

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

CLEOPATRA DE LEON, et al.,	§	
Plaintiffs,	§	Civil Action No. 5:13-CV-982-OLG
	§	
v.	§	
	§	
RICK PERRY, in his Official Capacity as	§	
Governor of the State of Texas, et al.,	§	
Defendants.	§	

**MOTION TO RECONSIDER THE MOTION FOR LEAVE TO FILE BRIEF OF  
AMICUS CURIAE IN SUPPORT OF DEFENDANTS’ DENIAL OF THE PLAINTIFFS’  
MOTION FOR TEMPORARY INJUNCTION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Pursuant to Rule CV-7, proposed *Amicus Curiae*, Texas Values, presents this its Motion requesting that the Court reconsider its denial for leave to file the attached and concurrently submitted Amicus Curiae brief in support of the Defendants’ Opposition of the Plaintiffs’ Request for Preliminary Injunction and in support thereof respectfully states the following:

1. The interest of proposed *Amicus Curiae*, Texas Values, was discussed in the original motion for leave to file its brief. As stated therein a portion of this organization’s mission is to promote traditional family values, including the tradition of marriage between one man and one woman as it is currently defined in the State of Texas.
2. In its order denying the motion to allow this filing, the Court stated that the *Amicus Curiae* was not attempting to provide legal authority, but instead was presenting “social science” which the court determined would not aid in its determination of the legal issues involved in this case.

3. Subsequently, on February 12, 2014 the court conducted the hearing on the Plaintiffs' request for a preliminary injunction seeking to strike Texas' definition of marriage between one man and one woman in an effort to include same sex couples. One of the issues raised during the hearing was the rational reason advanced by the state that marriage between one man and one woman is a reasonable reaction to procreation that occurs between a man and a woman and that the state has a legitimate interest in fostering the socially recognized institution of marriage that binds a man and a woman to their biological children.
4. In countering this argument, the Plaintiffs' counsel contended that there is no difference in the outcome for children raised in same sex households and as a result, this basis for the State to exclude these households from a recognized marriage is not rational. In advancing this argument, the Plaintiffs' counsel relied upon social science citing affidavits from their expert witnesses and also relied on the purported findings of the American Psychological Association among others.
5. In response, the State argued that the evidence presented by the Plaintiffs is irrelevant because the appropriate test for this court to consider when evaluating the constitutionality of the statute is a rational basis test. The State argued that the burden is entirely upon the Plaintiffs to negate all rational basis for the current legal definition of marriage and because they failed to do so, the State did not have the burden to show any social science evidence that would contradict the irrelevant evidence presented by the Plaintiffs. The State argued that its evidence could be presented in the event the Court utilized the higher scrutiny standard, but it was not presented at the hearing or in their written materials.

6. At the hearing, the Plaintiffs' counsel contended that in the event the Court determines that the higher scrutiny standard is applied, the only evidence that will be before the court on the issue of children and how they are affected in same sex households would be that presented by the Plaintiffs. Plaintiffs' counsel further argued that even under the rational basis test, the social science evidence could be used to show that children in same sex households have favorable outcomes when compared to those raised in households with one man and one woman and thus requested that the court consider it when it reviews the basis given by the State.
7. The brief that Texas Values requests be considered by the Court hits squarely on the issue of children being raised in same sex households and on the contention of the Plaintiffs that there is no difference in the outcome for those children and children raised by their own biological mothers and fathers in committed marriages. Because of the emphasis placed on this issue at the hearing and in the written submissions by the Plaintiffs when they rely upon this social science, Texas Values believes that its proposed brief, which counters this contention, is vital to the court's determination of this motion. In the event the Court considers this evidence presented by the Plaintiffs, Texas Values respectfully asserts that its proposed brief will demonstrate that the contention of the Plaintiffs and the social science they rely upon is not well established, is flawed and is subject to considerable debate.
8. As the State's counsel pointed out, same sex marriage in the United States has been in existence less time than Facebook has been on the internet, so the societal effect of these unions on raising children is still uncertain, and studies on these effects is still in its infancy. Contrary to the Plaintiffs' contention that studies show there is no adverse effect

on children raised in same sex households, Texas Values' proposed brief explains that the studies the Plaintiffs rely upon have methodological limitations that make them highly suspect. The brief points out that the studies purportedly showing no difference are flawed in numerous respects as was the finding of the Eleventh Circuit in Lofton v. Secty of Children Services, 358 F.3d 804, 825 (11<sup>th</sup> Cir. 2004).

9. Further, the brief shows that longstanding research supports the idea that raising children in a stable home with their own biological mother and father is the ideal and most beneficial environment for children. This is in large part because of the unique roles that each gender brings to childrearing.
10. Clearly the State has the constitutional right to promote this model of child rearing when it determines through its legislative process which family model it seeks to recognize. The amicus brief shows why this model is appropriate to recognize and thus will aid the court in determining the constitutional issues raised in this pending motion.
11. In light of the Plaintiffs written filings and their argument at the hearing, it has become evident they are relying upon the social science information as a basis to review this definition of marriage as defined in the Texas Constitution and to contend that this social science supports their view. The Plaintiffs thus believe the social science is vital to the Court's legal analysis. The information contained in the brief shows that the Plaintiffs' reliance is misplaced and should therefore be considered in the legal analysis being conducted by the Court.
12. Thus, the proposed *Amicus Curiae*, Texas Values, respectfully requests that the Court reconsider its denial of its motion to file its proposed Amicus Curiae brief.

Wherefore premises considered, the proposed *Amicus Curiae*, Texas Values, respectfully requests that the Court reconsider its previous ruling denying leave to file this brief and instead issue an order granting leave to file the accompanying brief

Respectfully Submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that on the 24<sup>th</sup> day of February, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/EFC system, which will send notification of such filing to the following:

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