

Is this all Prop 8 defenders have got?

By [David Heim](#)

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What was remarkable about the [overturning of Proposition 8](#)—California’s ban on same-sex marriage—was the weakness of the case mounted by the defense. At times during the proceedings, Judge Vaughn Walker had to ask the legal team in charge of defending the proposition, in effect: “Haven’t you got something better than this?”

The defense called only two expert witnesses, and only one addressed some of the substantive arguments that are made against same-sex marriage. That witness was David Blankenhorn, founder and president of the Institute for American Values. For his troubles, Blankenhorn was branded a bigot and ignoramus by some commentators, like Frank Rich of the *New York Times*. More important, he was witheringly dismissed by Judge Walker, who declared that Blankenhorn was no expert and that he offered no credible evidence.

It’s unfair to call Blankenhorn a bigot or an ignoramus. He is a thoughtful guy who operates with the far-from-crazy intuition that children fare better in families in which there is both a mother and a father, preferably a biological mother and father. His reflections are fueled by research on how children are hampered growing up with a single mother and no father. Blankenhorn has also been influenced by the work of Don Browning, the late, esteemed ethicist at the University of Chicago Divinity School, no bigot and no ignoramus.

Browning worried that marriage is being “de-institutionalized” in our time—becoming less of an economic and social institution and more of a private arrangement based on feelings. He argued that approval of same-sex marriage would further that movement, which would ultimately

undermine protections for children and other vulnerable people. That, at least, was the basis for Browning's "[liberal case against same-sex marriage](#)" (pdf).

Blankenhorn's

(and Browning's) arguments are somewhat nuanced. They are a mix of intuitions and extrapolations from social science. Whatever they are, Walker had no trouble eviscerating them.

For example, the judge [observed](#)

(pdf) that "Blankenhorn gave absolutely no explanation why manifestations of the deinstitutionalization of marriage would be exacerbated (and not, for example, ameliorated) by the presence of marriage for same-sex couples." When Blankenhorn declared that same-sex marriage is "symptom and cause" of the de-institutionalization of marriage, Walker dismissed that remark as a "tautology."

Blankenhorn

claimed that children fare better when raised by their married, biological parents, but Walker noted that the study Blankenhorn relied on compared children raised by married, biological parents "with children raised by single parents, unmarried mothers, step families and cohabiting parents." In other words, the study he cited did not even purport to compare biological parents with nonbiological parents, much less compare opposite-sex couples with same-sex couples.

Social

science evidence is not the last word in moral argument. But it is likely to be crucial in secular courts, especially before judges like Walker, who was interested in whether there is any concrete evidence that same-sex marriage inflicts harm.