ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CASE NO. DF-121316

In Re the Marriage of:

REBEKAH KAY WILSON,
Petitioner/Appellee,

v.

KRISTINA LEA WILLIAMS,
Respondent/Appellant,

BRIEF OF AMICUS CURIAE

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INDEX AND TABLE OF AUTHORITIES

AMICI STATEMENT

Amici curiae are some of the country's leading scholars on family law issues generally, and on issues of parentage specifically. They are authors of leading family law casebooks and treatises. *See, e.g.*, Susan Frelich Appleton, *Modern Family Law* (6th ed.) (with D. Kelly Weisberg); Susan Frelich Appleton, *Families Under Construction: Parentage, Adoption and Assisted Reproduction* (with D. Kelly Weisberg); Maxine Eichner, *Family Law: Cases, Texts, and Problems* (with I. Ellman, P. Kurtz, L. Weithorn, B. Bix, and K. Czapanskiy); Linda Elrod, *Family Law: Cases, Comments, and Questions* (with J. Thomas Oldham and Jamie R. Abrams); Linda Elrod, *Child Custody Practice and Procedure*; Linda Elrod, *Kansas Family Law and Practice*; Ann Laquer Estin, *Cases and Materials on Domestic Relations* (with Homer H. Clark, Jr.); Ann Laquer Estin, *Domestic Relationships: A Contemporary Approach*; Ann Laquer Estin, *International Family Law*; Ann Laquer Estin, *Global Issues in Family Law* (with Barbara Stark); Joanna Grossman and Douglas NeJaime, *Family Law in a Changing America* (with Ralph Richard Banks and Suzanne Kim); Joanna L. Grossman, *Inside the Castle: Law and the Family in 20th Century America*; Courtney G. Joslin, *Modern Family Law* (8th ed.) (with D. Kelly Weisberg); Harry Tindall, *Sampson & Tindall's Texas Family Code Annotated.*

Of particular relevance to this case, *amici curiae* are leading national experts on parentage and child custody laws around the country, including the Uniform Parentage Act (UPA), a project of the Uniform Law Commission (ULC). In 2006, Oklahoma enacted the 2000 version of the UPA (UPA (2000)). *Amicus* Harry Tindall (who has been a Commissioner from Texas since 1995) was the Chair of the ULC Committee that drafted the UPA (2000). *Amicus* Professor Joslin served as the Reporter for the most recent version of the UPA—UPA (2017). Professor Atwood (who has

been a ULC Commissioner from Arizona since 2006 and who chairs the Joint Editorial Board on Uniform Family Laws) and Harry Tindall served as Commissioners on this project. Professor NeJaime was an Observer and served as the principal drafter of the Connecticut Parentage Act, Public Act 21-15, which was enacted in 2021, and is based on the UPA (2017). Professor Eichner, who has been a ULC Commissioner since 2022, served the Reporter for the ULC Uniform Deployed Parents Custody and Visitation Act and as the Reporter for the ULC Study Committee on Family Courts in the Pandemic (2020-21). Professor Elrod served as the Reporter for the ULC Uniform Family Law Arbitration Act (UFLAA), the ULC Uniform Child Abduction Prevention Act (UCAPA), and is Reporter for the Joint Editorial Board on Uniform Family Laws.

Amici also serve in other leadership positions on leading national projects related to family law, including the Joint Editorial Board on Uniform Family Law) and as members of the American Law Institute (ALI). As such, amici are well situated to provide the Court with information on how cases like this one have been resolved by courts around the country.

SUMMARY OF ARGUMENT

This case presents a straightforward parentage issue that courts in many other states have already addressed. Courts in every state to have addressed the issue have concluded that the legal parentage of children born to married same-sex parents must be determined by the same rules applied to children born to other married parents.

Under the plain text and straightforward application of the Uniform Parentage Act, OKLA. STAT. tit 10, § 7700-101, *et. seq.* ("UPA"), a husband would be considered the parent under the facts of this case. The parties in this case—Rebekah Kay Wilson and Kristina Lea Williams—were married at the time the child, W.W.H., was born on August 8, 2019. OKLA. STAT. tit 10, § 7700-204(A)(1) provides that "A man is presumed to be the father of a child if: He and the

mother of the child are married to each other and the child is born during the marriage." Oklahoma law further provides that this presumption became conclusive, that is irrebuttable, on August 8, 2021, the child's second birthday. Specifically, OKLA. STAT. tit 10, § 7700-607(A) provides that a proceeding "to adjudicate the parentage of a child having a presumed father shall be commenced not later than two (2) years after the birth of the child."[1]

Both the divorce action and the motion to adjudicate the parentage of the sperm donor, Jeremy Harlan Vaughn, were commenced more than two years after the birth of the child. The divorce action was commenced by Appellee Wilson on December 2, 2021 (approximately four months after the child's second birthday), Tr. Vol. III at 18:14-17, and Vaughn's motion to have his parentage adjudicated was filed on January 18, 2022 (more than five months after the child's second birthday).[2] Accordingly, under the clear text of the UPA, Appellant's presumption became conclusive and can no longer be overcome.

The trial court, however, improperly held that these statutes for determining a husband's paternity could not be applied to determine a wife's maternity. As courts in every state to have considered the question have concluded, this holding is contrary to principles of statutory interpretation and principles of due process and equal protection. To comply both with Oklahoma's statutes and with the federal constitution, as well as to ensure that all marital children in Oklahoma receive the protections of Oklahoma law, that decision must be reversed.

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[1] There is a limited exception to this rule, but it does not apply to this case. The two-year bar does not apply if the, "prior to an order disproving the father-child relationship, [the court] determines that: 1. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and 2. The presumed father never openly held out the child as his own." OKLA. STAT. tit 10, § 7700-607(B). In this case, the parties were cohabiting during the time of conception and Appellant openly held the child out as her own.

[2] See *Jeremy Harlan Vaughn, v. Rebekah Kay Wilson*, FP-2022-44, Oklahoma County, Oklahoma.

ARGUMENT

I. Under the Identical Facts, a Male Spouse Would Be Recognized as a Parent

As Appellant's brief accurately and carefully explains, under the identical facts, a male spouse would conclusively be recognized as the child's parent under the UPA. The first Uniform Parentage Act was promulgated by the Uniform Law Commission[3] in 1973 (hereinafter "UPA-1973"). It was updated in 2000 (hereinafter "UPA-2000").[4] In 2006, the Oklahoma legislature overwhelmingly adopted[5] the UPA-2000. See 2006 Okla. Sess. Law Serv. Ch. 116 (H.B. 2967) (West).

Oklahoma, like every other state in the country, has a marital presumption—a rule under which a husband is presumed to be the legal parent of a child born to his wife. Specifically, OKLA. STAT. tit 10, § 7700-204(A)(1) provides that "A man is presumed to be the father of a child if: He and the mother of the child are married to each other and the child is born during the marriage."

Oklahoma law further provides that this presumption becomes conclusive, that is irrebuttable, on the child's second birthday. Specifically, OKLA. STAT. tit 10, § 7700-607(A) provides that a proceeding "to adjudicate the parentage of a child having a presumed father shall be commenced not later than two (2) years after the birth of the child."

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[3] The Uniform Law Commission (ULC) provides states with non-partisan legislation to bring clarity, stability, and uniformity to critical areas of state statutory law. ULC is a non-profit, unincorporated association that has worked for the uniformity of state laws since 1892. Made up of legislators, practitioners, judges and law professors, the commissioners receive no salaries or fees for their ULC work; they volunteer their time to the worthwhile goal of improving and unifying the law. The Oklahoma commissioners are a group of dedicated and well-respected judges, former judges, practitioners, and professors. They include Thad Balkman, Robert Henry, Brent Howard, Gerald Jackson, Christopher Kannady, Ryan Leonard, Laura McConnell-Corbyn, Fred Miller, Cheryl Plaxico, Mark Ramsey, Laura Talbert, and R. Stratton Taylor.

[4] *Amicus* Harry Tindall was the Chair of the Committee that drafted the UPA-2000.

[5] The bill was unanimously approved in the Senate. On the third reading in the House, the vote passed with a 59-39 approval.

This two-year statute of limitations provision was one of the important changes that the UPA-2000 made to the first iteration of the Uniform Parentage Act; this provision strengthened the marital presumption by making it conclusive after a period of time. Section 607 of the UPA-2000 provides a limited period of time in which to challenge the spouse's presumption. It makes clear that, after that period has elapsed, the marital family must be protected. The spouses themselves, as well as any other person, are precluded from challenging the spouse's parentage after that time. In this way, the UPA-2000 seeks to further one of the long-standing purposes of the marital presumption. As Justice Scalia explained in precluding a biological father from challenging the presumption's application to the mother's husband, the marital presumption was a "fundamental principle of the common law." *Michael H. v. Gerald D.*, 491 U.S. 110, 125, 109 S. Ct. 2333, 2343, 105 L.Ed.2d 91 (1989). A "key purpose" of this long-standing rule "has been to "promot[e] the 'peace and tranquility of States and families.'" *Id.*[6]

The public policy of this state favors protecting children by preserving their existing family units. See, e.g., *David V.R. v. Wanda J.D.*, 1995 OK 111, ¶ 11, n.2, 907 P.2d 1025, 1028 ("The [marital] presumption is actually a substantive rule of law based upon a determination by the Legislature as a matter of overriding social policy, given a certain relationship between the [spouse] and wife, the [spouse] is to be held responsible for the child and that the integrity of the family unit should not be impugned.").

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[6] Moreover, even in cases—unlike the instant one—in which the action to challenge the marital presumption is commenced prior to the child's second birthday, the UPA-2000 limits the circumstances under which the presumption can be rebutted. Section 608 provides that, even if an action seeking to challenge the marital presumption is commenced prior to the child's second birthday, a court may deny the request to challenge the presumption if the court determines that: "(1) the conduct of the mother or the presumed ... father estops that party from denying parentage; and (2) it would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father." UNIF. PARENTAGE ACT § 608(a) (2000).

Consistent with these principles, Oklahoma courts have held husbands to be legal parents of children born into their marriage, even over challenges by the child's genetic parent. For example, in *Bates v. Copeland*, 2015 OK CIV APP 30, ¶ 19, 347 P.3d 318, 325, the court rejected a genetic father's action to challenge the husband's parentage on the ground that the action was commenced more than two years after the child's birth. See also *Stevens v. Griggs*, 2013 OK CIV APP 104, ¶ 11, 362 P.3d 662, 665 (holding that the "Husband's status [as a 'legal' father] may only be rebutted by an action commenced not later than two years after the birth of the child. ... Because this action was not commenced within the two-year restriction of the Act, the trial court did not err when it held that § 7700–607 applies and is directly on point"); see also *Friend v. Tesoro*, 2007 OK CIV APP 78, ¶ 5, 167 P.3d 978, 979–80 (holding that holding out presumption could not be challenged or overcome after the child's second birthday). As Oklahoma courts have explained, the Oklahoma Parentage Act "unequivocally states a strong public policy intended to benefit and protect the parentage of children born during a marriage." *Stevens*, 2015 OK CIV APP 30, 362 P.3d 662.

II. These Rules Must Be Applied Equally to a Female Spouse

The trial court improperly held that these statutes for determining a husband's paternity could not be applied to determine a wife's maternity. See Order at pp. 6-7 ("Williams identifies as female and was born a woman, and therefore cannot establish a father-child relationship under 10 O.S. § 7700-201(B) or have the benefit of a presumption of paternity 10 O.S. § 7700-204, as Oklahoma has not yet adopted gender neutral language in the Uniform Parentage Act."). This conclusion was legally erroneous. Oklahoma's parentage rules must apply equally to a female spouse.

Contrary to the decision of the trial court, courts in every other state to have considered the issue have concluded—either under principles of statutory construction or under the constitutional principles of equal protection and due process—that the rules of parentage that apply to a mother's husband *must also apply to a mother's wife*. This conclusion makes sense not only as a matter of statutory construction and constitutional principles but also as a matter of public policy. The marital presumption, as well as other parentage rules, are meant to protect children's family structure and their established parent-child relationships. Applying the marital presumption to married same-sex couples advances this important policy goal.

A. State of the law around the country

Oklahoma is not alone in having a marital presumption written in gender-based terms. In the vast majority of states, the presumption treats a "husband" or a "male" as the legal father of a child born to his wife during the marriage. But the Oklahoma decision at issue here is out of step with decisions from courts around the country by failing to apply the marital presumption in a gender-neutral fashion. Courts in every state to have considered the question have concluded that this type of gender-specific marital presumption—one that establishes the paternity of men—must be applied equally to female spouses. These include courts in neighboring states, such as Kansas, Texas, Missouri, New Mexico, and Utah, that, like Oklahoma, have enacted the UPA. These also include neighboring states, such as Arizona, Indiana, Iowa, Louisiana, and Mississippi, that have not enacted the UPA.

1. Equal Application under Principles of Statutory Interpretation

Some courts reached this conclusion as a matter of statutory construction based on provisions directing that statutes written in the masculine be applied equally to the feminine. In some of these states, the court relied on this type of statutory construction provision that appeared

in their family code. For example, the New Mexico Supreme Court recently decided a case involving the parentage of twin children born to a married lesbian couple. *Soon v. Kammann*, 557 P.3d 104 (N.M. 2024). Like Oklahoma, New Mexico's marital presumption is based on the UPA-2000 and is written in gender-based terms. *See* N.M. STAT. ANN. § 40-11A-204(A)(1) ("A. A man is presumed to be the father of a child if: (1) he and the mother of the child are married to each other and the child is born during the marriage."). As the New Mexico Supreme Court explained, "Despite this problematically gendered statutory language, Kammann's gender is irrelevant and is not disqualifying." *Soon*, 557 P.3d at 108. Relying in part on a statutory construction provision applicable to the parentage statutes, the court held that it must "construe these [gender specific] statutes expansively to mean that a presumption of parentage, rather than a presumption of paternity, arises when a child is born during a marriage." *Id.*

In other states, courts reached the same conclusion by relying on general statutory construction provisions that apply to all of the state's statutes. This was true, for example, in *Schaberg v. Schaberg*, 637 S.W.3d 512, 521 (Mo. Ct. App. 2021). That case involved a child conceived through assisted reproduction and born to a lesbian married couple. Missouri, like Oklahoma, has a gender-specific marital presumption based on the UPA. In pertinent part, Missouri's marital presumption provides as follows: "A *man* shall be presumed to be the natural father of a child if: *He* and the child's natural mother are or have been married to each other and the child is born during the marriage[.]" MO. REV. STAT. § 210.822.1(1) (emphasis added). In the divorce proceeding, the birth mother, Jamie, argued that the marital presumption did not apply to her former spouse, Danielle, "because Danielle is not a man and the statute creates a presumption of parentage only for men. Jamie reasons that the masculine language used in Section 210.822 excludes Danielle from being presumed Daughter's natural parent." *Schaberg,* 637 S.W.3d at 520.

The birth mother further argued, as the birth mother argues here, that "because Danielle [her former spouse] never adopted Daughter, Danielle lacks any parental rights, and consequently lacks standing to assert claims of custody of Daughter in dissolution proceedings before the trial court." *Id.*

The Missouri court rejected the birth mother's arguments as a matter of statutory interpretation. The court looked to a provision of its code, Section 1.030, that "guides ... interpretation of all Missouri statutes." *Id.* at 521. That provision states: "[w]hen any ... person is described or referred to by words importing ... the masculine gender ... females as well as males ... are included." MO. REV. STAT. § 1.030.2. The birth mother's interpretation of the marital presumption as limited to male spouses, the court concluded, "runs afoul of Section 1.030 by suggesting that the words 'he' and 'man' exclude Danielle [the female spouse] from the scope of the statute." *Schaberg,* 637 S.W.3d at 521. Accordingly, the court concluded that the "presumption of natural parentage created by Section 210.822 [the marital presumption] applies to same-sex married couples." *Id.* at 522. *See also Harrison v. Harrison*, 643 S.W.3d 376, 383 (Tenn. Ct. App. 2021) ("Construing [the paternity rule set forth in] Tenn. Code Ann. § 68-3-306 in tandem with TENN. CODE ANN. § 1-3-104(b) will avoid constitutional conflict. ... Tennessee Code Annotated section 1-3-104(b) states that '[w]ords importing the masculine gender include the feminine and neuter, except when the contrary intention is manifest.' By virtue of TENN. CODE ANN. § 1-3-104(b), and in light of the principles gleaned from *Obergefell* and *Pavan*, we hold that the word 'husband' in TENN. CODE ANN. § 68-3-306 must be interpreted to include both the male and female genders.").

Courts in Colorado, Kansas, Texas, Minnesota, Nevada, and Hawaii, among other states, have likewise concluded as a matter of statutory construction that gender-specific paternity

provisions, including the marital presumption, must be applied equally to determine a woman's maternity. See, e.g., *Frazier v. Goudschaal*, 296 Kan. 730, 735, 295 P.3d 542, 547 (2013) (holding, as a matter of statutory interpretation, that paternity provisions of the Kansas UPA, based on the UPA-1973, must be applied equally to determine a woman's maternity); *Treto v. Treto*, 622 S.W.3d 397, 401 (Tex. App. 2020) (agreeing with "[o]ther state courts that have adopted the UPA [that] have concluded that [a gender-specific] marital presumption applies to non-gestational mothers in same-sex relationships"); *E.D.M. v. S.J.M.*, No. A20-0422, 2020 WL 6554653, at *3 (Minn. Ct. App. 2020) (holding that the Minnesota statutes "persuade us to neutrally construe the parentage presumption in MINN. STAT. § 257.55, subd. 1(a), to read, 'A [person] is presumed to be the [parent] of a child if ... [the person] and the child's biological mother are or have been married to each other and the child is born during the marriage.'"); *In re Parental Responsibilities of A.R.L.*, 318 P.3d 581, 584-85 (Colo. Ct. App. 2013) (holding that the court must apply the paternity presumption based on the UPA-1973 equally to a woman); *St. Mary v. Damon*, 309 P.3d 1027, 1032 (Nev. 2013) (holding that a gender specific paternity provision in statutes based on the UPA-1973 must be applied equally to a woman).

2. Equal Application Under Principles of Due Process and Equal Protection

Other courts have relied on constitutional principles of equal protection and due process to reach the same conclusion—that gender-specific marital presumptions must be applied equally to female spouses in the wake of the Supreme Court's decisions in *Obergefell v. Hodges*, 576 U.S. 644 (2015) and *Pavan v. Smith*, 582 U.S. 563 (2017).

In *Obergefell v. Hodges*, the Supreme Court declared that states must permit same-sex couples to marry. The Court made clear that extending the right to marry equally to same-sex couples requires not just equal access to the institution of marriage, but also equal access to the

"constellation of benefits that the States have linked to marriage." *Obergefell*, 576 U.S. at 670. The Court reached this conclusion based on principles of both due process and equal protection. Denying same-sex couples access to marriage, as well as the constellation of benefits associated with marriage, infringed the substantive due process right to marry. "The right of same-sex couples to marry that is part of the liberty promised by the Fourteenth Amendment is derived, too," the Court continued, "from that Amendment's guarantee of the equal protection of the laws." *Id.* at 672. This was so, the Court explained, because the challenged marriage laws were unequal: "same-sex couples [we]re denied all the benefits afforded to opposite-sex couples and [we]re barred from exercising a fundamental right." *Id.* at 675. "Especially against a long history of disapproval of their relationships, ... [t]he imposition of this disability on gays and lesbians serves to disrespect and subordinate them." *Id.* at 647. For this reason, the Court concluded that the challenged laws violated both the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment.

Two years later, the Court explicitly reiterated that this "constellation of benefits" that must now be extended equally to same-sex spouses include parenting rights linked to marriage. The *Pavan* case involved birth certificates for children born to married couples. The relevant statute provided that "[i]f the mother was married at the time of either conception or birth . . . the name of [her] husband shall be entered on the certificate as the father of the child." ARK. STAT. § 20–18–401(f)(1). Even though the State conceded that this rule had to be followed even when the male spouse was not the child's genetic parent, it refused to list a female spouse on the birth certificate of a child born to a married woman. This, the Supreme Court declared in *Pavan*, was unconstitutional: "Because that differential treatment infringes *Obergefell*'s commitment to

provide same-sex couples 'the constellation of benefits that the States have linked to marriage,' we reverse the state court's judgment." *Pavan*, 582 U.S. at 564.

Courts around the country have concluded that *Obergefell* and *Pavan* require states to apply gender-specific marital presumptions equally to female spouses. One of the first state high courts to do so was the Arizona Supreme Court. *McLaughlin v. Jones in and for County of Pima*, 401 P.3d 492, 500 (Ariz. 2017) (*cert. denied sub nom. McLaughlin v. McLaughlin*, 138 S. Ct. 1165, 200 L. Ed. 2d 314 (2018)). Arizona's marital presumption provides: "A man is presumed to be the father of the child if: 1. He and the mother of the child were married at any time in the ten months immediately preceding the birth or the child is born within ten months after the marriage is terminated...." Ariz. REV. STAT. § 25-814. In the case, the birth mother, like the birth mother here, argued that the statute did not and could not be applied equally to a female spouse. *McLaughlin*, 401 P.3d 492 at 496 ("Kimberly argues the trial court erred when it applied this marital paternity presumption to Suzan, because the statute by its terms only applies to males[.]").

The Arizona Supreme Court declared that this position could not be squared with the Supreme Court's precedents. "It would be inconsistent with *Obergefell*", the Arizona Supreme Court wrote, "to conclude that same-sex couples can legally marry but states can then deny them the same benefits of marriage afforded opposite-sex couples." *Id.* at 497. This conclusion, it continued, was "confirm[ed]" by *Pavan*," the Court continued, in which the Supreme Court declared that refusing to provide equal treatment to same-sex spouses with regard to recognizing on their children's birth certificates infringed *Obergefell*'s commitment to provide same-sex couples with equal liberty. *Id.* Ultimately, the Arizona Supreme Court concluded that "the presumption of paternity under [the state's marital presumption] cannot, consistent with the Fourteenth Amendment's Equal Protection and Due Process Clauses, be restricted to only

opposite-sex couples. The marital paternity presumption is a benefit of marriage, and following *Pavan* and *Obergefell*, the state cannot deny same-sex spouses the same benefits afforded opposite-sex spouses." *Id.* at 498.

Since then, many other courts have reached the same conclusion. For example, in *Interest of D.A.A.-B.*, 657 S.W.3d 549, 553–54 (Tex. Ct. App. 2022), a Texas appellate court considered a case in which a child conceived through an at-home insemination using sperm from a male friend was born to a married lesbian couple. Texas, like Oklahoma, has enacted the UPA-2000. The trial court held that the spouse lacked standing to seek custody or visitation with the child, reasoning that the spouse "could not be considered the child's parent, as she was admittedly not the child's biological mother." *Id.* at 556. The appellate court reversed, holding that it was required to interpret the Texas parentage provisions based on the UPA-2000, including the marital presumption, "in accordance with the constitutional requirements of *Obergefell* and *Pavan.*" *Id.* at 560. This meant, the court continued, that it "must construe these provisions in a manner that affords spouses in a same-sex marriage the same benefits granted to spouses in an opposite-sex marriage—which includes treating them equally when determining whether a spouse (or former spouse) in a same-sex marriage has standing . . . to assert her rights to a child born during the marriage." *Id.* "When read alongside the U.S. Supreme Court's holding that states must extend equal benefits to spouses in same-sex marriages, we reach the inexorable conclusion that the Family Code gives spouses in same-sex marriages the same opportunity to assert their parentage to a child born during the marriage, as it gives to spouses in opposite-sex marriages." *Id.* at 561.

Courts in many other states, including many neighboring states, have reached the same conclusion. *Boquet v. Boquet*, 269 So. 3d 895, 900 (La. Ct. App. 2019) (*writ denied*, 274 So.3d 1261 (La. 2019)) ("[U]sing the reasoning of *Pavan*, we find that we must apply [the gender-

specific marital presumption and the provision governing disavowal of the marital presumption] in such a manner that Brittany, the female spouse of a birth mother, has the same 'constellation of benefits' and obligations as those of a male spouse of the birth mother."); *Schaberg*, 637 S.W.3d at 522–23 ("[A] gender-specific application of Section 210.822 [, the marital presumption,] would deny Danielle a 'benefit' that is 'linked to marriage' by forcing her to obtain parental rights only through the adoption process for no reason other than having married someone of the same sex. In fact, *Obergefell* specifically lists child custody and child support among the benefits conferred to married couples by the states, which same-sex couples would otherwise be deprived.").

Not only state but also federal courts have reached this result. In *Henderson v. Box*, 947 F.3d 482, 487 (7th Cir. 2020), the federal Court of Appeals for the Seventh Circuit, in an opinion written by Judge Easterbrook, rejected Indiana's refusal to recognize a birth mother's wife as a legal parent under the state's marital presumption when it recognized a birth mother's husband as a legal parent. The court concluded that, "after *Obergefell* and *Pavan*, a state cannot presume that a husband is the father of a child born in wedlock, while denying an equivalent presumption to parents in same-sex marriages." *Id.*

As courts around the country have concluded, refusing to apply a gender-specific marital presumption to a female spouse infringes principles of equal protection and due process and therefore violates the Supreme Court's decisions in *Obergefell* and *Pavan*.

3. Public Policy Considerations

Courts have also noted that applying a gender-specific marital presumption equally to female spouses is consistent with public policy and the best interests of children. As a Texas appellate court recently explained, applying the marital presumption equally not only furthers principles of due process and equal protection, it "also satisfies the policies of this state in

promoting family stability and in protecting the interests of children." *D.A.A.-B.*, 657 S.W.3d at 562. It protects children's relationships with the people they view and rely upon as their parents, and in so doing, furthers "the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children." OKLA. STAT. ANN. tit. 43, § 110.1.

Holding that paternity rules must be applied equally to female spouses also ensures that the female spouses who deliberately bring children into the world and parent them will be held responsible for those children, rather than the state. A contrary conclusion would allow, for example, same-sex spouses to walk away from their obligations to support their children.

CONCLUSION

For the foregoing reasons, amici urge the Court to reverse the decision below and hold that Appellant is a legal parent of W.W.H.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On November 8, 2024, I caused a trued and accurate copy of the following document to be served upon:

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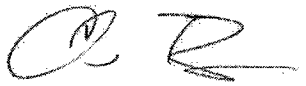
A copy of this brief is also filed with the Oklahoma County clerk in *Rebekah Kay Wilson v. Kristina Lea Williams,* FD-2021-3681.



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