he two sexes are not fungible[.]" *United States v. Virginia*, 518 U.S. 515, 533 (1996) (quotation marks omitted). The State, therefore, has a vital interest in fostering the involvement of fathers in the lives of their children.

2. Missouri's Marriage Laws Are Rationally Related to Furthering Compelling Interests.

Under the rational-basis test, a State establishes the requisite relationship between its interests and the means chosen to achieve those interests when "the inclusion of one group promotes a legitimate governmental purpose, and the addition of other groups would not[.]" *Johnson*, 415 U.S. at 383. Similarly, a State satisfies rational-basis review if it enacts a law that makes special provision for a group because its activities "threaten legitimate interests . . . in a way that other [groups' activities] would not." *Cleburne*, 473 U.S. at 448.

Therefore, the relevant inquiry here is not whether excluding same-sex couples from marriage furthers the State's interest in steering man-woman couples into marriage, but rather "whether an opposite-sex definition of marriage furthers legitimate interests that would not be furthered, or furthered to the same degree, by allowing same-sex couples to marry." *Jackson v. Abercrombie*, 884 F. Supp. 2d 1065, 1107 (D. Haw. 2012); *accord Andersen v. King County.*, 138 P.3d 963, 984 (Wash. 2006) (plurality opinion). "The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same." *Vacco v. Quill*, 521 U.S. 793, 799 (1997) (quotation marks and citation omitted). "[W]here a group possesses distinguishing characteristics relevant to interests the State has the authority to implement, a State's decision to act on the basis of those differences does not give rise to a constitutional violation." *Board. of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 366-67

(2001) (quotation marks omitted). Under this analysis, Missouri's Marriage Laws plainly satisfy constitutional review.

Sexual relationships between individuals of the same sex, by contrast, do not unintentionally create children as a natural byproduct of their sexual relationship; they bring children into their relationship only through intentional choice and pre-planned action. Moreover, same-sex couples do not provide children with both their mother and their father. Those couples thus neither advance nor threaten society's public purpose for marriage in the same manner, or to the same degree, that sexual relationships between men and women do. Under *Johnson* and *Cleburne*, that is the end of the analysis: Missouri's Marriage Laws should be upheld as constitutional.

That is why "a host of judicial decisions" have concluded that "the many laws defining marriage as the union of one man and one woman and extending a variety of benefits to married couples are rationally related to the government interest in 'steering procreation into marriage.'" *Bruning*, 455 F.3d at 867; *see, e.g.*, *Jackson*, 884 F. Supp. 2d at 1112-14; *In re Marriage of J.B. & H.B.*, 326 S.W.3d 654, 677-78 (Tex. App. 2010); *Conaway v. Deane*, 932 A.2d 571, 630-34 (Md. 2007); *Andersen*, 138 P.3d at 982-85 (plurality opinion); *Hernandez*, 855 N.E.2d at 7-8; *Morrison*, 821 N.E.2d at 23-31; *Standhard v. Superior Court*, 77 P.3d 451 at 461-64 (Ariz. Ct. App. 2003); *Adams v. Howerton*, 486 F. Supp. 1119, 1124-25 (C.D. Cal. 1980); *Singer v. Hara*, 522 P.2d 1187, 1197 (Wash. Ct. App. 1974); *Baker v. Nelson*, 191 N.W.2d 185, 186-87 (Minn. 1971).

II. Redefining Marriage Presents a Significant Risk of Adverse Social Consequences.

Although, as explained above, Missouri is not constitutionally required to show that redefining marriage will bring about harms or adverse social consequences, Missouri's Marriage Laws should be upheld even if this Court requires the State to make such a showing here.

A. Legally Redefining Marriage as Anything Other Than Between One Man and One Woman Would Have Real-World Consequences.

Complex social institutions like marriage comprise a set of norms, rules, patterns, and expectations that powerfully (albeit often unconsciously) affect people's choices, actions, and perspectives. *See* A.R. Radcliffe-Brown, *Structure and Function in Primitive Society* 10-11 (1952) ("[T]he conduct of persons in their interactions with others is controlled by norms, rules or patterns" shaped by social institutions). Although the law did not create marriage, its recognition and regulation of that institution has a profound effect on "mold[ing] and sustain[ing]" it. *See* Carl E. Schneider, *The Channeling Function in Family Law*, 20 Hofstra L. Rev. 495, 503 (1992). Plaintiffs ask this Court to use the law's power to redefine the institution of marriage to invalidate the importance of having both a man and woman in a procreational relationship. *See Lewis v. Harris*, 908 A.2d 196, 222 (N.J. 2006

Any redefining of marriage would permanently sever the inherent link between procreation (which absolutely requires a man and a woman) and marriage and that, in turn, would powerfully convey that marriage exists to advance adult desires rather than to serve children's needs.

B. Both a "Man and Woman" Form the Definition of Marriage and Omitting That Requirement Would Convey the Idea that Marriage Is a Mere Option (Not an Expectation) for Childbearing and Childrearing, and That Would Likely Lead to Adverse Consequences for Children and Society.

Over 70 prominent scholars from all relevant academic fields have acknowledged that the requirement of a man and a woman form the definition of marriage and omitting that language would undermine the intrinsic link between marriage and procreation. *See* Witherspoon Institute, *Marriage and the Public Good: Ten Principles* 18 (2008). Overlooking the need for having a father and a mother would promote "the mistaken view that civil marriage has little to do with

procreation[.]"*Goodridge v. Dep't of Public Health*, 798 N.E.2d 941, 1002 (Mass. 2003) (Cordy, J., dissenting).

This mistaken view, over time, would lodge in the public mind the idea that marriage is merely an option (rather than a social expectation) for man-woman couples raising children. That, in turn, would likely result in fewer fathers and mothers marrying each other, particularly in lower-income communities where the immediate impact of marriage would be financially disadvantageous to the parents. *See* Julien O. Teitler et al., *Effects of Welfare Participation on Marriage*, 71 J. Marriage & Fam. 878, 878 (2009) (concluding that "the negative association between welfare participation and subsequent marriage reflects temporary economic disincentives"). Indeed, as fewer man-woman couples marry and as more of their relationships end prematurely, the already significant social costs associated with unwed childbearing and divorce would continue to increase. *See* Benjamin Scafidi, *The Taxpayer Costs of Divorce and Unwed Childbearing: First-Ever Estimates for the Nation and All Fifty States* 5 (2008) (indicating that divorce and unwed childbearing "cost U.S. taxpayers at least $112 billion each and every year, or more than $1 trillion each decade.") (emphasis omitted); *see also* George, *supra*, at 45-46 (discussing other studies).

Thus, as the State undermines the importance of fathers, it would likely, over time, "weaken the societal norm that men should take responsibility for the children they beget," Witherspoon Institute, *supra*, at 18-19, and "soften the social pressures and lower the incentives . . . for husbands to stay with their wives and children[.]" George, *supra*, at 8. In these ways, redefining marriage directly undermines marriage's core purpose of encouraging men to commit to the mothers of their children and jointly raise the children they beget, with the anticipated outcome that fewer children will be raised by their mother and father in a stable family unit.

CONCLUSION

For the foregoing reasons, this Court should grant Intervenor's Motion for Judgment on the Pleadings and deny Plaintiff's Motion for Summary Judgment.

Dated: September 17, 2014

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 17, 2014, all parties listed on this certificate of service will receive a copy of the foregoing Brief of Amicus Curiae Missouri Family Policy Council filed electronically with the United States District Court for the Western District of Missouri, with notice of case activity to be generated and ECF notices to be sent electronically by the Clerk of the Court.

Date: September 17, 2014 /s/ Marsha I. Stiles
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