



Written by [Jack Kenny](#) on February 24, 2014

Federal Judge to Decide If Same-Sex Marriage Is Bad for Children

A judge in the U.S. District Court in Detroit will decide if same-sex marriage is bad for children, following a hearing that will begin Tuesday on a civil suit brought by a lesbian couple seeking to marry and adopt each other's children. Their suit challenges the ban on same-sex marriage in Michigan, where the state's constitution defines marriage as a union between one man and one woman. Attorneys for the women challenging the law, and those for the state defending it, will debate the reliability of studies purporting to show ill effects that same-sex unions have on children raised by homosexual or lesbian couples.



Testifying in favor of the ban will be four social science researchers who will cite evidence they claim demonstrates that children raised by same-sex couples do not fare as well as children with married heterosexual parents, the *New York Times* [reported](#) Sunday.

Scholars on the other side of the debate will argue that such studies are flawed and that when other factors are weighed, there is no evidence of harm to children of same-sex parents.

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"The overwhelming evidence so far is that there's not much difference between children raised by heterosexual or same-sex parents," Andrew Cherlin, a prominent sociologist of family issues at Johns Hopkins University who is not involved in the case, told the *Times*.

The state's strategy is similar to that followed in California four years ago when defenders of the state's Proposition 8 argued that the ban on same-sex marriage was rooted in the state's compelling interest in protecting the welfare of children. In striking down the one-man and one-woman rule for marriage, adopted by California voters in 2008 as an amendment to the state constitution, Judge Vaughn Walker in the U.S. District Court in San Francisco ruled that "no reliable evidence" had been presented to demonstrate that "allowing same-sex couples to marry will have any negative effects on society."

Mark Regnerus, a sociologist at the University of Texas, is among the researchers scheduled to testify in defense of the Michigan law. His findings from his study of same-sex marriage and its effect on children were published in *Social Science Research* in 2012. It was hailed by defenders of traditional marriage and just as emphatically panned by other sociologists, some of whom questioned the editorial judgment of the journal in publishing it. Critics included the 14,000-member American Sociological Association, which, the *Times* reported, argued in a friend of the court brief in a pair of same-sex marriage cases before the U.S. Supreme Court last year that more than half the children Regnerus described as children of "lesbian mothers" and "gay fathers" had been born of heterosexual marriages that failed, after which a parent had engaged in a same-sex relationship. Many never lived with same-



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sex parents, the brief claimed.

“If any conclusion can be reached from Regnerus’s study,” the association said, “it is that family stability is predictive of child well-being.”

Wendy Manning, a professor of sociology at Bowling Green State University in Ohio, said children of single mothers, adopted children, children of divorce, and children in poverty all have more problems on average than children of parents in stable middle-class marriages. “Every study has shortcomings, but when you pull them all together, the picture is very clear,” she told the *Times*. “There is no evidence that children fare worse in same-sex families.”

But if the evidence is inconclusive, the question might arise as to whether it is up to the court to trump the judgment of the people of Michigan and their elected representatives on the matter. The question of whether state-sanctioned marriage of same-sex couples is good or bad for children or society in general might be considered a policy judgment better suited to a legislature than a court. Yet Brian Dickerson in the *Detroit Free Press* notes that Judge Bernard Friedman is prepared to give the plaintiffs a second shot at the marriage law if the state proves there is a rational basis for it.

In the event Friedman finds that Michigan has a reasonable basis for discriminating against same-sex couples, Friedman has told attorneys for both sides, the court will convene a second hearing to determine whether the state’s same-sex marriage ban deserves the heightened scrutiny reserved for statutes that disadvantage members of certain minorities. In other words, Friedman could find that voters who legitimately sought to protect children went too far when they decided to forbid all same-sex marriages.

Of the 17 states where same-sex union has gained the legal status of marriage, six have had the change of marriage law imposed by judicial decree, eight by vote of legislatures and three by popular vote. Of the 33 states where legal marriage is still reserved to heterosexual couples, 25 have suits pending asking judges to overturn the laws.

The question of whether a state may maintain a legal requirement for marriage that has been the societal norm for centuries, even millennia, will likely arrive before long at the U.S. Supreme Court. There the justices will be challenged to find a universal right to same-sex marriage among the rights enumerated in the U.S. Constitution or among other rights “retained by the people,” referenced in the Ninth Amendment.

It’s not clear how, but the history of the court in recent decades suggests stranger things have happened.



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