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SUPREME COURT  
OF THE  
STATE OF CONNECTICUT

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S.C. 17716

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ELIZABETH KERRIGAN, ET AL.,

PLAINTIFFS-APPELLANTS

v.

COMMISSIONER OF PUBLIC HEALTH, ET AL.,

DEFENDANTS-APPELLEES

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**BRIEF *AMICUS CURIAE* OF THE FAMILY INSTITUTE OF CONNECTICUT  
IN SUPPORT OF THE DEFENDANTS-APPELLEES**

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## **STATEMENT OF THE ISSUE**

Whether the State of Connecticut has a rational basis for limiting marriage to one man and one woman.

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## INTEREST OF AMICUS

The Family Institute of Connecticut (hereinafter "FIC") is a non-partisan, non-profit Connecticut public policy organization whose purpose is to help make Connecticut as family-friendly as possible. FIC is an independent 501(c)(3) tax exempt institution, and its principal place of business is in Hartford, Connecticut. FIC places a strong emphasis on education, and networks with pro-family groups around the State of Connecticut and throughout the nation. Examples include the Connecticut Federation of Catholic School Parents and the Institute for American Values. See Family Institute of Connecticut Action, <http://www.ctfamily.org/about.html> (last visited April 13, 2007).

The vision of the Family Institute of Connecticut is to see citizens, institutions and government acknowledge and encourage the vital role of the family and to once again see the Judeo-Christian principles that are articulated in the Declaration of Independence and the United States Constitution re-employed in our society and its public policy.

See Family Institute of Connecticut, <http://www.ctfamily.org/values.html> (last visited April 13, 2007).

Additionally, FIC devotes its efforts toward a:

1. A restored consensus that the family consists of people related by marriage, birth or adoption, and which recognizes the vital role of both mother and father in nurturing and supporting children, *id.*;
2. A community committed to racial reconciliation and compassion for all families, especially single-parent and needy families, *id.*;
3. A society committed to helping family, church, synagogue and community meet the needs of its members without undue dependence upon government, *id.*;
4. A culture that recognizes the indisputable link between the sanctity of life at every stage and the dignity of every person, *id.*; and

5. A government that weighs the impact on the family of its policies and laws. Linked to this vision, [FIC] see[s] a need and opportunity for building consensus and progress by focusing upon the broad and unifying goal of strengthening families. [FIC] realize[s] that this is not a “quick-fix” effort, but a journey that will require visionary leadership, moral courage, compassionate commitment – and the blessings of Providence. *Id.*

FIC is committed to preserving the traditional institution of marriage as the union of one man and one woman, and therefore opposes efforts to take public debates on moral issues, including the definition of marriage, out of the legislative process through the minting of new rights under federal and state constitutions.

## **STATEMENT OF NATURE OF PROCEEDINGS AND FACT**

Amicus FIC adopts the statement of nature of proceedings and facts set forth in Defendants' brief.



## ARGUMENT

### A. STANDARD OF REVIEW.

The construction of the Connecticut Constitution presents a question of law subject to plenary review. See *Ramos v. Town of Vernon*, 254 Conn. 799, 829-30 (2000).

### B. REDEFINING MARRIAGE TO INCLUDE SAME-SEX COUPLES WILL EVENTUALLY DEVALUE THE INSTITUTION TO THE DETRIMENT OF CHILDREN.

Marriage is one of the most meaningful of human social institutions because of its link to creating and raising the next generation. In short, “if human beings did not reproduce sexually, creating . . . infants with their long periods of dependency, marriage would not be the virtually universal human social institution that it is.” Dan Cere, *The Future of Family Law: Law & the Family Crisis in North America* 14 (Institute for American Values 2005). The state’s purpose in civil marriage is to channel “the erotic and interpersonal impulses between men and women in a particular direction: one in which men and women commit to each other and to the children that their sexual unions commonly (and even at times unexpectedly) produce.” *Id.* at 12. Natural law theorist, John Rawls, explains the matter cogently:

As an institution, conjugal marriage addresses the social problem that men and women are sexually attracted to each other and that, without any outside guidance or social norms, these intense attractions can cause immense personal and social damage. This mutual attraction is inherently linked to the “reproductive labor” that is essential to the intergenerational life of all societies, including modern liberal societies. *The default position for men and women attracted to the opposite sex, absent strong social norms, is too many children born without fathers, too many men abandoning the mothers of their children, and too many women left alone to care for their offspring. If law and culture choose to “do nothing” about sexual attraction between men and women, the*

*passive, unregulated heterosexual reality is multiple failed relationships and millions of fatherless children.*

John Rawls, *Justice as Fairness: A Restatement* 162 (Harvard University Press 2001) (emphasis added).

Thus, the institution of civil marriage is deployed to convey the seriousness of sexual relationships that result in children.<sup>1</sup> This is especially crucial for heterosexual males who have no physical connection to their offspring after conception. See Douglas W. Kmiec, *The Procreative Argument for Proscribing Same-Sex Marriage*, 32 *Hastings Const. L. Q.* 653, 657 (2005). The Indiana Court of Appeals recognized this unassailable fact recently in upholding Indiana's Defense of Marriage Act:

The institution of opposite-sex marriage both encourages such couples to enter into a stable relationship before having children and to remain in such a relationship if children arrive during the marriage unexpectedly. The recognition of same-sex marriage would not further this interest in heterosexual "responsible procreation." Therefore, the legislative classification of extending marriage benefits to opposite-sex couples but not same-sex couples is reasonably related to a clearly identifiable, inherent characteristic that distinguishes the two classes: the ability or inability to procreate by "natural" means.

*Morrison v. Sadler*, 821 N.E.2d 15, 25 (Ind. Ct. App. 2005).

One of the three dissenting Justices in *Goodridge v. Department of Pub. Health*, also recognized the profound link between marriage and procreation:

Admittedly, heterosexual intercourse, procreation, and child care are not necessarily conjoined[,] ... *but an orderly society requires some mechanism for coping with the fact that sexual intercourse commonly results in pregnancy and childbirth. The institution of marriage is that mechanism . . . . The institution of marriage provides the important legal and normative link between heterosexual intercourse and procreation on the one hand and family responsibilities on the other.* The partners in a marriage are expected to engage in exclusive sexual

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<sup>1</sup> While it is true that the Connecticut legislature has largely eviscerated the unique status of marriage by extending all the benefits of marriage to civil unions, 2005 Conn. Pub. Acts 5-10 (Reg. Sess.), it should not be presumed that calling same-sex unions marriage will have no negative repercussions on the institution of marriage among heterosexuals, given the significant social meaning of marriage.

relations, with children the probable result and paternity presumed. Whereas the relationship between mother and child is demonstratively and predictably created and recognizable through the biological process of pregnancy and childbirth, there is no corresponding process for creating a relationship between father and child. Similarly, aside from an act of heterosexual intercourse nine months prior to childbirth, there is no process for creating a relationship between a man and a woman as the parents of a particular child. The institution of marriage fills this void by formally binding the husband-father to his wife and child, and imposing on him the responsibilities of fatherhood. The alternative, a society without the institution of marriage, in which heterosexual intercourse, procreation, and child care are largely disconnected processes, would be chaotic.

798 N.E.2d 941, 995-96 (Mass. 2003) (Cordy, J., dissenting) (emphasis added).

If any two individuals can “marry” and secure all of the benefits of civil marriage, then civil marriage loses potency as a means of encouraging responsible procreation. Proof of this point has been accruing for years in European countries that have adopted same-sex marriage. Three years ago in Holland, the first country to adopt same-sex marriage, five Dutch scholars wrote a letter addressed to “parliaments of the world debating the issue of same-sex marriage.” In the letter, the scholars advance a compelling case that gay marriage in the Netherlands has contributed to the decline of married heterosexual couples and to an exponential increase in out-of-wedlock births.<sup>2</sup> The authors reported substantial statistical evidence documenting the decline of Dutch marriage since gay marriage became legal, and conclude:

Over the past fifteen years, the number of marriages has declined substantially, both in absolute and in relative terms. In 1990, 95,000 marriages were solemnized (6.4 marriages per 1,000 inhabitants); by 2003, this number had dropped to 82,000 (5.1 marriages per 1,000 inhabitants). This same period also witnessed a spectacular rise in the number of illegitimate births--in 1989 one in ten children were born out of wedlock (11 percent), by 2003 that number had risen to almost one

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<sup>2</sup> Letter of Professors. M. van Mourik, A. Nuytinck, R. Kuiper, J. Van Loon PhD, & H. Wels PhD, July 8, 2004, *available at* <http://www.marriedebate.com/2004/07/dutch-scholars-on-ssm-new-statement.htm>.

in three (31 percent). The number of never-married people grew by more than 850,000, from 6.46 million in 1990 to 7.32 million in 2003. It seems the Dutch increasingly regard marriage as no longer relevant to their own lives or that of their offspring.

. . . .

[T]here are good reasons to believe the decline in Dutch marriage may be connected to the successful public campaign for the opening of marriage to same-sex couples in The Netherlands. After all, supporters of same-sex marriage argued forcefully in favour of the (legal and social) separation of marriage from parenting. In parliament, advocates and opponents alike agreed that same-sex marriage would pave the way to greater acceptance of alternative forms of cohabitation.

In our judgment, it is difficult to imagine that a lengthy, highly visible, and ultimately successful campaign to persuade Dutch citizens that marriage is not connected to parenthood and that marriage and cohabitation are equally valid 'lifestyle choices' has not had serious social consequences.<sup>3</sup>

Similarly, Scandinavia has seen a dramatic decrease in heterosexual marriages since gay marriage was adopted. British demographer David Coleman and senior Dutch demographer Joop Garssen have written that "marriage is becoming a minority status" in Scandinavia. In Denmark, a slight majority of all children are born within marriage, but 60 percent of first-born children are born out-of-wedlock. Danish demographers Wehner, Kambskard, and Abrahamson argue that marriage has ceased to be the normative setting for Danish family life.<sup>4</sup>

In certain Norwegian counties where gay marriage is widely accepted, heterosexual marriages have declined and out-of-wedlock births have risen far greater than rates for Norway as a whole. In one county where gay marriage was widely accepted and even preached in local churches, 82 percent of first-born children were born out-of-wedlock. Sixty-seven percent of all children born in the same county were born out-of-wedlock, mainly to cohabiting couples. Cohabiting

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<sup>3</sup> *Id.*

<sup>4</sup> Stanley Kurtz, No Explanation, Nat'l Rev. Online, at <http://www.nationalreview.com/kurtz/kurtz200406030910.asp>. (June 3, 2004).

couples in Scandinavia break up at two to three times the rate of married couples. Stanley Kurtz, *The End of Marriage in Scandinavia*, *The Weekly Standard*, February 2, 2004, at 9.<sup>5</sup>

Not surprisingly, public attitudes toward marriage reflect societal devaluation in those countries where same-sex marriage has been adopted. In *The Future of Marriage*, sociologist David Blankenhorn reports the results of polls taken by the International Social Survey Programme (ISSP), a collaborative effort of universities in over 40 countries. In 2002, the ISSP polled 50,000 adults in 35 countries, asking whether they agreed or disagreed with six statements about the value of marriage: 1) Married people are generally happier than unmarried people; 2) People who want children ought to get married; 3) One parent can bring up a child as well as two parents together; 4) It is all right for a couple to live together without intending to get married; 5) Divorce is usually the best solution when a couple can't seem to work out their marriage problems; and 6) The main purpose of marriage these days is to have children. David Blankenhorn, *The Future of Marriage* 222-24 (Encounter Books 2007).

The poll suggests strong correlations between societal attitudes devaluing marriage and the adoption of same-sex marriage. Positing that statements one, two, and six indicate support for traditional marriage and statements three, four, and five reflect a lack of support for traditional marriage, Blankenhorn concludes:

Support for marriage is by far the weakest in countries with same-sex marriage. The twelve countries that . . . have marriage-like civil unions show significantly more support for marriage. The two countries with regionally limited recognition of gay marriage (Australia and the United States) do better still on these support-for-marriage measurements, as do those . . . without gay marriage and without marriage-like civil unions.

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<sup>5</sup> Available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/003/660zypwj.asp>.

In some instances, the differences are quite large. For example, people in nations with gay marriage are less than half as likely as people in nations without gay unions to say that married people are happier. Perhaps most important, they are *significantly* less likely—38 percent compared with 60 percent—to say that people who want children ought to get married. They are also significantly more likely—83.1 percent compared with 49.7 percent—to say that cohabiting without intending to marry is all right, and are somewhat more likely to say that divorce is usually the best solution to marital problems. Compared with Australia and the United States [respondents in the countries with gay marriage] are significantly more likely to say that divorce is usually the best solution.

*Id.* at 228-29.<sup>6</sup>

Similarly, a study done by The World Values Survey, a Stockholm, Sweden-based group reveals the same correlation between acceptance of same-sex marriage and societal devaluation of marriage. The Survey, which polled over

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<sup>6</sup> On page 233 of his book, Blankenhorn summarized the statistics published by the ISSP in the reproduced chart below.

<b>Summary of Attitudes about Marriage in Surveyed Countries, by Legal Status of Same-Sex Marriage</b>					
	Married people are happier	People who want children should marry	One parent can be as good as two together	Cohabiting without intending to marry is all right	Divorce is usually the best solution to marriage problems
Countries with Same-Sex Marriage	21.5	37.8	43.2	83.1	68.4
Countries with Civil Unions	36.0	51.2	39.7	69.9	67.6
Countries with Regional Recognition	42.7	65.6	36.3	56.6	48.1
Countries without Same-Sex Unions	43.5	60.3	46.7	49.7	60.6

100,000 people in 80 countries, *id.* at 231,<sup>7</sup> contained three statements about marriage with which respondents were asked to approve or disapprove: 1) A child needs a home with both a father and a mother to grow up happily; 2) It is all right for a woman to want a child but not a stable relationship with a man; and 3) Marriage is an outdated institution. *Id.* at 239.

Again, the highest percentage of those who approved the second and third statements lived in countries with same-sex marriage. *Id.* at 231.<sup>8</sup> By significant margins, support for marriage was highest in countries that do not recognize same-sex unions of any kind. *Id.* Thus, the correlation between societal devaluation of marriage and the acceptance of same-sex marriage is indisputable. As Blankenhorn concludes:

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<sup>7</sup> See also David Blankenhorn, *Defining Marriage Down . . . Is No Way to Save It*. 04/02/2007, Volume 012, Issue 28, <http://www.weeklystandard.com/Content/Public/Articles/000/000/013/451noxve.asp>.

<sup>8</sup> On page 239 of his book, Blankenhorn summarized the statistics in the chart reproduced below.

<b>Summary of Attitudes about Marriage in Surveyed Countries, by Legal Status of Same-Sex Marriage</b>			
	A child needs a home with both a father and a mother to grow up happily	It is all right for a woman to want a child but not a stable relationship with a man	Marriage is an outdated institution
Countries with Same-Sex Marriage	76.6	48.3	23.6
Countries with Civil Unions	84.3	40.7	22.4
Countries with Regional Recognition	80.2	39.5	16.6
Countries without Same-Sex Unions	93.8	28.5	15.2

Certain trends in values and attitudes tend to cluster with each other and with certain trends in behavior. A rise in unwed childbearing goes hand in hand with a weakening of the belief that people who want to have children should get married. High divorce rates are encountered where the belief in marital permanence is low. More one-parent homes are found where the belief that children need both a father and a mother is weaker. A rise in nonmarital cohabitation is linked at least partly to the belief that marriage as an institution is outmoded. The legal endorsement of gay marriage occurs where the belief prevails that marriage itself should be redefined as a private personal relationship. And all of these marriage-weakening attitudes and behaviors are linked. Around the world, the surveys show, these things go together.<sup>9</sup>

**C. EXTENDING MARRIAGE TO SAME-SEX COUPLES THREATENS CHILDREN PRECISELY BECAUSE IT DIMINISHES THE IMPORTANCE OF CHILDREN BEING RAISED BY THEIR OWN BIOLOGICAL PARENTS.**

Fragmenting parenthood and valuing “intentional” parenthood over all else will ultimately leave children more, rather than less, insecure. Cere & Glendon, *supra*, at 38. The overwhelming weight of social science data establishes that the well-being of the nation’s children depends in enormous measure on healthy marriages between men and women who procreate the children. Civil marriage is ultimately about protecting the right of children to know and be raised by both of their biological parents. This central truth is recognized in the United Nations Convention on the Rights of the Child, which states that “the child shall ... have the right from birth to a name, the right to acquire a nationality and, as far as possible, *the right to know and be cared for by his or her parents.*” G.A. Res. 44/25, Art. 7 U.N. Doc. A/44/49 (Nov. 20, 1989) (emphasis added).

Gay marriage advocates concede that gay marriage would profoundly affect children. A leading gay rights advocate, William Eskridge, has observed that gay marriage

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<sup>9</sup> Blankenhorn, *Defining Marriage Down*, *supra* note 7.



involves the reconfiguration of family — de-emphasizing blood, gender, and kinship ties and emphasizing the value of interpersonal commitment. In our legal culture the linchpin of family law has been the marriage between a man and a woman who have children through procreative sex. Gay experience with “families we choose” delinks family from gender, blood, and kinship. Gay families of choice are relatively ungendered, raise children that are biologically unrelated to one or both parents, and often form no more than a shadowy connection between the larger kinship groups.

William N. Eskridge Jr., *Gaylaw: Challenging the Apartheid of the Closet* 11 (Harvard University Press 1999).

Recent Canadian court decisions creating the right to same-sex marriage evaluate two features: the unity of the couple and functional parenthood (that is, the day-to-day raising of children). The procreative link between marriage and children is eliminated along with the right of children to know their parents. *Halpern v. Att’y Gen.*, [2003] 65 O.R.2d 161 (Can.). More significantly, Canada’s proposed new Civil Marriage Act eliminates the category of “natural parent” across federal law. In other words, parenthood loses its natural relationship to sexuality and childbirth, and becomes merely a legal construct. See Cere & Glendon, *supra*, at 39.

Thus, state-approved same-sex marriage sends the message to all citizens, including heterosexuals who might some day be parents, that it is immaterial to the state whether children are raised by their biological mother and father. Under the paradigm shift in which marriage is about adult close relationships, adults choose the relationships that best suit them at the moment and children are expected to adapt. But social science evidence establishes overwhelmingly “that family structure matters for children, and the family structure that helps the most is a family headed by two biological parents in a low-conflict marriage.” See, e.g., Kristin Anderson Moore, Susan M. Jekielek & Carol Emig, *Marriage from a Child’s Perspective: How Does Family Structure Affect Children and What Can We Do About It?* Child Trends

Research Brief (Washington, DC: Child Trends, June, 2002), at 1.<sup>10</sup> Compiling statistical data, the authors demonstrate that “children in single-parent families, children born to unmarried mothers, and children in stepfamilies or cohabiting relationships face higher risks of poor outcomes” in all areas. *Id.* at 6.

**D. APPROVING SAME-SEX MARRIAGE CONVEYS THE MESSAGE THAT CHILDREN DO NOT NEED PARENTS OF BOTH SEXES.**

State approval of gay marriage also sends the message that it is unimportant whether children have both a mother and a father. Fathers and mothers become fungible and the state thereby ignores abundant social science data establishing that both boys and girls do best when they have parents of both sexes.<sup>11</sup> As Supreme Court Justice Ruth Bader Ginsburg has pointed out, the “two sexes are not fungible; a community made up exclusively of one [sex] is different from a community composed of both.” *United States v. Virginia*, 518 U.S. 515, 533 (1996) (quoting *Ballard v. United States*, 329 U.S. 187, 193 (1946)). “Inherent differences between men and women, we have come to appreciate, remain cause for celebration, but not

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<sup>10</sup> Also available at <http://www.childtrends.org/files/MarriageRB602.pdf>. See also William J. Doherty, et. al., *Why Marriage Matters: 21 Conclusions from the Social Sciences* (New York City: Institute for American Values, 2002); Maggie Gallagher and Joshua K Baker, *Do Moms and Dads Matter? Evidence from the Social Sciences on Family Structure and the Best Interests of the Child*, 4 *Margins* 161, 162 (2004) (concluding that “family structure does matter, and that a married mother and father is the family structure that best protects children”).

<sup>11</sup> Eleanor Maccoby, *The Two Sexes* 284 (Harvard University Press 1998); David Popenoe, *Life Without Father* 144, 146 (Harvard University Press 1996); David Blankenhorn, *Fatherless America: Confronting Our Most Urgent Social Problem* 219 (1995); Kyle D. Pruett, *Fatherhood* 41-52 (New York Press 2000); H.B. Biller, *Fathers and Families: Paternal Factors in Child Development* 1-3 (1993); Carin Neitzel and Ann Dopkins Stright, *Mothers’ Scaffolding of Children’s Problem Solving: Establishing a Foundation of Academic Self-Regulatory Competence*, 17 *Journal of Family Psychology* 75-92 (2003) (“The cognitive and emotional support of mothers is very important in helping a child develop “self-regulatory behavior.”).

for denigration of the members of either sex or for artificial constraints on an individual's opportunity." *Virginia*, 518 U.S. at 533. A federal appellate court recently upheld a state's ban on same-sex adoption, noting the state's interest in protecting "[the] vital role that dual-gender parenting plays in shaping sexual and gender identity." *Lofton v. Sec'y of the Dept. of Children and Family Servs.*, 358 F.3d 804, 818 (11th Cir. 2004).

Appreciating the innate differences between men and women and the unique contributions each sex makes in child-rearing is fundamentally at odds with the same-sex claim that "the modern individuation of women has resulted in the kind of fluidity of gender roles for men and women" that makes the presence of both genders within a family unnecessary. Maura I. Strassberg, *Distinctions of Form or Substance: Monogamy, Polygamy, and Same-Sex Marriage*, 75 N.C. L. Rev. 1501, 1606 (1997).

States that accept gay marriage advocates' efforts to dismiss or debunk the significance of biological parenthood, and the importance of dual-gender parenting are "standing on very thin ice." Cere & Glendon, *supra*, at 39. While it is true that many children grow up in alternative family structures and develop into well adjusted adults, it is also true that many of society's ills are rooted in adult alternative lifestyle choices in which children are the chief victims. Now is not the time for Connecticut to retreat from promoting the ideal of children being raised by both their biological parents in stable homes. Leveling marriage into nothing more than a close relationship between two consenting adults would constitute just such a retreat.

## **CONCLUSION**

Establishing an equivalency between same-sex couples and heterosexual unions undermines society's historic and compelling interest in promoting lasting bonds between men and women, in order to give children both a mother and father

and to bond them to one another and their offspring. If all loving, sexually intimate relationships between two adults are equally worthy of society's approval and encouragement, then the bonds between men and woman that produce each succeeding generation are no longer unique. The result of such a paradigm shift will ultimately imperil the well-being of the nation's children and society itself.

### **STATEMENT OF RELIEF REQUESTED**

Amicus, Family Institute of Connecticut, respectfully requests this Court to affirm the judgment of the Superior Court.

Respectfully Submitted,

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing complies with all the requirements of the Connecticut Practice Book, § 67-2.

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Kristina J. Wenberg  
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Brief *Amicus Curiae* of the Family Institute of Connecticut, in Support of Defendants-Appellees, was served upon the counsel of record listed below, via U.S. Mail, postage prepaid, on this \_\_\_\_\_ day of April 2007, in compliance with Connecticut Practice Book, § 62-7.

***Trial Judge:***

Hon. Patty Jenkins Pittman, J.  
Superior Court  
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