

IN THE SUPREME COURT OF OHIO
CASE NO. 01-625

IN RE: JOSEPH RAY, JACOB AUSTIN,
NICHOLAS JAMES, MATTHEW
WILLIAM AND SAMANTHA
JOSEPHINE BONFIELD

:
:
On Appeal from the Hamilton
County Court of Appeals,
First Appellate District
:
:

BRIEF *AMICUS CURIAE*
SUBMITTED IN SUPPORT OF APPELLANTS BY
AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY
AMERICAN COUNSELING ASSOCIATION
AMERICAN PUBLIC HEALTH ASSOCIATION
NATIONAL ASSOCIATION OF SOCIAL WORKERS
OHIO PSYCHOLOGICAL ASSOCIATION

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INTRODUCTION

Amici Ohio Psychological Association (OPA), American Academy of Child and Adolescent Psychiatry (AACAP), National Association of Social Workers (NASW), American Counseling Association (ACA), and the American Public Health Association (APHA) submit this brief in support of Appellants regarding: (1) the necessity to children of a legally recognized relationship between children and the persons who support and nurture them, regardless of whether the parents comprise an opposite sex couple or a same sex couple; (2) the ability of lesbians and gay men to raise children who are as healthy and well-adjusted as children raised in other families; and (3) the falsity of certain common myths about lesbians and gay men.

As psychiatrists, psychologists, social workers, health advocates, and counselors, *Amici* are thoroughly familiar with the factors that contribute to, and those that detract from, healthy family dynamics. Through education and experience, we are well versed in the many family-related issues that significantly impact the physical, mental and emotional well being of children.

As providers of services to lesbian and gay individuals and their children, we are thoroughly familiar with many of the issues raised in this case. *Amici* are witness to the myriad benefits children enjoy when the law acknowledges the relationships between the children and the gay and lesbian individuals who choose to parent them. Those benefits result regardless of whether legal acknowledgement comes in the form of a birth right, statutory or equitable adoption, through a shared parenting order as requested in this case, or other legal mechanism.

Amici are also well acquainted with, and deeply concerned about, the role that false assumptions have traditionally played, sometimes overtly and sometimes insidiously, in legal decisions regarding the children of gay men and lesbians. Thus, we believe that consideration of the empirical data, social science, and other material presented on the following pages will assist the Court in

arriving at a just and sensible result that appropriately benefits Appellants' children and other children who live in similar families.

INTERESTS OF *AMICI*

Amicus Ohio Psychological Association ("OPA") represents more than 1600 psychologists in the State of Ohio. OPA provides a variety of services, including professional education, to its member psychologists. In addition, OPA seeks to advance public understanding and to assist in the shaping of public policy on questions to which psychological expertise is relevant. The members of OPA voted in the spring of 1993 to oppose all efforts to enact legislation that discriminates against people because of their sexual orientation.

The Ohio Psychological Association is affiliated with the American Psychological Association. The American Psychological Association, a scientific and professional organization founded in 1892, is the major association of psychologists in the United States. It has more than 120,000 members and affiliates, including the vast majority of psychologists holding doctoral degrees from accredited universities in the United States. The American Psychological Association has publicly and formally urged the elimination of irrational discrimination against gay men and lesbians on many occasions. Beginning in 1975, the Council of Representatives of the American Psychological Association passed a series of resolutions urging that gay men and lesbians be freed from discrimination in employment, housing, licensing, public accommodation, and child custody. American Psychological Association, Minutes of the Annual Meeting of the Council of Representatives, 30 Am. Psychologist 620, 633 (1975); see also American Psychological Association, Minutes of the Annual Meeting of the Council of Representatives, 49 Am. Psychologist 628, 628 (1994)(declaring that discrimination against gay

people “is detrimental to mental health and public good”); American Psychological Association, Minutes of the Annual Meeting of the Council of Representatives, 43 Am. Psychologist 527, 528 (1988)(recognizing the “profound psychological consequences” of hate crimes motivated by anti-gay prejudice and urging governmental action to reduce such bias-related crimes and to eliminate the “policies that perpetuate them”).

Amicus American Academy of Child and Adolescent Psychiatry was established by child and adolescent psychiatrists in 1954. Now 6,500 members strong, the AACAP is the leading national medical association dedicated to treating and improving the quality of life for the estimated seven to twelve million American youth under eighteen years of age who are affected by emotional, behavioral, developmental, and mental disorders. AACAP supports research, continuing medical education, and access to quality care. AACAP disseminates information to members, practitioners, public officials, healthcare providers, parents, families, and educators in an effort to remove the stigma associated with mental illnesses, promote prevention and early intervention, and insure appropriate treatment.

Amicus National Association of Social Workers (“NASW”) was established in 1955 as a nonprofit professional association dedicated to the practice and interests of the social work profession. It is the largest social work association in the world, with more than 155,000 members, including 5,800 in Ohio. NASW formally opposes discrimination against gay men and lesbians. In 1977, NASW adopted its first policy statement on gay issues, which was subsequently revised and expanded in 1987 and again in 1993. As noted in the 1993 statement, the NASW Code of Ethics prohibits social workers from discriminating on the basis of sexual orientation in their professional roles. The current NASW policy also affirms the association’s commitment “to work toward full

social and legal acceptance and recognition of lesbian and gay people.”

Amicus American Public Health Association (APHA) is devoted to the promotion and protection of personal and environmental health and to disease prevention. Founded in 1872, APHA is the world’s largest health organization, with over 50,000 affiliated members from more than fifty disciplines and specialties in public health. APHA brings together researchers, health service providers, administrators, teachers, and other health workers in a unique, multidisciplinary environment of professional exchange, study and action. APHA’s mission is to continue to strive to improve public health for everyone.

Amicus American Counseling Association (ACA) is a not-for-profit professional and education organization dedicated to the growth and enhancement of the counseling profession. Founded in 1952 and with more than 51,000 members, ACA is the world’s largest association representing professional counselors. ACA members work in a variety of settings that include private practice, mental health clinics and agencies, elementary and secondary schools, higher education, community organizations, substance abuse treatment facilities, government, business, and industry. Divisions of ACA include the American Mental Health Counselors Association, the American School Counselors Association, the Association for Gay, Lesbian, and Bisexual Issues in Counseling, and the International Association of Marriage and Family Counselors.

ARGUMENT

I. THE BEST INTERESTS OF CHILDREN ARE PROMOTED BY LEGAL RECOGNITION OF EXISTING CHILD-PARENT RELATIONSHIPS

Children benefit greatly by legal recognition of the child-parent relationship. This benefit accrues regardless of whether the legal foundation is established by birth, statutory or equitable adoptions, a shared parenting order as sought by the parents in this case, or any other legal or equitable procedure. Children benefit psychologically through legal protection of their relationships with primary caregivers, with disruptions of these relationships causing serious developmental and emotional trauma. Children also benefit materially through additional health care choices, child support, and death benefits.

Nevertheless, if the lower courts' decisions denying legal recognition of the parent-children relationships in this case is allowed to stand, a child's eligibility for these protections irrationally depends not upon the actual relationship between the child and the parent, or upon the venerated "best interests of the children" test, but rather on antiquated notions about what constitutes a family. Because children today are being raised well by lesbian and gay parents, and in other non-traditional family arrangements, the definition of "parent" should not be narrowly construed. Such narrow construction of "parent" causes children of some families, but not others, to be denied the benefits and privileges that flow from a legally recognized child-parent relationship.

Recognizing a legal relationship between children and parents in cases such as the one at bar serves the best interest of children by protecting children's primary attachments to persons who otherwise have no legal standing in the event of death of or separation from the legally recognized parent. Legal recognition will promote the financial well being of children by increasing the resources

available for their care and by providing future financial security for children in the unfortunate event of the death of the legally recognized parent.

A. Providing Legal Recognition of an Existing Parent-Child Relationship Through Entry of a Shared Parenting Order or Other Means Will Protect the Primary Psychological Relationship Between Children and Their Non-Biological Parents

Protecting children through legal means minimizes the potential for disruption of children's lives that might otherwise arise due to separation of the same-sex partners who parent them, death of the legally recognized parent, or other situations that portend extended and emotionally wrenching battles over custody and visitation.

In this case, two women, Teri and Shelly, have been in a committed relationship for 13 years. During this time Teri and Shelly have created a family that includes six children: Joseph, Jacob, Nicholas, Matthew, Samantha and Jackson. Teri and Shelly both actively parent all six children. Shelly has acted as the primary caregiver of the children, including those born to and adopted by Teri. The children make no distinction between Shelly and Teri as parents.

As the court below affirmed, Shelly "has come to be seen by them as their 'parent' in the same way as has Teri." In re Ray, 2001 Ohio App. LEXIS 548, *2 (2001). Even in rejecting their request for a shared parenting order, the court validated appellants' objective of obtaining legal recognition of both partners as parents of all six children. "We do not intend to discredit their goal of providing a stable environment for the children's growth," the court declared. In re Ray, at *9.

In short, in the minds and hearts of these six children, Teri and Shelly are their parents. In the eyes of the law, however, each child has only one legal parent.

Children develop strong bonds with their parents very early in life. See generally John

Bowlby, Attachment (1969). These intense attachments form regardless of whether the persons who undertake the parental roles are the biological parents of the children. See, e.g., Leslie M. Singer et al., Mother-Infant Attachment in Adoptive Families, 56 Child Dev. 1543 (1985). Moreover, the sexual orientations of the persons assuming the parental roles are irrelevant to the bonding process. Barbara M. McCandlish, Against All Odds: Lesbian Mother Family Dynamics, in Gay and Lesbian Parents 23-38 (Frederick W. Bozett ed. 1987).

A “psychological parent” is “one who, on a continuing, day-to-day basis, through interacting, companionship, interplay, and mutuality, fulfills the child’s psychological needs for a parent, as well as the child’s physical needs.” Joseph Goldstein et al., Beyond the Best Interests of Child 98 (1979). The importance of children’s attachments to their “psychological parent” is well documented. Separation of a child from his or her family (however that family is constituted) for any period of time can be damaging to the child’s development. See, e.g., Christoph M. Heineke & Isle J. Westheimer, Brief Separations (1965). This is because children need to form secure attachments to primary caretakers to grow up emotionally and behaviorally intact. Peg Hess, Parent-Child Attachment Concept: Crucial for Permanency Planning, 63 Social Casework 46, 47-48 (1982).

In cases involving parents¹ such as Teri and Shelly, legal recognition of a child’s primary attachments can be preserved through entry of a shared parenting order, equitable or legal adoptions, or other legal mechanisms. Legal recognition of the relationship between all children and their parents

¹ Parents like Shelly and Teri are sometimes referred to as “co-parents.” *Amici* refer to such couples as simply “parents.” This terminology accurately reflects the perspective not only of the children, but also many others, especially professionals in the mental and medical health fields who regularly interact with many families headed by same-sex couples. Where necessary, *Amici* distinguish between the non-legally recognized parent and the parent whose legal rights are secured through biological relationship, adoption or other legal device.

is an important step toward protecting the children's psychological ties, and thus, the children's current mental health and continued positive development.

In addition, legal recognition of parent-child relationships preserves the children's primary attachments and may prevent them from suffering psychological harm if their parents separate in the future. Recognizing a legal relationship between the children and both parents preserves the legal rights of the non-custodial parent to continue contact through visitation or joint custody, thus assuring continuity in the children's relationship with both parents. See Judith S. Wallerstein & Sandra Blakeslee, Second Chances (1989)(children who do not maintain contact with co-parent suffer a continuing sense of loss and sadness); E. Mavis Hetherington et al., What Matters? What Does Not?, 53 Am. Psychologist 167, 177 (Feb. 1998)(concluding that when parents separate, "some degree of contact is essential").

Similarly, if the biological or adoptive parent dies, the establishment of a legally recognized relationship in the other parent protects the children's relationship with his or her remaining parent. Without this legal relationship, the biological or adoptive parent's death orphans the children. Even if the parents had previously agreed that the surviving parent would be the children's guardian, and if the adoptive or biological parent had made appropriate provisions in his or her will, Ohio law would not guarantee that this express preference be honored. See Ohio R.C. 2111.02(D)(Anderson 2001); R.C. 2111.12(B)(Anderson 2001); Liston v. Pyles, 1997 WL 46 7327 (Ohio Ct. App. 1997). Accordingly, the children could be subjected to the pain of further emotional loss if a custody battle ensued between relatives of the deceased biological or adoptive parent and the surviving parent, an occurrence which is sadly not uncommon. See Nancy Polikoff, This Child Does Have Two Mothers:

Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Non-Traditional Families, 78 Geo. L.J. 459, 531-32 (1990) (citing three tragic examples of such custody battles).

Recognizing a child-parent relationship through a shared-parenting order or other mechanism preempts the potential for bitter custody battles, and thus minimizes the chance that the heart-rending loss to the children caused by the death of one parent will be compounded by the loss, even if temporary, of their remaining parent. This protection is routinely afforded in traditional families; children raised in nontraditional families ask for no more, and they certainly deserve no less.

B. Legal Recognition of Existing Child-Parent Relationships May Protect Children's Material Interests, thus Contributing to their Mental and Emotional Health and Well Being

Recognizing parental rights and obligations in both parents may entitle the children to financial and other material benefits which they otherwise will not receive. Since the nature and extent of such benefits are legal matters, *Amici* defer to the arguments submitted by the parents on these issues.

Assuming, however, that such benefits include those automatically accorded children in traditional families, such as increased choices in terms of life and health insurance to secure the best coverage and protection for the children, access to social security disability and death benefits for children whose parents become disabled or die, additional certainty in inheritance for children whether through wills or intestate succession, and the availability of court-ordered visitation and support if the parents separate, then it is beyond debate that extending such benefits to all children has tremendous potential for protecting the mental and physical health and well being of those children. Once again, children in families such as the one created by Teri and Shelly are not looking for

additional favors under the law or extra rights and benefits; rather they are simply asking to be placed on equal footing with children raised in families with heterosexual parents.

C. *Amici Urge This Court to Interpret Ohio Law to Meet the Needs of Children Reared and Nurtured in Diverse Family Structures*

“Children are the most important foundation of every society. As the sole source of tomorrow’s leaders and participants, children are the link between the past, the present, and the future.” Gilbert A. Holmes, The Tie That Binds: The Constitutional Right of Children to Maintain Relationships with Parent-Like Individuals, 53 Md. L.Rev. 358, 359 (1993). Because children play this vital role in the preservation of our society, Ohio has a compelling interest in nurturing all families in ways that meet children’s needs.

As this Court has recognized, notions of what constitutes a family have expanded. See, e.g., Lawson v. Atwood, 536 N.E. 2d 1167 (Ohio 1989)(broadly interpreting the word “parent” to include a person who met every criteria of parenthood except legal recognition). Health care providers, educators, civic organization, employers, courts, and legislators have shifted from the traditional nuclear family model and moved towards a deeper understanding and appreciation of non-traditional families raising children. Studies of minority cultures, including Native Americans and African Americans, which traditionally have relied on extended kinship networks to rear their children, also have contributed to this more expansive conception of “family.”

This does not mean, of course, that we have rejected the value of traditional families, nor has support for traditional families diminished. Rather, we are, in every aspect of society, simply trying to be more inclusive in our efforts to ensure that all children receive the support they need. Support should be forthcoming that allows children not just to survive, but to thrive, thus ensuring, and, one

hopes, improving upon our collective future.

In the United States today, fewer and fewer children are being raised in the traditional nuclear family, composed of an opposite-sex married couple and their children. See Ellen C. Perrin, M.D. & The Committee on Psychosocial Aspects of Child and Family Health of the American Academy of Pediatrics, Children in Diverse Family Constellations, Pediatrics, June 1997, at 881. Due in part to escalating divorce rates, “the number [of children] living in single parent households, step-families, or other ‘blended’ families has steadily increased.” Joan M. Hollinger, Aftermath of Adoption: Legal and Social Consequences 13-82, in 2 Adoption Law & Practice (Hollinger, ed. 1994). See also Susan Chira, Struggling to Find Stability When Divorce is a Pattern, N.Y. Times, March 19, 1995, at Section 1, p. 1; Katherine T. Bartlett, Rethinking Parenthood as an Exclusive Status: The Need for Legal Alternatives When the Premise of the Nuclear Family Has Failed, 70 Va.L.Rev. 879, 880-81 (1984) (noting that in 1982 twenty-five percent of children under age eighteen did not live with both parents and estimating that by 1990 this figure would have risen to forty per cent). Thus, as families have changed, so too must the law change.

This changing domestic landscape led one expert to conclude, more than a decade ago, that “there is no such thing as a ‘typical’ family.” James R. Wetzel, American Families: 75 Years of Change, 113 Monthly Lab. Rev. 4 (1990). Just last year, the United States Supreme Court confirmed that observation by holding that “[t]he demographic changes in the past century make it difficult to speak of an average American family.” Troxel v. Granville, 530 U.S. 57, 65 (2000).

Due to the increasing frequency with which children are being parented by grandparents, friends, and relatives, children are forming significant *de facto* and psychological parental relationships

with persons who are their mothers or fathers in every respect, but not in the eyes of the law. Other non-traditional family arrangements and alternative methods of creating families exist. Single men and women are adopting children; gay and lesbian couples are becoming parents through adoption, foster care, or artificial insemination; divorced parents are marrying new spouses; and, through the advances of medical science, post-menopausal women are becoming mothers.

As our country has expanded its vision as to what constitutes a family, *Amici* have expanded their expertise in working with and providing support to these new families. See, e.g., Lawrence A. Kurdek, Lesbian and Gay Couples, in Lesbian, Gay and Bisexual Identities over the Lifespan 2433 (Charlotte J. Patterson and Anthony R. D'Augelli eds. 1995)(reviewing literature on the deep emotional attachments made by gay and lesbian couples that last for decades); Ellen C. Perrin, M.D. & Heidi Kulkin, Pediatric Care for Children Whose Parents are Gay or Lesbian, *Pediatrics*, May 1996, at 629; Susan Chollar, Happy Families: Who Says They All Have to be Alike?, *American Health*, July 1993 at 52; Elizabeth Ahmann, Working with Families Having Parents who are Gay or Lesbian, *Pediatric Nursing*, Sept. 1, 1999 at 531. *Amici* and others have also advocated that other disciplines, including law, recognize an expanded definition of family in order to fully serve and secure the best interests of children.

In recognition of this changing familial landscape, a significant number of courts have used adoption to legally cement the mother-child relationship between children and the mothers who are also the lesbian partners of the children's existing legal parents. See generally Mark Strasser, Courts, Legislatures, and Second-Parent Adoptions, 66 *Tenn. L. Rev.* 1019 (1999). Other courts, including one Ohio court of appeals, have not followed this trend. See Susan J. Becker, Second-Parent

Adoption by Same-Sex Couples in Ohio: Unsettled and Unsettling Law, 48 Cleve. St. L. Rev. 101 (2000). See also Rebra Carrasquillo Hedges, Student Note, The Forgotten Children: Same-Sex Partners, Their Children, and Unequal Treatment, 41 B.C. L.Rev. 883 (2000). But all courts that have considered “second-parent” adoption claims have acknowledged that permitting this type of adoption provides critical legal rights and protections to children that promote the children’s mental, physical, and emotional well-being.

In addition, the American Bar Association has long studied issues relating to discrimination in employment, housing, education and other areas based on race, religion, disability, and other factors. Beginning in the 1980s, the ABA supported enactment of laws that prohibit discrimination based on sexual orientation. More recently, the ABA began advocating that sexual orientation not be a factor in adoption, custody, or other family law decisions families. See American Bar Association, Discrimination in ABA Issues 77-78 (2001).

In light of the reality-based definition of family now utilized in the medical and mental health fields, society at large, and in the law, *Amici* urge this court to consider and adopt an expansive definition of the parent-child relationship for legal purposes. Approval of the shared parenting order sought by appellants in this case is one mechanism at this Court’s disposal for bridging the gap between law and reality in a manner that truly serves the best interest of Ohio’s children.

II. CHILDREN RAISED BY GAY AND LESBIAN PARENTS ARE AS HAPPY AND HEALTHY AS OTHER CHILDREN AND ARE NOT ADVERSELY AFFECTED BY THEIR PARENTS' SEXUAL ORIENTATION²

Children being raised by gay and lesbian parents are healthy, secure, and as well adjusted as children in other loving families.

Many children have gay or lesbian parents. Exact numbers, however, are unknown. The 2000 U.S. Census documented 18,937 same-sex couples living in Ohio. See Human Rights Campaign, Same Sex Partner Households (by State)(visited October 10, 2001) <http://www.hrc.org/family.net>. Census data are believed to significantly under represent gay and lesbian couples in this state and elsewhere, however, due to respondents' privacy concerns when providing information to the federal government. See D'Vera Cohn, Count of Gay Couples Up 300%, Washington Post, August 22, 2001, at A03. Data is currently unavailable regarding how many children live in households headed by same-sex couples.

Previous estimates of the number of children with gay and lesbian parents have ranged from six million, see Joy A. Schulenberg, Gay Parenting (1985), to between eight and ten million, see ABA Annual Meeting Provides Forum For Family Law Experts, 13 Fam. L. Rep. 1512, 1513 (1987), to between six and fourteen million, Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 Child Dev. 1025 (1992).

² This section reviews empirical research from the social and behavioral sciences pertaining to sexual orientation in general and to the parenting abilities of gay men and lesbians specifically. *Amici* describe data from studies conducted using the scientific method, which requires that data be collected through procedures that minimize the likelihood that a particular researcher's personal biases and values will influence the data recorded or the conclusions drawn. Thus, for example, in a valid study, research subjects should be unaware of the study's hypotheses because such knowledge might influence their responses or behavior. In addition, scientific studies

Far more important than statistics, however, is that fact that gay men and lesbians are raising emotionally healthy, secure, and happy children in the same proportion as heterosexuals. While this Court's decision will most directly affect the life of Teri and Shelly's children, it also will have a profound impact upon other children in Ohio whose lives would benefit greatly from recognition of a legal relationship with both of the same-sex parents who head up their families.

Studies of lesbian and gay parents show them to be very much like their non-gay counterparts.

A landmark work on gay and lesbian families concludes:

The psychological health of the children in lesbian mother families compared to non-gay families has been largely established . . . Based on current research, these families are raising healthy children, and deserve increased legal protection in terms of custody rights and the legalization of adoption by the non-biological parent in lesbian and gay parent families.

Frederick W. Bozett, Gay and Lesbian Parents 34 (1987) (emphasis added).

In all respects, lesbians and gay men are just as capable of being good parents as non-gay people, and their children do not suffer emotional or mental instability from being raised in nontraditional homes. See, e.g., Susan Dundas & Miriam Kaufman, The Toronto Lesbian Family Study, 40 J. Homosexuality 65 (2000); Robert L. Barret & Bryan E. Robinson, Gay Fathers (2000); Raymond W. Chan et al., Psychosocial Adjustment Among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers, 69 Child Dev. 443 (April 1998); Susan Golombok & Fiona Tasker, Do Parents Influence the Sexual Orientation of Their Children? Findings from a Longitudinal Study of Lesbian Families, 32(1) Dev. Psychology 3 (1996); David K. Flaks et

typically are subject to critical review by outside experts, usually during a peer review process preceding publication in a scholarly journal.

al., Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children, 31 Dev. Psychol. 105 (Jan. 1995); Melanie A. Gold et al., Children of Gay or Lesbian Parents, Pediatric Review, Sept. 1994 at 454; Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 Child Dev. 1025 (1992); Patricia J. Falk, Lesbian Mothers: Psychosocial Assumptions in Family Law, 44 Am. Psychologist 941, 943 (1989); Mary B. Harris & Pauline H. Turner, Gay and Lesbian Parents, 12 J. of Homosexuality 101, 103 (1986); David J. Kleber, et al., The Impact of Parental Homosexuality in Child Custody Cases: A Review of the Literature, 14 Bull. Am. Acad. Psychiatry & L. 81, 86 (1986). See also Judith Stacey & Timothy J. Biblarz, (How) Does the Sexual Orientation of Parents Matter?, 66 Am. Soc. Rev. 159, 159, 171 (2001)(critiquing some aspects of scientific studies of lesbian and gay parents but confirming that these studies reliably found no appreciable difference between children raised by lesbians and heterosexuals with respect to self esteem, anxiety, depression, behavioral problems, performance in sports, school and friendships, use of counseling, unsociability, hyperactivity, or emotional difficulty); Erica Goode, A Rainbow of Differences in Gays' Children, N.Y. Times, July 17, 2001, at F1 (discussing article by Stacey & Biblarz).

In a study of families headed by single lesbians and lesbian couples, for example, the researcher found that their children were very similar to children of heterosexual mothers in terms of social competence and behavior problems, self-concepts, and sexual identity. Charlotte J. Patterson, Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex Role Identity in Lesbian and Gay Psychology: Theory, Research and Clinical Applications 156-172 (Beverly Greene & Gregory M. Herek eds., 1994). In fact, this study found that the children of lesbian parents

experienced a greater sense of well being – that is, of "feeling joyful, content, and comfortable with themselves" - as compared to another study of the children of non-lesbian parents. Id. at 169.

Another study comparing adult daughters raised by lesbian mothers and heterosexual mothers found no higher incidence of emotional problems in the children raised by lesbian mothers. This study did find, however, that the lesbians' daughters were more likely to feel secure in their relationships and in the world generally, while the daughters of heterosexual mothers exhibited greater apathy and cautiousness and had more complaints and worries than the young women from the lesbian-raised cohort. Julie S. Gottman, Children of Gay and Lesbian Parents, in Homosexuality and Family Relations 177, 189-190 (Frederick W. Bozett ed., 1990).

The parenting skills of gay fathers have also been confirmed as quite similar to their heterosexual counterparts, except that the gay parents seemed to put forth a greater effort than heterosexual fathers to create a stable home environment and to develop a positive relationship with their children. Robert L. Barret & Bryan E. Robinson, Gay Dads, in Redefining Families: Implications for Children's Development 157, 163 (Adele Eskeles Gottfried & Allen W. Gottfried eds. 1994). See also Robert L. Barret & Bryan E. Robinson, Gay Fathers (2000).

The consensus among researchers is that children raised by openly lesbian or gay parents grow up as well adjusted as the children raised by heterosexuals. In sum, "being gay is not incompatible with effective parenting, and certainly not the major issue in parents' relationships with their children." Harris & Turner, supra, at 112.

III. SECURING A HAPPY AND STABLE HOME LIFE FOR CHILDREN, RATHER THAN FALSE ASSUMPTIONS ABOUT LESBIAN FAMILIES, SHOULD GUIDE THE COURT'S RESOLUTION OF THIS CASE

Unfounded assumptions regarding lesbian and gay people can prevent objective assessments of parents' relationships with their children. Indeed, "[t]he greatest single trap the mental health professional can fall into is to approach a 'homosexual' custody case differently from other custody cases." David J. Kleber et al., The Impact of Parental Homosexuality in Child Custody Cases: A Review of the Literature, 14 Bull. Am. Acad. of Psychiatry and Law 81, 86 (1986). The same is true for jurists in any case in which the sexual orientation of the parents is a factor.

Unfortunately, despite the clear scientific data supporting the parental fitness of lesbian and gay parents, lingering discomfort and misunderstanding persist. In a judicial setting, this can lead not only to unwarranted interference with parental rights, but also a failure to understand the importance of extending recognition of parental rights to further the best interests of children. As stated by the editors of the Harvard Law Review:

[A] judge's view of the child's moral well being may not be the same as the child's best interest. Because of the fluidity of the concept of moral well being and the existence of radically differing viewpoints of homosexuality, it is impossible to state definitively what beliefs regarding sexual orientation are best for the child.

Editors, Developments in the Law: Sexual Orientation and the Law, 102 Harv. L. Rev. 1508, 1639 (1989).

Amici are concerned that any decision in this case be free from the residue of false stereotypes and prejudices and ask this Court to confront and reject these stereotypes just as Ohio courts have done in the past. See, e.g., In re Adoption of Charles B., 50 Ohio St. 3d 88, 552 N.E.

2d 884 (1990) (holding that homosexuality of prospective parent is not a bar to adoption); Inscoc v Inscoc 121 Ohio App. 3d 396, 700 N.E.2d 70 (1997) (reversing adverse custody ruling against gay father); Conkel v. Conkel, 31 Ohio App. 3d 169, 509 N.E.2d 983 (1987)(allowing gay father liberal visitation with his minor son despite mother's contention that child would suffer from association with his gay father). See generally, Patterson, 63 Child Dev. 1025, 1028-29, 1038 (examining various stereotypes and recommending judicial disregard for them as empirically unfounded).

A. Contrary to Myth, Gay, Lesbian or Bisexual Orientation Is a Healthy Aspect of Human Diversity

"Homosexuality has existed in most societies for as long as recorded descriptions of sexual beliefs and practices have been available." Committee on Adolescence of the American Academy of Pediatrics, Homosexuality and Adolescence, Pediatrics, October 1993, at 631. "Societal attitudes towards homosexuality have had a decisive impact on the extent to which individuals have hidden or made known their sexual orientation." Id. Stated more succinctly, myths regarding gay, lesbian and bisexual orientation have long been abundant – and they are wrong.

Until the mid-1950s, virtually all research on same-sex orientation used subjects who were mental hospital patients or convicted prisoners, and this resulted in skewed and unreliable data. Many scientific "findings" and resulting social beliefs about lesbians and gay men were based on these highly distorted samples. See Marvin Siegelman, Parental Backgrounds of Homosexual and Heterosexual Women: A Cross-National Replication, 10 Archives Sexual Behavior 371 (1981). Once researchers began to work with more representative samples, an impressive body of authority has developed which demonstrates that lesbian or gay people are no more prone to suffer from psychopathology

than those who are predominantly or exclusively heterosexual.

In 1973, the American Psychiatric Association removed homosexuality from its list of mental disorders because no evidence supported its inclusion. American Psychiatric Association, D.S.M. III: Diagnostic and Statistical Manual of Mental Disorders 281-82, 380 (3d ed. 1980). The APA acted after a comprehensive review of the research on homosexuality. The reviewers reported that there was "not one objective study, by any researcher in any country, that substantiates the theory of homosexual pathology." Charles Silverstein, Even Psychiatry Can Profit From Its Past Mistakes, J. of Homosexuality 153, 157 (1976-1977). The reviewers concluded that the most recent and inclusive studies "indicate that homosexuality falls within the normal range of psychological functioning." *Id.* at 157. In removing homosexuality from its categories of mental illness, the APA professed that "homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities." Resolution of the American Psychiatric Association (Dec. 15, 1973)(reprinted in 131 Am. J. Psychiatry 497 (1974)).

Scientific bodies other than the American Psychiatric Association have adopted resolutions rebutting misconceptions regarding the mental and emotional health of gay and lesbian people and their capacity to parent. For instance, the National Association for Mental Health and the United States Surgeon General both recognized that a same-sex sexual orientation does not reflect mental or emotional illness. California Commission on Personal Privacy, Report of the Commission on Personal Privacy 361-63 (1983). In 1976, the American Psychological Association declared: "The sex, gender identity, or sexual orientation of natural, or prospective adoptive or foster parents should not be the sole or primary variable considered in custody or placement cases." 32 Am. Psychologist

432 (1977). Indeed, the American Psychological Association has encouraged mental health professionals to take the lead in removing the stigma of mental illness historically associated with homosexuality. John J. Conger, Proceedings of the American Psychological Association for the Year 1979, 35 Am. Psychologist 532 (1980).

The American Counseling Association (ACA) has formally opposed employment and other forms of discrimination based on sexual orientation since 1971. This policy has been subsequently reaffirmed and further elucidated through a series of resolutions adopted since that time. According to the ACA *Code of Ethics and Standards of Practice* for professional counselors, "Counselors do not condone or engage in discrimination based on age, color, culture, disability, ethnic group, gender, race, religion, sexual orientation, marital status, or socioeconomic status."

The National Association of Social Workers (NASW) also has consistently supported the position that gay men and lesbians are capable parents. The NASW policy statement on lesbian and gay issues notes that lesbians and gay men have been wrongly denied custody of children and the right to provide foster and adoptive care. National Association Of Social Workers, Lesbian and Gay Issues, in *Social Work Speaks: NASW Policy Statements* 93 (1988). The policy states that the NASW shall work for the adoption of policies and legislation to end all forms of discrimination on the basis of sexual orientation. *Id.* at 162. The Code of Ethics adopted by the NASW Delegate Assembly further states that "the social worker should not practice, condone, facilitate or collaborate with any form of discrimination on the basis of ...sexual orientation." *Id.* at 161.

In sum, gay/lesbian sexual orientation is now properly understood as a healthy and

commonplace aspect of identity that is set in place at an early age, earlier than allows for conscious choice. See, e.g., J. Michael Bailey & Kenneth J. Zucker, Childhood Sex-Typed Behavior and Sexual Orientation: A Conceptual Analysis and Quantitative Review, 31 Dev. Psychol. 43 (Jan. 1995); Richard R. Troidan, The Formation of Homosexual Identities, 17 J. Homosexuality 43, 43-73 (1989)(containing extensive research literature review); Alan P. Bell et al., Sexual Preference: Its Development in Men and Women 186-187 (1981). Accordingly, the myth that homosexuality reflects mental illness has been soundly rejected. Sexual orientation -- whether one is heterosexual, gay or lesbian, or bisexual -- is an integral part of human identity. See Ashley Montagu, A Kinsey Report on Homosexualities, Psychology Today, August 1978, at 62, 66 ("[h]omosexuals appear on the whole, to be as psychologically well-adjusted as heterosexuals"); Andrea K. Oberstone & Harriet Sukoneck, Psychological Adjustment and Lifestyle of Single Lesbian and Single Heterosexual Women, 1 Psychology of Women Quarterly 172 (1976) (no major differences found in the overall psychological adjustment of lesbians compared to heterosexual women); George Weinberg, Society and the Healthy Homosexual (1972).

B. Children of Gay Men and Lesbians Are Able To Overcome Stigmatization or Harassment Just As Children Of Other Minority Groups Do

There is no scientific evidence that children of gay or lesbian parents are harmed by attitudes toward the sexual orientation of their parents. See Jane B. Hotvedt & Mary E. Mandel, Children of Lesbian Mothers, in Homosexuality (Paul, et al. eds., 1982); Editors, Developments in the Law: Sexual Orientation and the Law, 102 Harv. L. Rev. 1508, 1638 (1989); Donna J. Hitchens & Martha Kirkpatrick, Lesbian Mothers/Gay Fathers, in Emerging Issues in Child Psychiatry and the Law 108,

112-16 (Elissa Benedek & Diane Schetky eds., 1985).

Children may be teased or harassed for all of the ways in which they or their parents depart from some perceived norm relating to physical appearance, race, religion, economic status, or any number of other factors. As sociologists and mental health professionals have acknowledged, anti-gay sentiment is akin to the prejudices that other minorities regularly confront. Such biased sentiment presents lesbian and gay families with many of the same challenges that other minority families have faced and overcome. See, e.g. Knud S. Larsen et al., Anti-Black Attitudes: Religious Orthodoxy, Permissiveness, and Sexual Information: A Study of the Attitudes of Heterosexuals Toward Homosexuality, 19 J. of Sex Research 105 (1983).

The important issue for children's development is not whether teasing occurs, but how the teasing is handled, and whether the children have the support of loving parents who help them deal with it. Just as African-American or Jewish parents help their children to cope with the bigotry inflicted on them because of race or religion, so can gay and lesbian parents guide their children and assist them in adjusting to the world's imperfections and unfairness.

Deference to prejudice and ignorance regarding lesbians and gay men is as inappropriate as relying upon prejudices against unmarried mothers, interracial couples, or unfamiliar religious practices. See Donna J. Hitchens, et al., An Alternative View to Child Custody: When One Parent is Homosexual, 17 Conciliation Courts Rev. 27 (1979); Frederick W. Bozett, Gay and Lesbian Parents 213-214 (1987). Deferring to prejudice is also unconstitutional.

The United States Supreme Court has held that an effort to shield children from private

prejudice is an impermissible basis for determining custody. Palmore v. Sidoti, 466 U.S. 429 (1984).

In Palmore, the Court held that a private prejudice toward a parent's interracial remarriage could not serve as a ground for denying that parent custody of her child. Id. In so holding, the Court held it unconstitutional for the government to make custody decisions that give effect to social prejudices and perceived stigma:

[The issue is] whether . . . private biases and the possible injury they might inflict are permissible considerations for removal of an infant child from the custody of its natural mother. We have little difficulty concluding that they are not. The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.

Id. (emphasis added). It is clear from this language that the United States Supreme Court will allow neither private prejudice nor fear of such prejudice as a proper basis for determining cases regarding the legal recognition of the child-parent relationship where the parent is a gay man or a lesbian.

An Ohio Court of Appeals held likewise, in Conkel v. Conkel, 31 Ohio App. 3d 169, 509 N.E.2d 983 (1987), that fear that a child will suffer because of anti-gay prejudice and discrimination is not a permissible basis on which to decide parental rights. The court held that a gay father could not be denied overnight visitation with his minor sons because he is gay. In answering the mother's concern that her children would be subjected to "the slings and arrows of a disapproving society," the court stated that it "fail[ed] to see why the extension of visitation would exacerbate this issue. The children will have to come to terms with the fact that their father is homosexual." Id. at 987. The court also refused to "take into consideration the unpopularity of homosexuals in society when its duty is to facilitate and guard a fundamental parent-child relationship." Id. See also In re Adoption

of Charles B., 50 Ohio St. 3d 88, 552 N.E. 2d 884 (1990) (approving adoption by gay parent); Inscoe v Inscoe 121 Ohio App. 3d 396, 700 N.E.2d 70 (1997) (reversing adverse custody ruling against gay father).

Conkel is not a lone candle in the wind. In M.P. v. S.P., 404 A.2d 1256 (N.J. Super. 1979), for example, a New Jersey court reversed a ruling granting custody of two minor children to their father on the basis that their mother's lesbianism might cause her children embarrassment in the eyes of their peers. In a conclusion that *Amici* believe is based on sound mental health principles, the New Jersey court held that custody should remain with the mother, stating that:

[T]he children's exposure to embarrassment is not dependent upon the identity of the parent with whom they happen to reside. Their discomfiture, if any, comes about not because of living with defendant, but because she is their mother, because she is a lesbian, and because the community will not accept her. Neither the prejudices of the small community in which they live nor the curiosity of their peers about defendant's sexual nature will be abated by a change of custody. Hard facts must be faced. These are matters which courts cannot control, and there is little to gain by creating an artificial world where the children may dream that life is different than it is.

Id. at 1262.

The M.P. court concluded, more than two decades ago, that any teasing encountered by children of lesbian and gay parents would not jeopardize the children's welfare or safety and may in fact benefit them in the long run:

It is just as reasonable to expect that they will emerge better equipped to search out their own standards of right and wrong, better able to perceive that the majority is not always correct in its moral judgments, and better able to understand the importance of conforming their beliefs to the requirements of reason and tested knowledge, not the constraints of currently popular sentiment or prejudice.

Id. at 1263.

Similarly, a Pennsylvania appellate court reversed the trial court's curtailing of a lesbian mother's overnight visits and its prohibition on her visiting her son in the presence of her female partner. Blew v. Verta, 617 A.2d 31 (Pa. Super. 1992). The court analogized the case to one involving an interracial home:

A court may not assume that because children will encounter prejudice in one parent's custody, their best interests will be served by giving them to the other parent. If the children are taunted and hurt because they live with a black man, with love and help they may surmount their hurt and grow up strong and decent--the sort of children any parent would be proud of. . . . [A] court must never yield to prejudice because it cannot prevent prejudice. Let the court know that prejudice will condemn its award, [still] it must not trim its sails.

Id. at 35 (quoting In re Custody of Temos, 450 A.2d 111 (Pa. Super. 1982), which involved an interracial home). The Blew court held this rationale was equally applicable to a child of a lesbian parent. It held that the child's interests would be best served by acknowledging the reality of his family rather than by "perpetuat[ing] the fiction of family homogeneity at the expense of the children whose reality does not fit this form." Id. at 36.

Following the course set in Ohio by Charles B., Conkel and Inscoc, and by the cases from other jurisdictions such as M.P. and Blew, *Amici* urge this Court to refuse to allow anti-gay attitudes to interfere with expanding the rights and protections accorded children in families headed by same-sex couples. The reality in this case is that Teri and Shelly are providing a healthy, loving environment for their children. The Court is only asked to secure its moorings by extending the legal recognition of parental rights and responsibilities to both parents of these children.

D. Children Raised By Lesbians and Gay Men Are No More Likely to Become Lesbian or Gay Than Children Raised By Heterosexuals

An additional misconception regarding sexual orientation is that children will develop a same-sex orientation as a result of substantial contact with a gay or lesbian parent. See Patterson, 63 Child Dev., at 1031-32 (no empirical evidence of difference in numbers between children of homosexual and heterosexual parents who identify themselves as gay or lesbian). This unfounded myth starts from the errant premise that something can or should be done to influence sexual orientation. But as previously explained, sexual orientation is a natural and healthy aspect of human diversity that is not affected by the sexual orientation of parents or other adults. All reputable research has found that there is no increased likelihood that children of gay or lesbian parents will be lesbian or gay because of parental influence. See Charlotte J. Patterson & Raymond W. Chan, Gay Fathers and Their Children, in Textbook of Homosexuality and Mental Health 371, 382 (Robert P. Cabaj & Terry S. Stein eds. 1997); Susan Golombok & Fiona Tasker, Do Parents Influence the Sexual Orientation of Their Children? Findings From a Longitudinal Study of Lesbian Families, 32(1) Developmental Psychology 3 (1996); J. Michael Bailey, et al., Sexual Orientation of Adult Sons of Gay Fathers, 31(1) Developmental Psychology 124 (1995).

Although the exact roots of sexual orientation are still under study, there is a clear consensus that, whatever its origins, sexual orientation is set in place by a very early age, long before adolescence, and cannot be changed. Bozett, Gay and Lesbian Parents at 211-13. See also J. Michael Bailey & Khytam Dawood, Behavioral Genetics, Sexual Orientation, and the Family, in Lesbian, Gay and Bisexual Identities in Families 3 (Charlotte J. Patterson & Anthony R. D'Augelli, eds. 1998)(reviewing scientific literature about possible biological origins of sexual orientation); Douglas

C. Haldeman, The Practice and Ethics of Sexual Orientation Conversion Therapy, 62 J. Consulting & Clinical Psych. 221 (1994)(concluding that sexual orientation is extremely resistant to efforts to change it); Simon LeVay, The Sexual Brain (1993)(discussing potential biological determinants of sexual orientation). The Conkel court observed "substantial consensus among experts that being raised by a homosexual parent does not increase the likelihood that a child will become homosexual." Conkel 31 Ohio App.3d 169, 509 N.E.2d 983.

In one frequently cited study of twenty-one children raised by lesbian or gay parents, researchers concluded that "based on the best indicators of emerging sexual identity, psychosexual development appears to be typical in at least twenty of the twenty-one children described in this paper." Richard Green, Sexual Identity of 37 Children Raised By Homosexual or Transsexual Parents, 135 Am. J. Psychiatry 692, 696 (1978). Other research on gay or lesbian parenting confirms these findings and shows no significant differences between children raised by gay parents and those raised by non-gay parents. See, e.g., Susan Golombok, et al., Children in Lesbian and Single Parent Households: Psychosexual and Psychiatric Appraisal, 24 J. of Child Psychology and Psychiatry 551, 568 (1982); Bonnie M. Mucklow & Gladys K. Phelan, Lesbian and Traditional Mothers: Responses to Adult Response to Child Behavior and Self-Concept, 44 Psychological Reports 880-81 (1979).

Experts agree that sexual orientation is not within social or parental control, and no respected theory of causation has identified the emulation of a parent's sexuality as determinative. Carol Warren, Homosexuality and Stigma, in Homosexual Behavior: A Modern Reappraisal 123, 137-38 (Judd Marmor ed., 1980). See also Lawrence J. Cohen, Children of Homosexuals Seen Headed Straight, Psychology Today, Nov. 1978, at 44-45; Beverly Hoeffer, Children's Acquisition of Sex-Role

Behavior in Lesbian-Mother Families, 51 Am. J. of Orthopsychiatry 536, 542 (1981) (noting no significant difference in the acquisition of sex-role traits between the children of lesbian and heterosexual mothers and hypothesizing that children's peers have the greatest influence on their sex-role development).

Children's sexual orientation is developed independently from their parents. The strongest proof for this simple proposition is that most lesbians and gay men were raised by parents who are exclusively or primarily heterosexual. "As this fact suggests, homosexual men and women do not learn their sexual preference by watching the sexual activities of their parents." Marilyn Riley, Student Note, The Avowed Lesbian Mother and Her Right to Child Custody: A Constitutional Challenge That Can No Longer Be Denied, 12 San Diego L. Rev. 799, 861 (1975) (quoting psychiatrist George Weinberg). See also Calif. Comm'n on Personal Privacy, Report of the Comm'n on Personal Privacy 364 (1983) (it is as likely that the left-handed minority will "convert" members of the right-handed majority as it is that gay people can "convert" heterosexuals.)

D. Contrary to Myth, There Is No Connection Between Sexual Orientation and Child Sexual Abuse

One particularly odious myth is that gay people (particularly men) are intrinsically inclined to sexually abuse children. That accusation is false. Evelyn Hooker, Homosexuality - Summary of Studies, in Sex Ways in Fact and Faith 172 (Duval & Duval eds., 1961); Bozett, Gay and Lesbian Parents at 210-11.

Accusations of child molestation have historically been made against disfavored minorities

vulnerable to such "propaganda," be they gay people, Jews, or others. John Boswell, Christianity, Social Tolerance and Homosexuality 16 (1980). See also B. Voeller & J. Walters, Gay Fathers, 27 Fam. Coordinator 149, 154 (1978) (discussing the popular misconceptions about child molestation by gay men); Burton Leiser, Liberty, Justice, and Morals: Contemporary Value Conflicts 36-37 (1973) (concerning the common but erroneous confusion of homosexuality with pedophilia).

A comprehensive study by researchers at The Children's Hospital in Denver confirmed that any suggestion that gay or lesbian parents are likely to sexually abuse their children is completely unsupportable. See Carole Jenny, et al., Are Children at Risk for Sexual Abuse by Homosexuals?, Pediatrics, July 1994, at 41-44. The study concluded that a child is 100 times more likely to be sexually abused by the heterosexual partner of a relative than by a gay or lesbian adult. The researchers found that of the 269 reported incidents of child abuse where an adult was the suspected abuser, only two cases, or less than one percent, were identified as homosexual perpetrators. Jenny, et al., Pediatrics, July 1994, at 41. Other research on the sexual abuse of children confirms that offenders are, in disproportionate numbers, heterosexual men. See Baker v. Wade, 553 F. Supp. 1121, 1130 (1982), rev'd. on other grounds, 769 F.2d 289 (1985); Evelyn Hooker, Homosexuality - Summary of Studies, in Sex Ways in Fact and Faith 172 (Duval & Duval eds., 1961); Bozett, Gay and Lesbian Parents at 210-11.

Similarly, incest statistics show that the vast majority of cases of parent-child incest involve heterosexual fathers and their daughters. Human Development Service, National Study of the Incidence and Severity of Child Abuse and Neglect 27-29 (1982). In sum, the "fear that gay or lesbian parents will molest children is unfounded." Developments, 102 Harv. L. Rev. at 1639.

CONCLUSION

Providers of mental and physical health care including the *Amici* joined in this brief have repeatedly urged state and federal courts to take a realistic and flexible approach in interpreting and applying the law to provide maximum protection for the increasingly diverse family structures in this country. To further the best interests of children living within these families - a goal commonly shared and shouldered by *Amici* and this Court - *Amici* urge this Court to construe Ohio law to enable children raised in non-traditional families to receive the many benefits already accorded children being raised in traditional families.

Amici urge this Court to evaluate this matter in the context of the ample social science and other data highlighted herein which confirms the validity of same-sex couples raising children and counters the false assumptions concerning gay and lesbian people. We ask this Court to base its decision upon the reality of the family that Teri and Shelly have created and the hundreds (if not thousands) of similar families in Ohio. These families have two primary caretakers and the children have healthy, independent parent-child relationships with both caretakers. Denying legal recognition of both parent-child relationships destabilizes the children's lives while serving no salutary purpose. Thus, we urge this Court to recognize, through a shared parenting order or other appropriate mechanism, a legal standard that fully appreciates the realities of modern family life and that fully protects the children of those families.

Respectfully Submitted,




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