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Brief Amicus Curiae of Ohio Psychological Association, National Association of Social Workers and Ohio Chapter, American Academy of Child and Adolescent Psychiatry, Ohio Human Rights Bar Association and the Lesbian/Gay Community Service Center of Greater Cleveland in support of Appellants, in re Adoption of Jane Doe, Ohio Ninth District Case No. 19017

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IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
SUMMIT COUNTY, OHIO

C.A. No. 19017

Appeal from the
Common Pleas Court of Summit County
Akron, Ohio
Case No. A96-10-004

IN RE ADOPTION OF JANE DOE

BRIEF *AMICUS CURIAE* OF
OHIO PSYCHOLOGICAL ASSOCIATION,
NATIONAL ASSOCIATION OF SOCIAL WORKERS AND OHIO CHAPTER,
AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY,
OHIO HUMAN RIGHTS BAR ASSOCIATION AND
THE LESBIAN/GAY COMMUNITY SERVICE CENTER OF GREATER CLEVELAND
IN SUPPORT OF APPELLANTS

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INTRODUCTION

Amici Ohio Psychological Association, American Academy of Child and Adolescent Psychiatry, National Association of Social Workers, (NASW) and its Ohio Chapter, Ohio Human Rights Bar Association and The Lesbian/Gay Community Service Center of Greater Cleveland submit this brief with the consent of counsel for all parties (attached) in support of appellants on the importance to children of allowing adoptions by unmarried couples, the documented ability of lesbians and gay men to raise children who are as healthy and well-adjusted as other children and the falsity of certain common myths about lesbians and gay men.

Amici are familiar with the questions involved in this case and believe there is a necessity for additional argument on the above issues to assist the Court in arriving at a just and sensible result of benefit to "Jane Doe" and other children in need of adoption. As psychiatrists, psychologists, social workers, attorneys and providers of services to lesbian and gay individuals and their families, *Amici* are deeply familiar with and concerned about the effects that false assumptions have in legal decisions regarding the children of gay men and lesbians. *Amici* also are familiar with the benefits of adoption for these and other children who happen to be raised in non-traditional family settings.

Amici submit this brief to bring to this Court's attention the body of professional research pertinent to these issues which is relevant to the legal questions posed in this case. Research and experience demonstrate the psychological and practical importance to children of cementing their bonds with psychological or *de facto* parents. An extensive body of research also shows that the parenting abilities of lesbians and gay men have been unfairly denigrated and denied based upon prejudice, fear, myths, and stereotypes. Although no party to this case has advocated a decision

premised on the parties' sexual orientation, *Amici* believe that this Court's consideration of this case will be aided by presentation of the literature and studies demonstrating the groundlessness of such discrimination.

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 *amicus* American Psychological Association passed a series of resolutions urging that gay men and lesbians not be discriminated against in employment, housing, licensing, public accommodation, and child custody.¹

¹ See, e.g., American Psychological Association, Minutes of the Annual Meeting of the Council of Representatives, 30 Am. Psychologist 620, 633 (1975); American Psychological Association, Minutes of

Amicus the American Academy of Child and Adolescent Psychiatry ("AACAP") is a nonprofit professional organization representing over 6,600 child and adolescent psychiatrists. Its members are physicians with at least five years of additional training beyond medical school in general and child and adolescent psychiatry. Its members actively research, diagnose and treat psychiatric disorders affecting children, adolescents, and their families. The AACAP is committed to protecting the well-being and rights of children and their families. It advocates for the best interests of the child or the adolescent.

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 and chapters in every state, including Ohio with 5,800 members, and internationally. 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 the Lesbian/Gay Community Service Center of Greater Cleveland ("The Center") is a not-for-profit community service organization. Originally formed as a research and

the Annual Meeting of the Council of Representatives, 32 Am. Psychologist 408, 432 (1977); American Psychological Association, Minutes of the Annual Meeting of the Council of Representatives, 36 Am. Psychologist 552, 581 (1981).

education foundation, it has since grown into a multi-service agency providing programs, meeting space, awareness, advocacy and support for all of Northeast Ohio. The Center is a resource for obtaining information, referrals, peer support, leadership and advocacy. It's mission is to work to improve the quality of life for many communities through self-empowerment, visibility, justice and equality. The Center strives to raise the awareness/consciousness of the rest of society surrounding lesbian, gay, bisexual and transgender issues. The Center serves nearly 1500 people every month who call, attend groups, or drop in for information.

Amicus Ohio Human Rights Bar Association ("OHRBA") is a non-profit professional organization. OHRBA is committed to facilitating and improving the administration of justice and promoting legislative and administrative reforms for the purposes of eliminating discrimination on the basis of sexual orientation and assuring fair and just treatment of individual gay men and lesbians by and under law. OHRBA is committed to gaining legal recognition for lesbian and gay couples and families, and eradicating the injustices that result from the lack of such recognition. Incorporated in 1988, OHRBA's membership consists of attorneys, legal workers, and law students.

OHRBA has appeared as *amicus curiae* in a number of cases which involve the interests of lesbian, gay, and bisexual Ohioans, including Equality Foundation of Greater Cincinnati, Inc. v. Cincinnati (challenging the Cincinnati ordinance prohibiting civil rights protections for lesbians, gay men and bisexuals) and Inscoc v. Inscoc (reversing change of custody from gay father). Additionally, OHRBA has been the sponsoring organization of Continuing Legal Education seminars recognized by the Ohio Supreme Court on the topics of "Gay and Lesbian Issues in Probate and Family Law," "Gay and Lesbian Issues in Family Areas; Custody and

Adoption," and "Legal Issues in Adoption." This case, involving as it does the children of lesbian parents, raises issues of particular concern to and within the particular purview of the organization. OHRBA submits this brief in an effort to advance the court's understanding of the children of gay men and lesbians residing in Ohio. For these reasons, OHRBA is well-qualified to appear as an *amicus curiae* before this court.

ARGUMENT

I. THE BEST INTERESTS OF CHILDREN ARE PROMOTED BY ALLOWING UNMARRIED COUPLES TO BE ABLE TO PETITION TO ADOPT CHILDREN

Through adoption, children who are not being raised by both biological parents can find safe, stable, and loving homes. Children benefit from adoption psychologically through protection of their relationships with primary caregivers, disruptions of which can cause developmental and emotional trauma. Children also benefit materially through additional health care choices, child support, and death benefits.

Nevertheless, if the lower court's decision denying unmarried couples standing to adopt is affirmed, children's eligibility for these protections would depend upon the marital status of their caregivers, not on the best interests of the child. Because children today are being raised, and raised well, by grandparents, single parents, lesbian and gay parents, and in other non-traditional family arrangements, standing to file adoption petitions should not be construed so narrowly that children in need of stable, safe homes will not find them.

As discussed more fully below, giving standing in adoption proceedings to persons in

unmarried couples can serve the best interest of the child by protecting the child's primary attachment to the parent who otherwise has no legal standing in the event of death of or separation from the legal parent. A grant of standing also will promote the financial well-being of the child by increasing the resources available for her care and by providing financial security for the child should her second parent die. Permitting non-marital couples to adopt also will maximize the pool of potential adoptive parents available for the increasing numbers of children in state care who desperately need permanent homes. Such adoptions meet the needs of children in our increasingly heterogenous modern families.

A. Allowing Second-parent Adoption Petitions to Proceed Will Protect the Primary Psychological Relationship Between Children and Their Non-Biological Parents.

The importance of a child's attachments to his or her "psychological parent"² is well documented. Researchers have concluded that separation of a child from his or her family for any period of time can be damaging to the child's development.³ This is because children need to form attachments to primary caretakers in order to grow up emotionally and behaviorally intact.⁴ In cases involving non-married co-parents, legal recognition of a child's primary attachments can be preserved through adoption. In such situations, permitting unmarried couples to file for adoption is an important step toward protecting the child's psychological ties because

² Leading child welfare experts Solnit, Freud, and Goldstein define the psychological parent as "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." J. Goldstein, A. Freud, & A. Solnit, Beyond the Best Interests of Child 98 (1979).

³ See, e.g. C. Heineke & I. Westheimer, Brief Separations (1965)

⁴ P. Hess, Parent-Child Attachment Concept: Crucial for Permanency Planning, 63 Social Casework 46, 47-48 (1982).

it is only through adoption that children can be guaranteed the myriad psychological, financial, and legal benefits arising out of a legally recognized relationship with the second parent.

Where unmarried couples are permitted to adopt children with whom they are living, children can gain a significant legal relationship which will preserve their primary attachments and may prevent them from suffering psychological harm if their parents separate in the future. Adoption, by giving both parents equal legal status vis-a-vis their child, will preserve the legal rights of the non-custodial parent to continue contact through visitation or joint custody.

Similarly, if the biological parent dies, adoption would also protect the child's relationship with his or her remaining parent because, in the eyes of the law, the biological parent's death would otherwise orphan the child. Even if the co-parents had agreed that the surviving co-parent would be the child's guardian, Ohio law would not guarantee that their preference would be honored. R.C. 2111.02(D); R.C. 2111.12(B)

Moreover, without the legal protection of adoption, the child could be subjected to the pain of further emotional loss in the event that a custody battle ensued between relatives of the deceased biological co-parent and the surviving co-parent, an occurrence which is sadly not uncommon.⁵ Again, Ohio law would not require that the child remain in the co-parent's custody. See, e.g., Liston v. Pyles, 1997 WL 46 7327 (Ohio Ct. App. 1997) (appended to appellants' brief). Allowing unmarried couples to adopt would preempt these bitter custody battles and minimize the chance that the loss to the children caused by the death of one parent would be

⁵ See 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).

compounded by the loss of their remaining co-parent.

B. Permitting Second-parent Adoptions Will Protect Children's Material Interests

Allowing unmarried couples to adopt may entitle the children to significant financial and other benefits which they otherwise will not receive. For example, either legal parent may choose health insurance with dependent coverage that provides the child with optimal benefits. If the biological parent is uninsured for any period, or has lost her insurance because she has chosen to stay home from work to raise the child, adoption would enable the child to be insured by the non-biological parent during the period of having a full-time parent at home to care for the child.

Adoption also will allow the child's parents to plan their estates so that the children will be assured of inheriting the non-biological parent's assets in the event of her death. Although a *de facto* parent can provide for a child in a will, Ohio's laws of intestate succession may bar the child from inheriting from her. By bestowing the children with the right of inheritance in the case of intestacy, adoption secures the children's inheritance from both parents if a will is invalidated, lost, or contested. Further, an adoption decree can make a child eligible for family trusts passing to children.

Absent an adoption decree, the child also will be deprived of social security, death or disability benefits normally available to a child upon the death or disability of a legal parent. See 42 U.S.C. §402 [d]. See also Adoption of Tammy, 619 N.E.2d 315, 320 (Mass. 1993); In re Jacob, In re Dana, 86 N.Y. 2d 651 (1995), In re Adoption of J.M.G., 632 A.2d 550, 552 (N.J. Super. Ct. Ch. Div. 1993).

Finally, if the child's parents separate, adoption would ensure that the incomes of both parents would be available to the child for child support. Adoption would guarantee the child a legally enforceable right to financial support in the future in the event the couple separates.

C. Given the Increasing Numbers of Children in Need of Adoptive Homes, this Court Should Construe Standing Requirements in a Manner that Will Increase the Pool of Adoptive Parents.

Although the child before the Court has not been abandoned, the Court's ruling in this case will affect both children like her and many other children awaiting adoption. Child welfare systems across the nation are in a state of crisis. The number of children in the foster care system nationwide ballooned from 276,000 in 1986 to over 450,000 in 1992, according to the National Council for Adoption and the American Public Welfare Association.⁶ At the same time that the number of children entering foster care is increasing, the number of adoptions is shrinking. Over the past two decades, the number of unrelated domestic adoptions fell from 90,000 in 1970 to less than 53,000 a year in 1994.⁷

In light of this crisis, the courts can ill afford to construe standing requirements in an unnecessarily restrictive manner to bar consideration of adoption petitions filed by loving and nurturing parents capable of providing stable homes to children. Sound public policy dictates that courts should act to ease the State's burden of finding suitable homes for children in State care. By construing the standing requirement to allow unmarried couples to adopt, more homes will become available to Ohio children.⁸

⁶ Thomas McArdle, Exploring the Adoption Option, Investor's Business Daily, Aug. 4, 1994, at 1.

⁷ Id.

⁸ See Developments in the Law — Sexual Orientation and the Law, 102 Harv. L. Rev. 1508, 1645-46 (1989) (noting the question of whether lesbians and gay men should be permitted to adopt must be

**D. This Court Should Interpret the Act to Meet the Needs of Children
Reared and Nurtured in Diverse Family Structures**

In recent years, notions of what constitutes a family in America have expanded, primarily as a result of a shift away from traditional nuclear family living and a deeper understanding and appreciation by courts and legislatures of the needs of children in these non-traditional families. Studies of minority cultures, which traditionally have relied on extended kinship networks to rear their children, also have contributed to this more expansive conception of "family." In accordance with this widening notion of what families mean to children, courts and legislatures have proved flexible in protecting these increasingly complex and heterogenous family networks. In order to meet the best interests of children, this Court should construe the Ohio Adoption Act to enable children raised in loving and nurturing non-traditional families to receive the many benefits of adoption.

In the United States today, fewer and fewer children are being raised in the traditional nuclear family, composed of a married couple (male and female) and their children. In large part due to escalating divorce rates, "the number [of children] living in single parent households, step-families, or other 'blended' families has steadily increased."⁹ This trend led a recent report

answered in the context of the placement alternatives for "hard-to-place" state wards — including lesbian or gay teenagers — who may not otherwise find the permanent home which is so vital to a child's healthy development).

⁹ Hollinger, Aftermath of Adoption: Legal and Social Consequences 13-82, in 2 Adoption Law & Practice (Hollinger, ed. 1994). See also S. Chira, Struggling to Find Stability When Divorce is a Pattern, New York Times, March 19, 1995; 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 18 did not live with both parents and estimating that by 1990 this figure would have risen to forty per cent).

to conclude that "there is no such thing as a 'typical' family".¹⁰

With increasing frequency, children are being cared for by step-parents, grandparents, friends and relatives. As a result, children are forming significant *de facto* parental relationships with persons who are not their biological mothers or fathers.

Legal protections have been afforded to children's relationships in some minority cultures, where they are routinely cared for in expanded kinship networks. For example, non-nuclear family child-rearing is common in Native American cultures where children move back and forth among kin on reservations and in the cities; urban Native Americans reportedly view themselves as extensions of their kin on the reservations.¹¹

Legal recognition of these differences can be found in statutes and case law that have expanded notions of family to meet children's needs for nurturance. See, e.g., Indian Child Welfare Act, 25 U.S.C. §1902 (Congressional declaration of policy to preserve Indian children's familial and tribal connections).

As in Native American culture, children in many African-American communities are frequently raised by relatives jointly with, or as a substitution for, the birth parents.¹² Many of these children will have multiple "mothers" at once or in succession, while retaining deep ties to their parents and siblings.¹³ The recent reliance on kinship foster care by public child welfare

¹⁰ James R. Wetzel, American Families: 75 Years of Change, 113 Monthly Lab. Rev. 4 (1990).

¹¹ C. Stack, Cultural Perspectives on Child Welfare, XII N.Y.U. L. Rev. L. & Soc. Change 539, 543 (1983-84).

¹² Stack at 543-45 (1983-84); R. Hill, Informal Adoption Among Black Families (1977).

¹³ Stack at 544.

agencies “may justly be credited with respecting and building upon the longstanding tradition of kinship care and support with poor communities and communities of color.”¹⁴

Other non-traditional family arrangements and alternative methods of creating such families also exist. There are single men and women who are adopting children; gay and lesbian couples who are becoming parents through adoption, foster care, or artificial insemination; divorced parents who are marrying new spouses, and, through the advances of medical science, post-menopausal women who are becoming mothers. Again, as a result of these new family contexts, courts have avoided a narrow definition of “family” and sought to meet the needs of children consistently with the goal of protecting the best interests of the child. For example, when a child was born to a woman and a man with whom she had an extra-marital affair, a plurality of the United States Supreme Court determined that the woman’s husband who had raised the child as his own — and not the biological father — was the legal father. Michael H. v. Gerald D., 109 S. Ct. 2333 (1989). In one custody dispute between a step-mother and biological father, the judge, while grappling with how to define the step-mother’s relationship with the children, exclaimed “I am aware of the relationship among the parties, and you will forgive me if I refer to them as parents. They certainly occupied a position of parents for several reasons, whether they were biological or not....” Husack v. Husack, 417 A. 2d 233, 235 (Pa. Super. Ct. 1979).

Similarly, a number of courts have recognized that the mother-child relationship between the child and the lesbian co-parent should be legally sanctioned through adoption. In re Jacob, 86

¹⁴ M. Kurtz, The Purchase of Families Into Foster Care, 26 Conn. L. Rev. 1453, 1455 (1994).

N.Y. 2d 651; Petition of K.M., 274 Ill. App. 3d 189 (1995); J.M.G., 632 A.2d 550; Adoption of Tammy, 619 N.E.2d 315 (Mass. 1993). Adoption of B.L.V.B., 628 A.2d 1271 (Vt. 1993). In the Matter of the Petition of L.S. and V.L., 17 Fam L. Rptr. (BNA) 1523 (D.C. Super. Ct., Aug. 30, 1991). In re Adoption by S.M.Y., 21 Fam. L. Rep. (BNA) 1099 (N.Y. Fam. Ct., Dec. 12, 1994).¹⁵ Each of these courts has found that permitting this type of adoption provides critical legal rights and protections to children as well as promoting their safety and physical and emotional well-being.

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 ORIENTATION¹⁶

Millions of children have gay or lesbian parents.¹⁷ Moreover, gay men and lesbians raise

¹⁵ See also C. Sella, When a Mother is a Legal Stranger to Her Child: The Law's Challenge to the Lesbian Nonbiological Mother, 1 U.C.L.A. Law J. 135, 159, n. 105 (1991) citing In re Adoption of a Minor Child, No. 1-JU-86-73 (Alaska Super. Ct., Feb. 6, 1987); In re Adoption of N., No. 18086 (Cal. Super. Ct., Mar. 11, 1986); In re Adoption of M.M.S.A., No. D-8503-61930 (Or. Cir. Ct., Sept. 4, 1985); In re E.B.G., No. 87-5-00137-5 (Wash. Super. Ct. 1989).

¹⁶ This section reviews empirical research from the social and behavioral sciences pertaining to the parenting abilities of gay men and lesbians and to sexual orientation, generally. *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 observation he or she makes. 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 typically are subject to critical review by outside experts, usually during a peer review process preceding publication in a scholarly journal.

¹⁷ Estimates range from six million, see J. Schulenberg, Gay Parenting (1985), to eight to ten million, see ABA Annual Meeting Provides Forum For Family Law Experts, 13 Fam. L. Rep. 1512, 1513 (1987), to six to fourteen million, Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 Child Dev. 1025 (1992).

emotionally healthy, secure, and happy children in the same proportion as do heterosexuals.¹⁸

While the Court's decision in this case will most directly affect the life of "Jane Doe," it also may have a profound impact upon other children in Ohio whose relationships with their gay or lesbian parents would be threatened by affirmance of the trial court's ruling.

Studies of lesbian and gay parents show them to be very much like their non-gay counterparts.¹⁹ No studies have revealed a difference in basic lifestyle or parenting style between lesbian and gay parents and heterosexual parents.²⁰ In a landmark work on gay and lesbian families which reviews the research in numerous studies, the editor 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.²¹

In all respects, lesbians and gay men are just as capable of being good parents as non-gay

¹⁸ Given the increasing number of lesbians and gay men forming lasting same-sex relationships and raising children, corresponding numbers of children will be in need of protection of the significant ties formed in the context of these families. These children of gay parents come to be part of the family in a variety of ways: through custody determinations in dissolution of heterosexual marriages, adoption, foster care, an alternative means of conception. Polikoff, 78 Geo. L.J. at 464-68; Developments in the Law, 102 Harv. L. Rev. 1643; Patterson, at 1036 (comprehensive overview of relevant research overwhelmingly affirms that there is no negative developmental effect in children of gay and lesbian parents).

¹⁹ See infra notes 25-31

²⁰ Patterson, 63 Child Dev. 1025.

²¹ Frederick W. Bozett, Gay and Lesbian Parents 34 (1987) (emphasis added). See also Patterson, 63 Child Dev. at 1036.

people.²² The unrefuted consensus among researchers is that children raised by openly lesbian or gay parents grow up well-adjusted. The most comprehensive survey of these studies, numbering more than fifty, was done at the University of Virginia. It concluded:

[d]espite long-standing legal presumptions against gay and lesbian parents in many states, despite dire predictions about their children based on well-known theories of psychosocial development, and despite the accumulation of a substantial body of research investigating these issues, not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence to date suggests that home environments provided by gay and lesbian parents are as likely as those provided by heterosexuals to support and enable children's psychosocial growth.²³

Other researchers have similarly concluded that, "being gay is not incompatible with effective parenting, and certainly not the major issue in parents' relationships with their children."²⁴

Extensive research shows that the children of lesbian parents are not adversely affected by their mothers' sexual orientation.²⁵ The focal issue in all of these studies is the comparative significance of sexual orientation, and they support the conclusion that sexual orientation is

²² See, e.g., 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).

²³ Patterson, 63 Child Dev. at 1036 (emphasis added).

²⁴ Harris & Turner, 12 J. Homosexuality at 112.

²⁵ See Patterson, 63 Child Dev. at 1025. For example, in a recent study of 37 families headed by single lesbians and lesbian couples, 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 ("feeling joyful, content, and comfortable with themselves") as compared to another study of the children of non-lesbian parents. *Id.* at 169.

irrelevant to parenting. In short, all of the studies turn on the fact that parents need not be heterosexual in order to raise healthy children. Indeed, there is no reputable scientific work that suggests that gay or lesbian people are less capable parents, as a group, than non-gay people. Sexual orientation is fundamentally irrelevant to a parent's qualifications or a child's well-being.

III. SECURING A HAPPY AND STABLE HOME LIFE, NOT FALSE ASSUMPTIONS ABOUT LESBIAN FAMILIES, SHOULD BE THE COURT'S DETERMINING CONSIDERATION.

As appellants' brief demonstrates, the Ohio courts' obligation to determine the best interests of the child in each case mandates that the determination be based on actual fact and made on a case-by-case basis without undue focus on the issue of sexual orientation.²⁶ But, unfounded assumptions regarding lesbian and gay people can prevent an objective assessment of parents' relationships with their children. 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 to unwarranted interference with parental rights, and a failure to serve the true best interests of the child. 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.²⁷

²⁶ See also 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 greatest single trap the mental health professional can fall into is to approach a 'homosexual' custody case differently from other custody cases.") The same is true for adoption cases.

²⁷ Developments in the Law, 102 Harv. L. Rev., at 1639.

Amici are concerned that any decision in this case be free of the residue of false stereotypes and prejudices and ask this Court to reject these stereotypes.²⁸

In addition to the studies reviewed above confirming that gays and lesbians are fit parents, the other common myths and concerns about lesbian and gay people have been refuted. *Amici* will review some of these myths and concerns here.

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

The myth that homosexuality reflects mental illness has been rejected. Sexual orientation -- whether one is heterosexual, gay/lesbian or bisexual -- is an integral part of human identity.²⁹ Although often misunderstood, it is well-established that gay/lesbian sexual orientation is a healthy and commonplace aspect of identity that is set in place at an early age, earlier than allows for conscious choice.³⁰ In 1973, the American Psychiatric Association removed homosexuality from its list of mental disorders because no evidence supported its inclusion.³¹ The APA acted

²⁸ See Patterson, 63 Child Dev. 1025, generally, and especially at 1028-29 & 1038 (examining various stereotypes and recommending judicial disregard for them as empirically unfounded).

²⁹ See, e.g., 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); Mark Freedman, Homosexuality and Psychological Functioning (Brooks/Cole Publishing Co. 1971). See generally George Weinberg, Society and the Healthy Homosexual (1972); Sylvia Law, Homosexuality and the Social Meaning of Gender, 1988 Wis. L. Rev. 187, 214 and n.131; Developments in the Law, 102 Harv. L. Rev. 1508.

³⁰ See, e.g., J. Gonsiorek, et al., Definition and Measurement of Sexual Orientation, 25 J. of Suicide and Life-Threatening Behavior and Supplement 41 (1995).

³¹ American Psychiatric Association, D.S.M. III: Diagnostic and Statistical Manual of Mental Disorders 281-82, 380 (3d ed. 1980).

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."³² The reviewers concluded that the most recent and inclusive studies "indicate that homosexuality falls within the normal range of psychological functioning."³³

Other scientific bodies also have adopted resolutions which rebut misconceptions regarding the mental and emotional health of gay and lesbian people and their capacity to parent.³⁴ 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."³⁵ The National Association of Social Workers also has consistently supported the position that gay men and lesbians are capable

³² See Charles Silverstein, Even Psychiatry Can Profit From Its Past Mistakes, 2 J. of Homosexuality 153, 157 (1976-1977) (emphasis added).

³³ Id. at 157. Thus, for more than 20 years, psychiatry has rejected the earlier view that people with same-sex orientation were mentally deviant. 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 Siegelman, Parental Backgrounds of Homosexual and Heterosexual Women: A Cross-National Replication, 10 Archives Sexual Behavior 371 (1981). Since 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.

³⁴ For instance, the National Association for Mental Health and the United States Surgeon General both have 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). The American Psychological Association has encouraged mental health professionals to take the lead in removing the stigma of mental illness which historically has been associated with homosexuality. John J. Conger, Proceedings of the American Psychological Association for the Year 1979, 35 Am. Psychologist 532 (1980).

³⁵ 32 Am. Psychologist 432 (1977).

parents.³⁶

This Court should treat sexual orientation neutrally, acting in the best emotional, psychological and financial interests of children, not based on stereotypes or unfounded assumptions.

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.³⁷ 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. It presents lesbian and gay families with

³⁶ For example, when Massachusetts instituted a policy that effectively prohibited the state from licensing lesbians and gay men as foster parents, NASW joined a lawsuit challenging the policy. See Babets v. Secretary of the Executive Office of Human Serv., 526 N.E.2d 1261, (Mass. 1988). See also Inscoe v. Inscoe, 1997 WL 34619 (Ohio Ct. App. 1997) (NASW submitted *amicus* brief in support of gay father). 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. Nat'l Ass'n 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.

³⁷ See Jane B. Hotvedt & Mary E. Mandel, Children of Lesbian Mothers, in Homosexuality (Paul, et al. eds., 1982); Note, Joint Adoption: A Queer Option?, 15 Vt. L. Rev. 197, 206, 208 at n. 17 (1990); see also 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).

many of the same challenges that other minority families have faced and overcome.³⁸ The important issue for a child's development is not whether teasing occurs, but how the teasing is handled, and whether the child has the support of a loving parent in learning to 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.

Further, 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.³⁹ It 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.

³⁸ 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).

³⁹ See Donna J. Hitchens, et al., An Alternative View to Child Custody: When One Parent is Homosexual, 17 Conciliation Courts Rev. 27 (1979); Bozett, Gay and Lesbian Parents 213-214 (1987).

Id. (emphasis added). It is clear that neither private prejudice nor fear of such prejudice is a proper basis for determining eligibility to adopt.

The Court of Appeals likewise held 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); Inscocoe, 1997 WL 346199 (reversing adverse custody ruling against gay father).

Similarly, in M.P. v. S.P., 404 A.2d 1256 (N.J. Super. 1979), the 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. 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.

In a recent Pennsylvania case, the 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.

As in Charles B., Conkel and Inscocoe, this Court should refuse to allow anti-gay attitudes to interfere with expanding the pool of eligible adoptive families. Here, Jane Doe has had the same happy, healthy family her whole life. The Court is only asked to secure its moorings.

C. 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.⁴⁰ This myth, which is unfounded, starts from the errant premise that something can or should be done to influence sexual orientation. But sexual orientation is a natural and healthy aspect of human diversity that is not affected by the sexual orientation of a custodial parent or other adults.⁴¹ 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. 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.⁴² The Court of Appeals has noted a "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.

For example, 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

⁴⁰ 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).

⁴¹ See supra notes 28-32. See also 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).

⁴² Bozett at 211-13; see also Gonsiorek., 25 J. of Suicide 41, generally.

described in this paper."⁴³ 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 determinative⁴⁴

Children's sexual orientation is developed independently from their parents.⁴⁵ 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."⁴⁶

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

Finally, one particularly odious myth is that gay people (particularly men) are

⁴³ 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).

⁴⁴ Carol Warren, Homosexuality and Stigma, in Homosexual Behavior: A Modern Reappraisal 123, 137-38 (Judd Marmor ed., 1980).

⁴⁵ See Lawrence J. Cohen, Children of Homosexuals Seen Headed Straight, Psychology Today, Nov. 1978, at 44-45; Beverly Hoeffler, 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).

⁴⁶ 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.)

intrinsically inclined to sexually abuse children.⁴⁷ The accusation is patently false.⁴⁸ A comprehensive study by researchers at The Children's Hospital in Denver recently confirmed this. It found that of the 269 reported incidents of child abuse where an adult was the suspected abuser, only two cases (.7%) were identified as homosexual perpetrators.⁴⁹ Research on the sexual abuse of children shows that offenders are, in disproportionate numbers, heterosexual men.⁵⁰ See Baker v. Wade, 553 F. Supp. 1121, 1130 (1982), rev'd. on other grounds, 769 F.2d 289 (1985). Similarly, incest statistics show that the vast majority of cases of parent-child incest involve heterosexual fathers and their daughters.⁵¹ In sum, the "fear that gay or lesbian parents will molest children is unfounded."⁵²

⁴⁷ See Carole Jenny, et al., Are Children at Risk for Sexual Abuse by Homosexuals?, Pediatrics, July 1994, at 41-44; Child Molesters Rarely Homosexual, USA Today, July 12, 1994, at D1, (a child is 100 times more likely to be sexually abused by the heterosexual partner of a relative than by a gay adult; only 3% of child abuse is committed by gay adults, a figure which is either equal to or smaller than the percentage of adults who have a gay sexual orientation). 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); Voller, 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 3637 (1973) (concerning the common but erroneous confusion of homosexuality with pedophilia).

⁴⁸ See, e.g., Evelyn Hooker, Homosexuality - Summary of Studies, in Sex Ways in Fact and Faith 172 (Duval & Duval eds., 1961); Bozett at 210-11.

⁴⁹ Jenny, et al., Pediatrics, July 1994, at 41.

⁵⁰ See Sam Houston State Univ., Criminal Justice Center, Responding to Child Sexual Abuse: A Report to the 67th Session of the Texas Legislature (1980) ("The vast majority of sex crimes committed by adults upon children are heterosexual, not homosexual.").

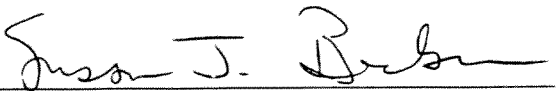
⁵¹ See Human Development Service, National Study of the Incidence and Severity of Child Abuse and Neglect 27-29 (1982).

⁵² Developments in The Law, 102 Harv. L. Rev. at 1639.

CONCLUSION

Amici urge this Court to evaluate Jane Doe's best interests and to interpret the Ohio Adoption Act based upon her parents' track record and not based upon false assumptions concerning gay and lesbian people or the makeup of stable families. We ask this Court to base its decision upon Jane's reality. She always has had two primary caretakers and two healthy, parent-child relationships. We urge this Court to understand that lesbians and gay men can and do effectively parent and that the children of lesbians and gay men love and depend on their parents. To deny an adoption may destabilize Jane's life and the lives of other children with unmarried, gay or lesbian parents while serving no salutary purpose.

Respectfully Submitted,


One of the attorneys for *Amici Curae*

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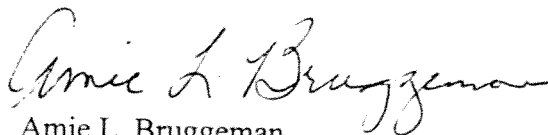
**Re: Adoption Of Jane Doe
Court of Appeals No. 19017**

Dear Ms. Becker:

By this letter, the guardian ad litem gives consent to the filing of an *amicus* brief by the Ohio Psychological Association, et al, in the above matter in the Court of Appeals, and further consents to its filing at any time before argument of this matter.

Very truly yours,

ROETZEL & ANDRESS


Amie L. Bruggeman

ALB/kkl

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25th anniversary 1973-1998

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September 24, 1998

Susan J. Becker, Esq.
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Re: *Adoption of Jane Doe* (Ohio Ct. Apps., Ninth Dist., No. 19017)

Dear Susan:

By this letter, the appellants give their consent to the filing of an *amicus* brief by the Ohio Psychological Association, et al. in the above matter in the Court of Appeals, and further consent to its filing at any time before argument of this matter.

Best wishes,


Patricia M. Logue

PROOF OF SERVICE

A copy of the foregoing Brief *Amicus Curiae* in Support of Appellants was served via ordinary U.S. mail this 14th day of October, 1998 upon:

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