SUBMISSION OF THE WILBERFORCE FOUNDATION TO THE SELECT COMMITTEE (SELECT COMMITTEE) ON THE EXPOSURE DRAFT OF THE *MARRIAGE AMENDMENT (SAME-SEX MARRIAGE) BILL* (BILL)

Introduction

1. The Wilberforce Foundation is a coalition of lawyers committed to the preservation and advancement of common law values, rights and freedoms.
2. The Wilberforce Foundation proffers this submission to the Select Committee.
3. The Wilberforce Foundation understands that this submission must be confined to the terms of reference of the Select Committee and it will so do. However we are compelled to state that evidence and policy dictates that the definition of marriage in the *Marriage Act 1961* (Cth) (**MA**) be preserved. The evidence and arguments are summarised in the attachment A

Terms of Reference

4. **Term of Reference (a): the nature and effect of proposed exemptions for ministers of religion, marriage celebrants and religious bodies and organisations, the extent to which those exemptions prevent encroachment upon religious freedoms, and the Commonwealth Government's justification for the proposed exemptions**
   4.1. Proposed section 47 allows a minister of religion to refuse to solemnise a marriage despite **any law**, if the refusal is because the marriage is not the union of a man and a woman and the refusal conforms to the doctrines of the minister's religious body or is necessary to avoid injury to the religious susceptibilities of adherents to the religion or if the minister's conscientious and religious beliefs do not allow the minister to solemnise the marriage. Proposed section 47A says that a religious body may, despite **any law** refuse to make a facility available or provide goods and services in relation to the solemnisation of a marriage or matters incidental thereto if the refusal is because the marriage is not between a man and a woman and the refusal is conforms to the doctrines of the religion or is necessary to avoid injury to the religious susceptibilities of adherents to the religion.
   4.2. The merits and inadequacies of these proposed sections are discussed below.
   4.3. Merits:
      4.3.1. Proposed section 47 provides that the right of a minister of religion to refuse to perform a same-sex marriage (**SSM**) extends to the effect of **any** law. This is important as, even under the current MA, proceedings have been brought alleging unlawful discrimination based on sex and marital status by reason of the inability of homosexual and bisexual men and women and transgender and intersex persons to register same sex marriages in the States of New South Wales, Queensland, Victoria, South Australia and the Australian Capital Territory.[1] If SSM was made legal, claims may be made against ministers who refuse to perform SSMs that notwithstanding any right to not perform such ceremonies under the MA, the conduct was unlawful discrimination under the *Sex Discrimination Act 1984* (Cth) (**SDA**) and the various anti-discrimination acts in the states and territories. The proposed amendment to the SDA also supports that position.
      4.3.2. Proposed section 47 also allows a minister to refuse to perform a SSM by reason of the exercise of their own conscience. This is important, as on occasions a minister's conscience may differ from the public position of a particular faith. As the Canadian Supreme Court has recognized an individual's right to religious freedom does not necessitate an inquiry into whether their "beliefs are objectively recognized as valid by other members of the

[1] *Margan v President, Australian Human Rights Commission* [2013] FCA 109.

same religion, nor is such as inquiry appropriate for court's to make."[2] In an Australian context, *Christian Youth Camps and Anor v Cobaw Community Health Services Ltd and Ors*[3] demonstrates the accuracy of the Canadian Supreme Court's observation as courts are not well equipped to decide on doctrines which are part of a religion's beliefs or not, particularly where, in some cases, denominations have not spelled out their beliefs as much has proceeded under a common understanding. Further, as will be demonstrated below, the issue here is not so much freedom to practise one's religion, but the freedom which religious freedom exemplifies-the freedom of conscience.[4]

4.3.3. Proposed section 47A extends that freedom to marriage celebrants if SSM is contrary to their religious beliefs or conscience. Again that is important in relation to the freedom of conscience.

4.3.4. Proposed section 47B extends the freedom to the provision of facilities and goods and services by religious bodies. That is only correct when it is considered that facilities like church halls etc are built and maintained by the money, time and labour of the adherents of the faith. It would be a violation of conscience to coerce such premises to be used or a purpose contrary to the doctrines of the faith, the maintenance and advancement of which has motivated people to help with the creation of such facilities. Similar reasons support the freedom extending to the provision of goods and services. They are provided to further the faith and adherents should not be compelled to provide those good or services contrary to the faith.

4.3.5. Proposed sections 47A and 47b apply despite any law. That is appropriate for the reason discussed at [4.3.1] above.

4.4. Inadequacies:

4.4.1. Religious freedom is a fundamental common law[5] and human right.[6] The importance of this freedom has been recognised by many Australian courts. It has been described by them as "the paradigm freedom of conscience,"[7]"the essence of a free society,"[8] "a fundamental concern to the people of Australia,"[9] "a fundamental freedom"[10] and "a fundamental right because our society tolerates pluralism and diversity and because of the value of religion to a person whose faith is a central tenet of their identity."[11] Australian courts have recognized "the importance of the freedom of people to adhere to the religion of their choice and the beliefs of their choice and to manifest their religion or beliefs in worship, observance, practice and teaching."[12] Section 116 of the Constitution precludes the Commonwealth from passing any law which prohibits the free exercise of any religion. While the boundaries of the limitation of Commonwealth legislative power imposed by section 116 are not clear, it is clear that:

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[2] *Syndicat Northcrest v Amselem* [2004] 2 SCR 551 [43].
[3] [2014] VSCA 75.
[4] *Church of New Faith v Commissioner of Pay-roll Tax (Victoria)* (1982-1983) 154 CLR 120 at 130 per Mason ACJ and Brennan J.
[5] Ibid.
[6] *Eweida & Ors v The United Kingdom* [2013] IRLR 243.
[7].*Church of the New Faith v. Commissioner of Pay-Roll Tax* (1982-1983) 154 C.L.R. 120, 130 (Vict.); *Aboriginal Legal Rights Movement Inc. v State of S. Austl.* (1995) 64 SASR 551, 557.
[8].*Church of the New Faith* 154 CLR at 150.
[9].*Canterbury Municipal Council v Moslem Alawy Soc'y Ltd.*, (1985) 1 NSWLR 525, 543.
[10].*Aboriginal Legal Rights,* 64 SASR at 552, 555.
[11].*Christian Youth Camps Ltd. v Cobaw Community Health Services Ltd.*, (2014) VSCA 75, 560.
[12].*Evans v. N.S.W.* (2008) 168 FCR 576, 580.

"What man feels constrained to do or to abstain from doing because of his faith in the supernatural is prima facie within the area of legal immunity, for his freedom to believe would be impaired by restriction upon conduct in which he engages in giving effect to that belief."[13]

4.4.2. Therefore it is not satisfactory that the proposed sections are referred to and drawn as if they were exemptions from the normal law, when in fact they represent freedoms which exist and should be recognised to exist independently from any exemption in the MA. If the MA seeks to infringe upon religious freedom those infringements ought to be described as exceptions to the right to freedom of religion.

4.4.3. In this regard it must be noted that Australians' religious convictions are an integral part of their identity.[14] It should not be thought that they have any less right to full exercise of their rights and freedoms including the freedom to not participate in SSM, as those who propound SSM. This is especially so as developing research indicates that it is "natural for humans to be religious" and therefore "Religion …answers a basic tendency of human nature and we should be free to walk that path if we so wish."[15]

4.4.4. This issue brings squarely into focus the contest of rights that exists between SSM and religious freedom. As Paul Kelly has said:
"Once the state authorises SSM then religions will come under intense pressure to allow SSM and another campaign based on a further application of marriage equality will begin. Looking at the passions of the SS movement can this be seriously doubted? At that point the ideology of marriage equality runs into direct conflict with the idea of religious freedom, something will have to give."[16]

4.4.5. The Chief Justice of the United States Supreme Court expressed sentiments similar to those of Paul Kelly in *Obergefell v Hodges*[17] when he said:
"Respect for sincere religious conviction has led voters and legislators in every State that has adopted same-sex marriage democratically to include accommodations for religious practice. The majority's decision imposing same-sex marriage cannot, of course, create any such accommodations. The majority graciously suggests that religious believers may continue to "advocate" and "teach" their views of marriage. Ante, at 27. The First Amendment guarantees, however, the freedom to "exercise" religion. Ominously, that is not a word the majority uses. Hard questions arise when people of faith exercise religion in ways that may be seen to conflict with the new right to same-sex marriage—when, for example, a religious college provides married student housing only to opposite-sex married couples, or a religious adoption agency declines to place children with same-sex married couples."[18]

4.4.6. Therefore, it is not satisfactory that the Commonwealth should have to justify exceptions. Rather, it is for those who propound SSM to justify why existing and fundamental freedoms should not be given their full force and effect. Putting it another way there is no

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[13] *Church of the New Faith* at p.135.
[14] *Cobaw* at [545] and [559] per Redlich JA.
[15] *Freedom, Toleration and the Naturalness of Religion* Roger Trigg Chapter 9 in *Religion, Intolerance, and Conflict: A Scientific and Conceptual Investigation*
Steve Clarke, Russell Powell, and Julian Savulescu Oxofrd University Press Scholarship Online 2013
http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199640911.001.0001/acprof-9780199640911-chapter-9 accessed 22 December 2016.
[16] *The Australian* 22 September 2012
[17] *Obergefell et al v Hodges, Director of Health, Utah et al* 576 U. S. ____ (2015).
[18] *Obergefell* at p.28.

constitutional nor policy reason why the freedoms and identity of up to 78% of Australian citizens[19] should be subjugated to the freedoms and identity of about 1-2% of Australians.[20]

4.4.7. Therefore we respectfully suggest that the three proposed sections commence with a subsection similar to the current section 47 of the MA namely:

Recognising the fundamental nature of the Freedom of Conscience and Religion and the limitation of Commonwealth power in section 116 of the Constitution, nothing in this Act imposes an obligation on a minister of religion, to solemnise any marriage that is not a marriage between a man and a woman.

4.4.8. Further the requirement that a minister has to justify that a refusal to solemnise a SSM or that a religious group must prove that its refusal to allow its facilities for SSM accords with its doctrines will inevitably lead to litigation to test that stand and whether it conforms to those doctrines. There will difficult issues to be decided as to:

4.4.8.1. Whether the doctrines of a religion are a formal pronouncement of a position or are a broader concept namely the teachings of the religion.

4.4.8.2. Many religious traditions do not have a systematic and readily accessible written record of their doctrines.

4.4.8.3. The approaches of many religious traditions are not necessarily uniform across every congregation and so the question of "doctrine" can be complex – is it the doctrine of a particular faith or religion taken as a whole or in that particular community or congregation?

4.4.8.4. Whether "conforms" means that which is *mandated or required* by the fundamental doctrines of the religion or is a more relaxed concept that does not require an affirmative breach of doctrine.

4.4.9. These are not academic issues. There already exists a conflict in relation to these very matters between the stricter approach of the Victorian Court of Appeal in *Cobaw* and the far more relaxed approach of the New South Wales Court of Appeal and the Anti-Discrimination Tribunal in that state in *OV & OW v Members of the Board of the Wesley Mission Council* and *OW & OV*[21] *v Members of the Board of the Wesley Mission Council;*[22]

4.4.10. As we have said these are not inquiries courts are well equipped to make. In *Church of New Faith* Mason ACJ and Brennan said:

"We would respectfully adopt what Douglas J. said in *United States v. Ballard* in reference to the freedom of religious belief: 'It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. **They may not be put to the proof of their religious doctrines or beliefs**.'"[23]

4.4.11. Accordingly we suggest that proposed section 47 be amended to say:

"A minister of religion may refuse to solemnise a marriage if the union is not between a man and a woman"

and the requirements to show that the refusal is in conformity with doctrine etc should be deleted. There should be a similar amendment to section 47B.

4.5. It is also foreseeable that any action of a minister even though it accords with the doctrine of the religion in relation to this issue may result in an action under section 17 of the *Tasmanian Anti-Discrimination Act 1998* and similar legislation, as was the case with Archbishop Porteous of the

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[19] http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4102.0Main+Features30Nov+2013 About 78% of Australians claim a religious identity.

[20] http://www.fava.org.au/news/2012/how-many-homosexuals-are-there-in-australia/

[21] [2010] NSWCA 155.

[22] [2010] NSWADT 293.

[23] *Church of New Faith* at p.134.

Roman Catholic Church. We therefore suggest that a new section be included which may read as follows:

> Any action of a person which is authorised by this Act cannot form the basis of a claim under any law of the Commonwealth or any State or Territory against the person as this Act is intended to be a complete code in relation to the freedoms, rights and obligations of all persons involved in the solemnisation of marriage in Australia.

5. Term of Reference (b): the nature and effect of the proposed amendment to the *Sex Discrimination Act 1984* (Cth):

5.1. Section 40(2A) of the SDA is to be amended as follows: After "in direct compliance with", insert ", or as authorised by". The section currently provides as follows:
Nothing in Division 1 or 2, as applying by reference to section 5A, 5B, 5C or 6, affects anything done by a person in direct compliance with the *Marriage Act 1961*.

5.2. The amendment broadens the exemption so that conduct which is authorised by the MA, such as declining to solemnise a SSM, is not affected by the SDA.

5.3. Without this amendment any right or freedom given to ministers will be illusory as what is permitted by the MA may be prohibited by the SDA.

5.4. However the amendments to the SDA do not protect ministers, marriage celebrants or religious bodies from claims under the state and territory anti-discrimination laws. Therefore a further provision along the lines of that which is set out at [4.5] above is needed.

6. Term of Reference (c): potential amendments to improve the effect of the bill and the likelihood of achieving the support of the Senate:

6.1. The Bill does not provide any protection for those who are not clergy and yet whose faith or conscientious commitment to marriage as being, and only being, between a man and a woman will compel them to refuse to allow their facilities to be used for, or provide goods and services for, a same-sex marriage. If the MA is amended to allow for same-sex marriage if they so refuse, under current anti-discrimination law and subject to section 116 of the Constitution, they may face expensive court action.

6.2. The Wilberforce Foundation therefore suggests that there be a new section along the lines of the proposed section 47B as follows:

> Recognising the fundamental nature of the Freedom of Religion and the limitation of Commonwealth power in section 116 of the Constitution, a person may, despite any law (including this Part), refuse to make a facility available, or to provide goods or services, for the purposes of the solemnisation or celebration of a marriage, or for purposes reasonably incidental to the solemnisation or celebration of a marriage, if:
>
> (a) the refusal is because the marriage is not the union of a man and a woman; and
> (b) the refusal conforms to the doctrines, tenets or beliefs of their religion or
> (c) is genuinely informed by their own conscientious conviction that marriage is and is only a union of a man and a woman.

Conclusion

7. An understanding of marriage as consisting of one man and one woman has been the consistent tradition reflected in colonial, State, Territory[24] and Commonwealth legislation since European settlement Australia. Whilst this view pre-dates Christianity it is consistent with the conjugal or traditional view of marriage which has the traditional position of the mainstream Christian Churches and of many other religious traditions. This approach to State recognition has always excluded other forms of marriage recognised in other traditions such as the cultural or traditional marriages of Australia's Aboriginal peoples and the polygamous and also the short term marriages recognised in

[24] Other than for a brief time in the ACT by legislation found by the High Court to be invalid.

some faith traditions. If the popular contemporary view of marriage in Australia is no longer the traditional or conjugal view the first step for any government considering reform ought be to first consider what marriage is now intended to mean. Without this understanding the reasons for any continued involvement of the State in marriage remain unclear. If this is the case were marriage redefined so as to recognise SSM but no other forms of currently unrecognised marriages the State would not be removing any present inequality or discrimination – it would be introducing changes which treat people unequally and in a discriminatory way. Tradition and empirical evidence supports the view that the State continues to have an interest in regulating and supporting traditional marriage. Long term and large scale **statistical evidence demonstrates that traditional marriage benefits the spouses and their children and provides children with the statistically best prospects of being cared for and reared in the best possible environment. This continues to be a compelling interest which is best secured by the preservation of the present definition of marriage in the MA**.

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APPENDIX A: Some evidence and arguments for preserving the current definition of marriage in the MA

A conception of marriage as consisting between one man and one woman entered into for life pre-dates Christianity. It was certainly the dominant view of the first Europeans to arrive in Australia however. Australia has always been a continent occupied by different races and faiths. Whilst throughout the history of Australia's colonies, States, Territories and the Commonwealth a conception of marriage consistent with the current definition of marriage in the MA has been the only form of marriage given State recognition as marriage in Australia[25] there have always been different views about what constitutes a marriage among different groups in Australia. For example, the traditional or customary understanding of marriage of Australia's Aboriginal peoples included arranged marriages, infant betrothal and polygamous marriages. In most communities specific actions (such as a couple sharing a campfire) demonstrated a marriage relationship, rather than the exchange of vows or rings or of a particular form of marriage ceremony. As Berndt has noted, "'Tribal' marriage or 'customary' marriage must still be regarded as marriage in the sense of a socially sanctioned and ratified agreement with an expectation of relative permanency'.[26] Muslims have been coming to Australia since about the 1750s. In Islam marriage is between a man and a woman but the *sharia* has permitted a man to have up to four wives simultaneously since the seventh century. Temporary or *mut'a* or *mutah* marriages are permitted in Shia law.

The MA does not recognise any traditional or cultural marriages within Australia's Aboriginal peoples as marriage and nor does it recognise Islamic polygamous or temporary marriages as marriage. If the definition of marriage in the MA is to be changed the reasons for doing so to recognise the most recent of forms of marriage to be recognised anywhere in the world but not to recognise forms of marriage with deep religious, historic and cultural roots in Australia needs to be identified. If not these groups will feel marginalised, discriminated against and lacking in equality.

Australia's *Constitution* contains very few provisions which relate to individuals. As Jacobs J observed in *Russell v Russell* in 1976:

> Paragraphs (xxi) and (xxii) of s51 [the marriage and divorce powers respectively] are the only subject matters of Commonwealth power which are not related to what may be broadly described as public economic or financial subjects but which are related to what are commonly thought of as private or personal rights. The reason for their inclusion to me appears to be twofold. First, although marriage and the dissolution thereof are in many ways a personal matter for the parties, social history tells us that the state has always regarded them as matters of public concern. Secondly, and perhaps more important, the need was recognised for a uniformity in legislation on these subject matters throughout the Commonwealth. In a single community throughout which intercourse was to be absolutely free provision was required whereby there could be uniformity in the laws governing the relationship of marriage and the consequences of the relationship as well as the dissolution thereof. Differences between the States in the laws governing the status and the relationship of married persons could be socially divisive to the harm of the new community which was being created.[27]

According to Jacobs J this State interest in marriage was principally about families and children:

> [M]arriage as a social intuition which the law clothes with rights and duties attaching to the parties thereto is primarily an institution of the family. It is true that marriage can be regarded as a social relationship for the mutual society, help and comfort of the spouses but it cannot be

[25] Apart from the brief and invalid introduction of SSM by the ACT.
[26] Ronald Murray Berndt, 'Tribal Marriage in a Changing Social Order' (1961) 5 *University of Western Australia Law Review* 326, 341, quoted in Australian Law Reform Commission above n 21, [236].
[27] *Russell v Russell* (1976) 134 CLR 495, 546.

> simply so regarded. **The primary reason for its evolution as a social institution, at least in Western society,is in order that children begotten of the husband and born of the wife will be recognised by society as the family of that husband and wife**.[28]

For Jacobs J '[t]he nurture of children by, and in recognised and ordered relationship with their parents is thus integral to the concept of marriage as it has been developed as an institution in our society.'[29]

A view of procreation as central to marriage pre-dates Christianity. It is part of the natural law and assumed in most cultures and religions.

As marriages between one man and one woman have been around for a long time there is much empirical research into this form of marriage. This research shows that statistically traditional marriage benefits both the couples who marry and their children.[30]. State recognition of same sex marriage is a recent phenomenon and there is comparatively little published empirical research comparing unmarried same-sex couples to married same sex couples.[31] Larger and longer term studies need to be done. Although many studies of opposite-sex relationships have shown that the physical and mental health benefits of the spouses improve with relationship duration this may not to be the case with same-sex.[32]

In relation to children and same-sex couples there are many difficulties for researchers[33] and the value and quality of the reports which have been done have been heavily criticised.[34] In his review of same-sex parenting literature from 1995 to 2013 Allen concluded as follows:

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[28] Ibid 548 (emphasis added).
[29] Ibid 549; 525; *Attorney-General for the State of Victoria v The Commonwealth of Australia* (1962) 107 CLR 529, 554, 574, 580-581.
[30] 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 Works Ohio Chapter, American Psychoanalytic Association, American Academy of Family Physicians and American Medical Association, Submission in *Obergefell et al. v Hodges, Director, Ohio Department of Health, et al.*, 6 March 2015, 15; Richard G Wight, Allen J Leblanc and M V Lee Badgett, 'Same_Sex Legal Marriage and Psychological Well-Being: Findings From The California Health Interview Survey' (2013) 103(2) *American Journal of Public Health* 339, 339.
[31] 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 Works Ohio Chapter, American Psychoanalytic Association, American Academy of Family Physicians and American Medical Association, above n 81, 13.
[32] Mark Edward Williams and Karen I Fredreiksen-Goldsen, 'Same-Sex partnerships And the Health of Older Adults' (2014) 42(5) *Journal of Community Psychology* 558, 565 – 566.
[33] Simon R Crouch et al, 'Parent-reported measures of child health and wellbeing in same-sex parent families: a cross-sectional survey' (2014) 14 *BMC Public Health* 635, 636, 651.
[34] See, eg, Christine C Kim, 'Impact of Same-Sex Parenting on Children: Evaluating the Research' (Report, Issue Brief, 19 June 2012) 1-3; Doug Allen, 'More Heat Than Light: A Critical Assessment of the Same-Sex Parenting Literature, 1995 - 2013' (2015) 51(2) *Marriage & Family Review* 154,154-177; Redding, Politicized Science, above n 213, 441 - 444; Redding, Scientific Groupthink and Gay Parenting, above n 213; Monte, above n 211, 221—226, 245 - 250; Wendy D Manning, Marshal Neal Fettro and Esther Lamidi, 'Child Well-Being in Same-Sex Parent Families: Review of research Prepared for American Sociological Association Amicus Brief' (2014) 33 *Population Research and Policy Review* 485, 487 – 491; Sullins, above n 86, 100, 108; D Paul Sullins, 'Bias in recruited Sample Research on Children with Same-Sex Parents Using the Strength and Difficulties Questionnaire (SDQ)' (2015) 5(5) *Journal of Scientific Research & Reports* 375, 376, 385; D Paul Sullins, 'The Unexpected Harm of Same-Sex Marriage: A critical Appraisal, Replication and Re-analysis of Wainright and Patterson's Studies of Adolescents with Same-sex Parents' (2015) 11(2) *British Journal of Education, Society & Behavioural Science* 1, 2 - 3; Regnerus, , 752 - 755; Ryan T Anderson, *Truth Overruled: The Future of Marriage and Religious Freedom* (2015, Regnery) 148-158; David van Gend, *Stealing from a Child The Injustice of 'Marriage Equality'* (2016, Connor Court) 59 - 75; American College of Paediatricians, et al, above

A series of weak research designs and exploratory studies do not amount to a growing body of advanced research. Nock (2001) provided the first critical assessment of this literature. He stated then that 'the only acceptable conclusion at this point is that the literature on this topic does not constitute a solid body of scientific evidence.' Although the best studies gave been done recently..[M]ost of [the] latest studies have the same structural flaws found 15 years earlier. Nock's conclusion still stands.[35]

There have been few large-scale demographic studies which are more reliable and suggest that outcomes for children raised by parents of the same sex are significantly worse than the outcomes achieved by children raised by opposite sex married parents particularly those raised by their married biological parents. According to Sullins:

> [N]o representative population data have found lower emotional problems among children with same sex parents. Every random sample has observed higher emotional problems among such children; where the sample was large enough, those differences were statistically significant.[36]

There is presently not sufficient empirical evidence to establish that same-sex couples would benefit from State recognition of their relationships as marriage or that State recognition of such relationships would result in improved outcomes for children raised by such couples.

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n 81, 3-17*; Lofton v Secretary of the Department of Children and Family Services* 358 F 3d 804 [57] (11th Cir, 2004); Family Watch International, 'Same-Sex Parenting and Junk Science' (Policy Brief) <http://www.familywatchinternational.org/fwi/policy_brief_ss_parenting.pdf>.

[35] Allen 173 -174.

[36] Sullins, 385.