IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DARBY, et al., Plaintiffs, v. ORR, Defendant.	)	Nos. 2012 CH 019718 2012 CH 019719 Hon. Sophia Hall
STATE OF ILLINOIS *ex rel.* MADIGAN and WEBB, et al., Intervenors.	)	

MEMORANDUM *AMICUS CURIAE* OF THE CATHOLIC CONFERENCE OF ILLINOIS AND THE LUTHERAN CHURCH-MISSOURI SYNOD IN SUPPORT OF INTERVENORS CHRISTIE WEBB & KERRY HIRTZEL

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INTRODUCTION

> Marriage was before human law, and exists by higher and holier authority—the Divine Order, which we call the law of nature.
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> *Campbell v. Campbell*, 37 Wis. 206, 1875 WL 6269, at *4 (Wis. 1875)

Marriage long has been embraced as the transcendent union between one man and one woman. Originating in natural and sacred laws regarding the complementary nature of men and women, the nurturing of children, and the foundations of a flourishing society, marriage predated both state and federal law. Our State's definition of marriage as the union of one man and one woman—adopting a societal definition that pre-dates the founding of the Nation—appropriately reflects the shared ideals commonly understood to define the longstanding institution of marriage. Plaintiffs now challenge this definition, contending that our State's prohibition on same-sex "marriage" (as codified in the Illinois Marriage and Dissolution of Marriage Act ("IMDMA")) violates, *inter alia*, the due process and equal protection clauses of the Illinois Constitution. Plaintiffs, however, fail to state a constitutional violation.

First, as the definition of marriage as a union between one man and one woman is deeply rooted in the practices, values, and traditions of this State and the United States (not to mention 5,000 years of Western culture), Plaintiffs fail to show that the liberty protections of the Illinois Due Process Clause extend to same-sex marriage.

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[1] A*micus curiae* Catholic Conference of Illinois advocates on matters of law and policy for the Catholic community in Illinois—six dioceses, nearly one thousand parishes, and approximately 3.8 million persons, or over one-quarter of the State's population. A*micus curiae* the Lutheran Church—Missouri Synod is a family of 2.6 million Christians, gathered in more than 6,000 congregations throughout the United States, including more than 500 congregations throughout Illinois.

Second, Plaintiffs do not state a violation of the Illinois Equal Protection Clause because, since its founding, our State has had at least a rational basis for reserving marriage to opposite-sex couples. As this Court is well aware, for the purposes of rational basis review, there merely must be a reasonable relationship between the challenged legislation and a conceivable (even if unarticulated) governmental interest. Here, the State has an unquestionable interest in ensuring that its legal definition of marriage reflect what the People of Illinois actually believe marriage to be. Additionally, the General Assembly could have reasonably decided that adopting the consensus definition of marriage best serves the State's interest in the responsible raising of children produced by opposite-sex unions. The Legislature also could have determined that same-sex marriage would impermissibly threaten religious freedom. The wisdom of these determinations is not at issue, as the Legislature's policy choices, reflecting the will of the People, are entitled to great deference under a rational basis review. Under this standard, the IMDMA must be upheld.

Marriage is a fundamental building block of our society and is at the heart of our cultural, religious and social consensus about how society should be organized. The current law reflects the broad consensus of what marriage is and has been since the Founding. If so important an institution is to be radically redefined in Illinois, then so grave a decision belongs to the People.

ARGUMENT

I. SAME-SEX MARRIAGE IS NOT "DEEPLY ROOTED" IN THIS NATION'S HISTORY AND TRADITIONS, AND THEREFORE IS NOT GUARANTEED BY THE LIBERTY PROTECTIONS OF THE ILLINOIS DUE PROCESS CLAUSE

When evaluating whether a plaintiff has asserted a fundamental right for the purposes of a substantive due process analysis, courts first must assess whether the purported right is "deeply rooted in this Nation's history and tradition[] and implicit in the concept of ordered liberty."

Washington v. Glucksberg, 521 U.S. 702, 720-21 (1997) (internal quotations and citations omitted). "[B]y extending constitutional protection to an asserted right or liberty interest, [courts], to a great extent, place the matter outside the arena of public debate and legislative action." *Id.* at 720 (internal quotations and citations omitted). Accordingly, the U.S. Supreme Court has required the "utmost care" when recognizing new fundamental rights, "lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of [the] Court." *Id.*

Although Plaintiffs assert a fundamental right to marry someone of the same sex, this purported right is found nowhere in the State's or the Nation's history or traditions. Our country and our State have had a near-unanimous consensus that marriage is the union of one man and one woman. This collective understanding was not the result of legislative pronouncement, but rather emanated from commonly held beliefs regarding the complementary nature of men and women, shared goals regarding the parenting of children, and civic ideals regarding the creation of a thriving society.

Our country's faith traditions, which laud marriage as the sacred union of one man and one woman, have buttressed these collective ideals. While marriage is not a uniquely religious institution, the meaning of the word itself derives much of its iconic power from the Nation's faith traditions which have enshrined marriage as a particular kind of union—separate and apart from any other. Amici are among the many faiths which hold this belief.

Amicus Catholic Conference of Illinois represents the Catholic Church in Illinois. The Catholic Church teaches that "[m]arriage is a lifelong partnership of the whole of life, of mutual and exclusive fidelity, established by mutual consent between a man and a woman, and ordered towards the good of the spouses and the procreation of offspring." A Pastoral Letter of the

United States Conference of Catholic Bishops, *Marriage: Love and Life in the Divine Plan*, 7 (2009). Existing not purely as a "human institution," the Catholic Church teaches that marriage "has been established by the creator and endowed by him with its own proper laws." *Id.* (internal quotations omitted). Male-female complementarity is integral to the Catholic Church's understanding of marriage, as men and women are believed to be "different as male and female, but the same as human persons who are uniquely suited to be partners or helpmates for each other." *Id.* at 10. "This communion of persons has the potential to bring forth human life and thus to produce the family . . . which is the origin and foundation of all human society." *Id.* at 11.

Amicus The Lutheran Church—Missouri Synod ("LCMS") extols marriage as "the permanent and faithful union of one man and one woman" and the "natural basis of the family." *The Protection of Marriage: A Shared Commitment*, Rev. Matthew C. Harrison (President of LCMS) signatory (Dec. 6, 2010). Honoring not only "the unique love between husbands and wives," the LCMS also affirms "the indispensable place of fathers and mothers" and the "corresponding rights and dignity of all children." *Id.* According to the LCMS, "[m]arriage thus defined is a great good in itself" and "serves the good of others and society." *Id.*

The Natural Law affirms this understanding of marriage, holding that marriage is "a permanent association between a man and women intended to nourish the bond of conjugal love and to enable the procreation and education of children." John J. Coughlin, O.F.M., *Natural Law, Marriage, and the Thought of Karol Wojtyla*, 28 Fordham Urb. L.J. 1771, 1774 (2001). "In contrast to a focus on marriage as a mere social convention reflective of subjective preference, the natural law tradition considers marriage and family to constitute the most fundamental form

of human community. This natural community flows from the unity of the person as body and spirit and the complementarity of the sexes." *Id.* at 1777-78.

This definition of marriage as a complementary opposite-sex union is one which has been reflected in the English lexicon since before the Nation's founding. *See, e.g.*, Thomas Dyche & William Pardon, A NEW GENERAL ENGLISH DICTIONARY (1740) (defining marriage as "that honourable contract that persons of different sexes make with one another"); James Buchanan, LINGUAE BRITANNICAE VERA PRONUNCIATIO (1757) (defining marriage as a "civil contract, by which a man and a woman are joined together").

From the very beginning, marriage in Illinois has been defined in accord with the Western cultural consensus. The Illinois Due Process Clause traces its origin to the Northwest Ordinance ("An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio"), first enacted in 1787 by the Continental Congress, and later reenacted by the First Congress of the United States (which in 1789 proposed what is now the Due Process Clause of the Fifth Amendment) ("[n]o man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land."). The Northwest Ordinance is an authoritative reference when determining how similar constitutional provisions should be interpreted. *Reynolds v. Sims*, 377 U.S. 533, 573 (1964). The 1788 law of the Northwest Territory was clear about marriage: "Male persons of the age of seventeen years, and female persons of the age of fourteen years, and not prohibited by the laws of God, may be joined in marriage." Laws of the Northwest Territory of the River Ohio 102 ch. VII § 1 (1833 ed.).

Federal law required that the Illinois Constitution of 1818 be in harmony with the Northwest Ordinance. *See* Matthew J. Hegreness, *An Organic Law Theory of the Fourteenth Amendment: The Northwest Ordinance As the Source of Rights, Privileges, and Immunities*, 120

YALE L.J. 1820, 1857 & n. 116 (2011) (citing Act of Congress Enabling the People of Illinois to Form a State Constitution, Apr. 18, 1818, ch. 67, § 4, 3 Stat. 428, 430). Under our first State constitution, the earliest marriage laws reflected what marriage was (and is) thought to be. *See* 1826 Ill. Laws 88 ("Be it enacted . . . That it shall be lawful for any of the judges of the circuit courts in this state, to join together, as husband and wife, all such persons as are allowed to marry by virtue of the act entitled 'an act regulating marriages,' approved February 20, 1819 . . ."). The 1819 marriage law closely tracks the territorial statute. *See Bonham v. Badgley*, 7 Ill. 622, 627 (1845) (quoting 1819 Ill. Laws 26). The law's reference to "the laws of God" reflects not only its basis in preexisting societal understanding, but also the relationship between marriage and procreation. *See Arado v. Arado*, 281 Ill. 123, 125-26 (1917) (stating that "the laws of God" "have been commonly understood as the prohibitions . . . of the eighteenth chapter of Leviticus" relating to consanguinity).

Civil marriage always has been defined under Illinois law as the union of one man and one woman. *See Cartwright v. McGown*, 121 Ill. 388, 398 (1887) (defining marriage as "a civil contract . . . by which a man and woman agree to take each other for husband and wife"); *Dunham v. Dunham*, 162 Ill. 589, 607 (1896) ("Marriage, as understood among civilized people, is the union of one man with one woman."); *Seuss v. Schukat*, 358 Ill. 27, 35 (1934) ("A 'marriage' is a civil contract, by which a man and a woman agree to take each other for husband and wife during their joint lives."); *In re Marriage of Best*, 387 Ill. App. 3d 948, 949 (2d Dist. 2009) (providing that "[t]he term 'marriage'" is "defined as '[t]he legal union of a man and woman as husband and wife'") (quoting Black's Law Dictionary 986 (7th ed. 1999)).

Moreover, when the current Illinois Constitution was ratified by special election in 1970, marriage was defined under Illinois law as an opposite-sex union. It is implausible to imagine

that the due process clause's liberty protections were thought to include a right to same-sex marriage or that marriage was understood as anything other than the union of one man and one woman under our current Constitution. *Cf. Committee for Educational Rights v. Edgar*, 174 Ill.2d 1, 13 (1996) ("The meaning of a constitutional provision depends on the common understanding of the citizens who, by ratifying the constitution, gave it life. This understanding is best determined by referring to the common meaning of the words used.") (internal citations omitted).

Finally, as Plaintiffs concede, even today, only six states and the District of Columbia permit same-sex couples to marry. (*See* Lazaro's Compl. ¶ 4.) Moreover, in every state where same-sex marriage has been put to referendum, it has been rejected by the People. John Wagner, *Same-sex marriage to be tested in Md.*, Wash. Post, May 8, 2012, at A4. Given this longstanding history of defining marriage as the union of one man and one woman, Plaintiffs cannot show that the purported right to marry someone of the same sex is deeply rooted in the history and traditions of this State or the United States. Accordingly, Plaintiffs fail to state a Due Process Clause violation.

II. UNDER THE EQUAL PROTECTION CLAUSE ILLINOIS HAS A RATIONAL BASIS TO ADOPT THE LONGSTANDING SOCIETAL CONSENSUS THAT MARRIAGE IS THE UNION BETWEEN ONE MAN AND ONE WOMAN

a. The People's Definition Of Marriage Is Presumptively Constitutional.

The challenged IMDMA provisions represent the will of the People of Illinois, expressed in a statute passed by the Legislature. Equal Protection review of a statute under the rational basis test is "limited and deferential," affording a "strong presumption of constitutionality" to the statute. *Hudson v. YMCA of Metropolitan Chicago LLC*, 377 Ill.App.3d 631, 638 (1st Dist. 2007) (citing *People v. Cully,* 286 Ill.App.3d 155, 163 (1997)) There merely must be "a

reasonable relationship between the challenged legislation and a conceivable, [even though] unarticulated, governmental interest." *Id.* (internal quotation omitted). The legislature is not required to "actually state at any time the purpose or rationale supporting its classification." *Id.* Rather, "if any set of facts can reasonably be conceived to justify the challenged classification, it must be upheld." *Id.*

b. Illinois Has At Least A "Conceivable" Interest In Defining Marriage In The Same Way As The People of Illinois.

When it codified the definition of marriage, the Legislature recognized a social institution which predated the founding of the State; it was not creating that institution. As established above, a consensus already existed as to what the word "marriage" signified. Accordingly, the State had a legitimate interest in ensuring that its definition of marriage reflected what the people of Illinois actually understood marriage to be. *Cf. Atkins v. Virginia*, 536 U.S. 304, 312 (2002) ("[T]he 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'") (quoting *Penry v. Lynaugh,* 492 U.S. 302, 331 (1989)).

In their attempt to overturn the People's definition of marriage, Plaintiffs correctly note that "the right to marry in the United States was far more restricted than it is today." (Lazaro's Compl. ¶ 3.) But Plaintiffs do not (and cannot) assert that a consensus now exists that marriage should be defined without respect to an individual's gender. Furthermore, even if such a consensus were forming, it would be the role of the Legislature—not the Judiciary—to effectuate so drastic a change in Illinois law. Moreover, restricting who may marry is wholly distinct from redefining what "marriage" is. Put another way, denying an individual the right to enter into an institution as it already exists is altogether different from denying that individual's request to radically redefine the institution. Accordingly, as the State's definition of marriage merely (and rightly) reflects the understanding of marriage actually embraced by our citizens and our

forebearers, the State has a rational basis for defining marriage as between one man and one woman.

c. The State's Definition Of Marriage Promotes Its Interest In Responsible Procreation Among Opposite-Sex Couples.

The Legislature could have determined that the traditional definition of marriage furthered the State's legitimate interest in promoting the nurturing of children produced by opposite-sex unions. As New York's high court, the Court of Appeals, explained:

> [T]he Legislature could rationally decide that, for the welfare of children, it is more important to promote stability, and to avoid instability, in opposite-sex than in same-sex relationships. Heterosexual intercourse has a natural tendency to lead to the birth of children; homosexual intercourse does not. Despite the advances of science, it remains true that the vast majority of children are born as a result of a sexual relationship between a man and a woman, and the Legislature could find that this will continue to be true. The Legislature could also find that such relationships are all too often casual or temporary. It could find that an important function of marriage is to create more stability and permanence in the relationships that cause children to be born. It thus could choose to offer an inducement—in the form of marriage and its attendant benefits—to opposite-sex couples who make a solemn, long-term commitment to each other.
>
> The Legislature could find that this rationale for marriage does not apply with comparable force to same-sex couples. These couples can become parents by adoption, or by artificial insemination or other technological marvels, but they do not become parents as a result of accident or impulse. The Legislature could find that unstable relationships between people of the opposite sex present a greater danger that children will be born into or grow up in unstable homes than is the case with same-sex couples, and thus that promoting stability in opposite-sex relationships will help children more.

Hernandez v. Robles, 855 N.E.2d 1, 7 (N.Y. 2006). *See, also, Citizens for Equal Protection v. Bruning*, 455 F.3d 859, 867 (8th Cir. 2006) (accepting Nebraska's argument that its marriage laws were rationally related to its interest in "steering procreation into marriage"); *Jackson v. Abercrombie*, 2012 WL 3255201, at *2 (D. Hawaii Aug. 8, 2012) ("[T]he legislature could rationally conclude that defining marriage as a union between a man and woman provides an

inducement for opposite-sex couples to marry, thereby decreasing the percentage of children accidently conceived outside of a stable, long-term relationship.").

In recognition of the fact that opposite-sex relationships may give rise to unintended pregnancies in ways that same-sex relationships simply do not, and the fact that the State's interests in marriage largely are rooted in promoting responsible parenting, the General Assembly could have determined that children's interests were best served by retaining the consensus definition of "marriage" and its corresponding ideal of having both the mother and the father assume full responsibility for any children produced by their union. Moreover, that the Legislature has extended the legal benefits of marriage to same-sex couples via civil unions "does not negate the plausibility that the prestige and social significance of marriage might induce opposite-sex couples to marry." *Id.* at *39.

While it may be argued that the Legislature's chosen distinction is imprecise, as some opposite-sex couples will not have children and some same-sex couples will do so, such an argument is of no consequence for the purposes of rational basis review. *Citizens for Equal Protection v. Bruning*, 455 F.3d 859, 868 (8th Cir. 2006) (quoting *Vance v. Bradley,* 440 U.S. 93, 108-09 (1979)) ("'[e]ven if the classification . . . is to some extent both underinclusive and overinclusive,'" "'[w]e accept such imperfection because it is in turn rationally related to the secondary objective of legislative convenience'").

d. Retaining The Traditional Definition Of Marriage Furthers The State's Interest In Preserving Religious Freedom.

The U.S. Supreme Court has made clear that "it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out their religious missions." *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 335 (1987). Indeed, when reviewing a

statute's constitutionality, the high court seeks to adopt a construction that avoids potential infringements on and entanglements with the First Amendment's Religion Clauses. *See, e.g.*, *N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 507 (1979) (declining to "construe the Act in a manner that could in turn call upon the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses"); Schlitz, P. and Laycock, D., Employment In Religious Organizations, Religious Organizations In The United States, Serritella, J. (2006) at 527-563.

In the absence of sufficiently expansive religious and conscience accommodations, governmental redefinition of marriage to include same-sex unions threatens the religious liberty interests of religious groups and religiously-devoted individuals. One scholar catalogued these potential threats, explaining that:

> [R]eligious institutions in the United States that refuse to recognize same-sex marriage may face significant potential civil liability and litigation risk under employment antidiscrimination laws, fair housing laws, and public accommodation laws. They may also risk loss of government privileges and benefits including tax-exempt status, exclusion from eligibility for social service contracts, [2] exclusion from government facilities and grounds, and exclusion from solemnizing marriages. Moreover, they may face potential civil and criminal liability for violating "hate crimes" and "hate speech" laws.

Lynn D. Wardle, *A House Divided: Same-Sex Marriage and Dangers to Civil Rights*, 4 LIBERTY U. L. REV. 537, 554 (2010). Specifically, "[r]eligiously affiliated marriage-counseling services, day-care centers, retreat centers, summer family camps, or family community centers might be penalized for refusing to provide[] services to same-sex couples." Thomas C. Berg, *What Same-*

[2] The State's recent decision not to renew its longstanding contracts with several Catholic Charities adoption and foster care service providers on account of Catholic Charities' policy of not placing children with unmarried cohabitating couples (including couples in civil unions) shows that such threats are not merely speculative. *See, e.g.*, Mitch Dudek and Dave McKinney, *Gov. Quinn cuts foster-care contracts with Catholic Charities over civil unions dispute*, Chicago Sun-Times (July 11, 2011).

Sex Marriage and Religious-Liberty Claims Have in Common, 5 NW J. L. & SOC. POL'Y 206, 209 (2010). Furthermore, "[p]rivate individuals, who for reasons of faith or conscience do not wish to facilitate or endorse same-sex marriages, risk exclusion from eligibility for employment ... in civil service positions that involve licensure or the solemnization of marriage." Wardle, 4 LIBERTY U. L. REV. at 554. The Legislature could have decided that preserving the historically accepted definition of marriage as between a man and a woman was the best way to prevent these threats to religious liberty.

The recently enacted Illinois Religious Freedom Protection and Civil Union Act (the "Civil Union Act"), 750 ILCS 75, provides strong support for this proposition. In the Civil Union Act, the General Assembly decreed that "[a] party to a civil union is entitled to the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses." 750 ILCS 75/20. In extending these benefits to same-sex couples, however, the Legislature did not designate these unions "marriages." Rather, recognizing that instituting civil unions implicates religious freedoms that the General Assembly constitutionally is required to respect, the General Assembly retained a legal distinction between civil unions and marriage, balancing its desire to extend legal benefits to same-sex couples with its mandate to protect religious freedom. *See* 750 ILCS 75/15 (providing that "[n]othing in this Act shall interfere with or regulate the religious practice of any religious body"). The IMDMA's prohibition on same-sex marriage is consistent with these goals of avoiding encroachments on religious freedom rights.[3]

[3] The General Assembly's adoption of civil unions in Illinois in no way renders Illinois' marriage laws constitutionally suspect, as the Legislature is entitled to make incremental modifications of its laws. *See Jackson v. Abercrombie,* 2012 WL 3255201, at *37 (D. Hawaii Aug. 8, 2012) (noting that it is "illogical and unwise to conclude that the passage of the civil unions law—advocated for by the gay and lesbian community—renders Hawaii's existing

e. Equal Protection Of The Laws Requires Legal Equality As Opposed To Equality Of Societal Esteem and Recognition.

The equal protection enshrined in the Illinois Constitution is "equal protection of the laws," Art. I, § 2, as opposed to equal societal esteem of different types of relationships. Plaintiffs assert that they "are before this Court because offering them civil unions instead of marriage denies them the longstanding reverence, esteem, and universal recognition that are associated solely with marriage." (Lazaro's Compl. ¶ 8.) Plaintiffs' real target, therefore, is not any inequality *under the law*, but rather the beliefs of our citizens regarding marriage and civil unions. However, as the Civil Union Act is to be "liberally construed" in order to afford parties to a civil union the same legal benefits as are afforded to spouses, 750 ILCS 75/5, any deprivation of *legal* benefits Plaintiffs may have experienced has been addressed under this Act.

Perceived deprivations of societal esteem do not implicate constitutional questions. The recognition and reverence that accompanies marriage exists not because the State has codified marriage in a particular way, but rather because, for millennia, people from diverse backgrounds have embraced marriage as the union of one man and one woman. Moreover, "[t]here is no constitutionally protected right to moral or social approbation. . . . Social stature within a community comprises the thoughts of people in that community. The 'equal protection of the laws' requires equal legal stature, not social stature. Courts cannot force people to bestow social esteem outright." Daniel Dunson, *A Right to a Word? The Interplay of Equal Protection and Freedom of Thought in the Move to Gender-Blind Marriage*, 5 ALB. GOV'T L. REV. 552, 592-93 (2012). That private citizens may hold views regarding marriage that run counter to the views held by Plaintiffs is not indicative of a constitutional violation but rather reflects the reality of

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marriage laws irrational and unconstitutional" as such a conclusion "would negate the ability of states to experiment with social change without fear of constitutionalizing this divisive social issue").

living in a democratic society in which citizens' thoughts and beliefs—including those that spring from religious traditions—are beyond the realm of permissible governmental intrusion.

III. THE SEPARATION OF POWERS REQUIRES THE COURT TO DEFER TO THE GENERAL ASSEMBLY'S PUBLIC POLICY PRONOUNCEMENTS REGARDING MARRIAGE

When, as here, a purported challenge to a statute's constitutionality is actually a challenge to the wisdom of the statute, Illinois courts have made clear that the challenge should be directed to the Legislature. *See, e.g., In re Parentage of John M.*, 212 Ill. 2d 253, 273 (2004) ("[W]here objections pose what are essentially questions of policy[,] [they] are more appropriately directed to the legislature than to this court.") (internal quotation omitted). Accordingly, courts have emphasized that they "do not sit as a superlegislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare." *Id.* (internal quotations and citations omitted).

The General Assembly unambiguously communicated its goals when enacting the IMDMA, stating that the Act was designed to "strengthen and preserve the integrity of marriage and safeguard family relationships" and to "provide adequate procedures for the solemnization and registration of marriage." 750 ILCS 5/102. The Legislature also clearly defined what constitutes a marriage and expressly provided that "[a] marriage between 2 individuals of the same sex is contrary to the public policy of this State." 750 ILCS 5/213.1. This policy of defining marriage as between one man and one woman was reinforced when the Legislature chose to recognize civil unions but not same sex marriages. As no fundamental rights are implicated by these provisions and such provisions are reasonably related to legitimate

governmental interests, the Legislature's policies regarding marriage should be honored.[4] *Cf. Hewitt v. Hewitt*, 77 Ill. 2d 49, 61 (1979) ("The question whether change is needed in the law governing the rights of parties in this delicate area of marriage-like relationships involves evaluations of sociological data and alternatives we believe best suited to the superior investigative and fact-finding facilities of the legislative branch in the exercise of its traditional authority to declare public policy in the domestic relations field.").

For more than 5,000 years, marriage has been enshrined as the time-honored way in which one man and one woman could unite to raise a family and, through that union, engage the divine. In defining marriage as between one man and one woman, the Legislature reflected the deeply rooted beliefs and values of the People—those whom it was charged with representing. Accordingly, for the word "marriage" to retain its significance as a socially revered relationship, any redefinition of the word should emanate from the People, through their elected representatives, and must not be imposed upon the People by judicial fiat. *See Jackson v. Abercrombie,* 2012 WL 3255201, at *3 (D. Hawaii Aug. 8, 2012) ("If the traditional institution of marriage is to be restructured ... it should be done by a democratically-elected legislature or the people through a constitutional amendment, not through judicial legislation that would inappropriately preempt democratic deliberation regarding whether or not to authorize same-sex marriage.").

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[4] When reviewing prohibitions on same-sex marriage, the high courts of New York and Washington held that such laws were not unconstitutional and concluded that it was not within the scope of their powers to decide what the law *should* be. *See Hernandez v. Robles*, 855 N.E.2d 1, 12 (N.Y. 2006) (holding that limiting marriage to opposite-sex couples was not unconstitutional and emphasizing that "[i]t is not for us to say whether same-sex marriage is right or wrong"); *Andersen v. King County*, 138 P.3d 963, 968 (Wash. 2006) (holding that "the solid body of constitutional law disfavors the conclusion that there is a right to marry a person of the same sex" and underscoring that "our decision is not based on an independent determination of what we believe the law should be").

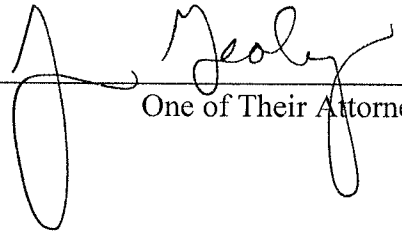
CONCLUSION

Wherefore, Amici The Catholic Conference of Illinois and The Lutheran Church—Missouri Synod respectfully request that this Court grant the Motion to Dismiss filed by Intervenors Christie Webb and Kerry Hirtzel, and grant such other relief as may be just and proper.

Respectfully submitted,

CATHOLIC CONFERENCE OF ILLINOIS and THE LUTHERAN CHURCH-MISSOURI SYNOD

Dated: August 27, 2012

By: 
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