

**No. 01-12-00872-CV**

**IN THE  
COURT OF APPEALS  
FOR THE  
FIRST DISTRICT OF TEXAS**

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**JERRY L. BERWICK**, Appellant,  
*versus*  
**RICHARD T. WAGNER**, Appellee.

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Appealed from Trial Court Cause No. 0849782, Hon. Sheri Y. Dean  
309th Judicial District Court, Harris County, Texas

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**BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF SOCIAL  
WORKERS, NATIONAL ASSOCIATION OF SOCIAL WORKERS, TEXAS  
CHAPTER**

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## **IDENTITY AND INTEREST OF AMICUS CURIAE**

The National Association of Social Workers (“NASW”) was established in 1955 and is the largest association of professional social workers in the world with 140,000 members and 56 chapters throughout the United States, including Puerto Rico, Guam, and the Virgin Islands, and the International Chapter in Europe. The NASW, Texas Chapter has 6,000 members. With the purpose of developing and disseminating standards of social work practice while strengthening and unifying the social work profession as a whole, NASW provides continuing education, enforces the NASW Code of Ethics, conducts research, publishes books and studies, promulgates professional standards and criteria, and develops policy statements on issues of importance to the social work profession.

NASW adopted a policy statement on lesbian and gay issues in 1977, which was subsequently revised and expanded. NASW’s family policy recognizes that gay and lesbian people are a part of existing families and provide important caregiving to children, as well as other family members. NASW is committed by its policies, as well as its Code of Ethics, to advancing policies and practices that will improve the lives of all children, including those raised by gay, bisexual, and lesbian parents.

## **RULE 11 DISCLOSURE**

Under Texas Rule of Appellate Procedure 11(c), *Amici Curiae* National Association of Social Workers and National Association of Social Workers, Texas Chapter state that no fee has been paid or will be paid for the preparation of this brief.

## **SUMMARY OF ARGUMENT**

Many children in our society today are being raised by parents who have no biological connections with their children but who nevertheless are their children's parents. Decades of social science research have shown that children experience psychological harm and trauma when the attachment bonds they have formed with their parents are severed.

Nearly 30 years of peer-reviewed social science research conclusively establishes the following principles: (1) children form significant attachment bonds to parental figures early in life, bonds that are central to the well-being and development of the child; (2) strong parent-child attachments develop regardless of whether there exists a defined biological relationship between parent and child; (3) when a non-biological parent and a biological or adoptive parent work together to parent a child, the child will consider both individuals as parents; and (4) when a child's attachment relationship with any parent – including a non-biological parent – is severed, the emotional and psychological harm to the child can be significant. As these empirical findings demonstrate, the existence of a biological link is not a significant factor in determining the strength, significance, or integrity of the parent-child relationship.

After ten years as a committed couple, Jerry Berwick and Richard Wagner jointly decided to use assisted reproductive technology to have a child together,

which resulted in the birth of C.B.W. (5 RT 54-58; 8 RT at 70.) Both Berwick and Wagner have paternity orders from a California court recognizing that they are both C.B.W.'s legal parents. *Berwick v. Wagner*, 336 S.W.3d 805 (Tex. App. – Houston [1st Dist.] 2011, pet. denied). Wagner has fully participated in parenting C.B.W. for over seven years and provided for the physical, emotional, and social needs of C.B.W. during that time. When C.B.W. was born, Wagner and Berwick listed themselves both as parents on C.B.W.'s birth certificate (15 RT Wagner Ex. 149) and jointly decided to give him the middle name “Berwick” and Wagner” as a last name (15 RT at Ex. 149). Wagner has been engaged in C.B.W.'s education and completed several applications for kindergarten programs for C.B.W. despite opposition from Berwick. (11 RT at 56-57; 14 RT at Ex. 98, 99, 109.) After obtaining a court order, Wagner was able to enroll C.B.W. in kindergarten. (11 RT at 56-57; 14 RT at Ex. 98, 99, 109.) Wagner provided health and dental insurance for C.B.W. until Berwick unilaterally changed C.B.W.'s insurance coverage. (5 RT at 132-35; 14 RT at Ex. 16, 82, 93, 94.) Even though Berwick and his wife scolded C.B.W. for doing so, he has grown up calling Wagner “dad” and believes him to be his parent. (11 RT at 107.) Berwick now challenges a jury verdict selecting Wagner as C.B.W.'s sole managing conservator, arguing that Wagner should be declared a non-parent because Wagner is not a biological parent.

## ARGUMENT

### I. SOCIAL SCIENCE RESEARCH CONFIRMS THAT THE FORMATION OF ATTACHMENT BONDS IS CRITICAL TO A CHILD'S HEALTHY DEVELOPMENT.

Decades of child development research demonstrates that children form important attachment bonds to parental figures early in life, and that these bonds strengthen and develop as the children grow older. *See, e.g.*, JOHN BOWLBY, ATTACHMENT 177, 265-68 (2d ed. 1982); MELVIN KONNER, CHILDHOOD 84-87 (1991). Attachment bonds are the “reciprocal, enduring, emotional, and physical affiliation between a child and a caregiver.” BEVERLY JAMES, HANDBOOK FOR TREATMENT OF ATTACHMENT-TRAUMA PROBLEMS IN CHILDREN 2 (1994). These bonds are distinguished from other bonds in that they involve the persons with whom the child “seeks security and comfort.” Jude Cassidy, *The Nature of the Child's Ties*, in HANDBOOK OF ATTACHMENT: THEORY, RESEARCH AND CLINICAL APPLICATIONS 3, 12 (Jude Cassidy & Phillip R. Shaver, eds., 1999). Attachment relationships constitute the most important relationships in the child's life: “Attachment figures are one's most trusted companions.” MARY D. AINSWORTH ET AL., PATTERNS OF ATTACHMENT: A PSYCHOLOGICAL STUDY OF THE STRANGE SITUATION (1978). It is through attachment bonds that children “form their concepts of self, others and the world.” JAMES, *supra*, at 2.

Social science and medical research illustrate that attachment relationships have profound neurological effects and are among the major environmental factors shaping children's brains during the period of maximal growth, creating the central foundation of a child's development. See, e.g., DANIEL J. SIEGEL, THE DEVELOPING MIND: TOWARD A NEUROBIOLOGY OF INTERPERSONAL EXPERIENCE 67-68, 81-87, 116-120 (1999); see also Am. Acad. of Pediatrics, Comm. on Early Childhood, Adoption, and Dependent Care, *Developmental Issues for Young Children in Foster Care*, 106 PEDIATRICS 1145 (2000) [hereinafter *Young Children*] (“[E]motional and cognitive disruptions in the early lives of children have the potential to impair brain development.”).

These relationships shape the child's social, emotional, and behavioral development. Specifically, “[a]ttachment to a primary caregiver is essential to the development of emotional security and social conscience.” *Young Children, supra*, at 1146. “[W]hat young children learn, how they react to the events and people around them, and what they expect from themselves and others are deeply affected by their relationships” with their caregivers. NAT'L RESEARCH COUNCIL & INST. OF MED., FROM NEURONS TO NEIGHBORHOODS: THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT 226 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000) [hereinafter *Neurons*]. Secure attachment bonds lead to “the development of self-awareness, social competence, conscience, emotional growth[, and] emotional

regulation.” *Id.* at 265. These bonds provide children with protection against harm, a sense of emotional security, the ability to cope with stress, increased self-reliance and increased ability to “meet challenges and demands in a flexible manner.” *Id.* at 226; James G. Byrne et al., *Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments*, 46 J. CHILD PSYCHOL. & PSYCHIATRY 115, 118 (2005).

## **II. ATTACHMENT RELATIONSHIPS DEVELOP DESPITE THE ABSENCE OF A BIOLOGICAL CONNECTION BETWEEN THE PARENT AND CHILD.**

Attachment bonds develop between the child and a parental figure regardless of whether the parent and child are biologically related. *See* JOSEPH GOLDSTEIN ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD* 27 (2d ed. 1979); *see also* Leslie M. Singer et al., *Mother-Infant Attachment in Adoptive Families*, 56 CHILD DEV. 1543, 1550 (1985). Attachment bonds are not determined by genetic material. Instead, those bonds develop from the “provision of physical and emotional care, continuity or consistency in the child’s life, and emotional investment in the child.” *Neurons, supra*, at 234.

The science overwhelmingly shows that it is the *quality* and *nature* of the interaction between parent and child, rather than a biological connection, that creates and sustains the attachment relationships that so critically impact a child’s development. *See* Susanne Bennett, *Is There a Primary Mom? Parental*

*Perceptions of Attachment Bond Hierarchies Within Lesbian Adoptive Families*, 20 CHILD & ADOLESCENT SOC. WORK J. 159, 161 (2003) (“[T]he nature of the interaction . . . is more important than the person’s legal or biological tie to the child.”); *see also* Am. Acad. of Pediatrics, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 PEDIATRICS 341, 341 (2002) (reaffirmed February 2010) (“Children’s optimal development seems to be influenced more by the nature of the relationships and interactions within the family unit than by the particular structural form it takes.”); Raymond W. Chan et al., *Psychological Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 CHILD DEV. 443, 454 (1998) (“[O]ur results are consistent with the general hypothesis that children’s well-being is more a function of parenting and relationship process within the family [than] household composition or demographic factors.”).

### **III. SEXUAL ORIENTATION IS IRRELEVANT TO THE DEVELOPMENT OF STRONG ATTACHMENTS.**

Research consistently shows that, in all relevant respects, lesbians and gay men parent as well as heterosexuals do. *See, e.g.*, Rachel H. Farr et al., *Parenting and Child Development in Adoptive Families: Does Parental Sexual Orientation Matter?*, 14 APPLIED DEVELOPMENTAL SCI. 164 (2010); G. Dorsey Green & Frederick W. Bozett, *Lesbian Mothers & Gay Fathers*, in HOMOSEXUALITY: RESEARCH IMPLICATIONS FOR PUBLIC POLICY 197, 198 (John C. Gonsiorek &

James D. Weinrichs eds., 1991) (concluding that “[t]he research is *extraordinarily clear* in its finding about lesbian and gay parents and their children: they look remarkably like their heterosexual counterparts and their children”) (emphasis added). Indeed, in a recent study, children raised by lesbian parents demonstrated higher levels of social, academic, and total competence, and lower levels of rule-breaking and aggressive behavior than gender-matched samples of other teenagers. Am. Acad. of Pediatrics, *US National Longitudinal Lesbian Family Study: Psychological Adjustment of 17-Year-Old Adolescents*, 126 PEDIATRICS 1, 5-6 (2010) [hereinafter *Longitudinal Lesbian Family Study*].

Studies have also concluded that a parent’s sexual orientation is immaterial to the formation and importance of children’s attachments, and that children are just as likely to form close bonds with gay and lesbian parents as with heterosexual parents. See Am. Acad. of Pediatrics, *Family Pediatrics: Report of the Task Force on the Family*, 111 PEDIATRICS 1541, 1550 (2003) (“[R]esearch has found that parental sexual orientation per se has no measureable effect on the quality of parent-child relationships.”); A. Brewaeys et al., *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*, 12 HUM. REPROD. 1349, 1354 (1997) (“[T]he quality of the parent-child interaction [does] not differ significantly between the biological and the [non-biological] mother.”); Bennett, *supra*, at 159, 168 (finding that the “quality of care was the salient factor

in the establishment of an attachment hierarchy,” and “the nature of the interaction . . . [was] more important than the person’s legal or biological tie to the child.”). See also Susan Golombok et al., *The European Study of Assisted Reproduction Families: Family Functioning and Child Development*, 11 HUM. REPROD. 2324, 2330 (1996) (finding the lack of a genetic link between a parent and child does not negatively impact parent-child relationships); Barbara M. McCandlish, *Against All Odds: Lesbian Mother Family Dynamics*, in GAY AND LESBIAN FAMILIES 30-31 (Frederick W. Bozett, ed., 1987) (finding that children of lesbian couples become attached to both mothers).

#### **IV. CHILDREN EXPERIENCE SEVERE EMOTIONAL AND PSYCHOLOGICAL HARM WHEN THEIR ATTACHMENT RELATIONSHIPS ARE SEVERED.**

Continuity of the parent-child attachment relationship is essential to a child’s healthy development and overall well-being. See, e.g., Goldstein, *supra*, at 31-33. “[T]he quality of the attachment has profound effects on the child’s social adjustment.” Ana H. Marty et al., *Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver*, 175 EARLY CHILD DEVELOPMENT & CARE 271, 274 (2005). Secure attachments in childhood are a necessary element to a child’s ability to develop close relationships later in life, as they shape the child’s attachment style, which in turn shapes how the child will form bonds with others. W. Andrew Collins & L. Alan Sroufe, *Capacity for Intimate Relationships:*

*Developmental Construction, in THE DEVELOPMENT OF ROMANTIC RELATIONSHIPS IN ADOLESCENCE* 125-27 (Wyndol Furman et al., eds., 1999). “[S]ecurity of attachment in infancy strongly predicted preschool characteristics of self-reliance, effective peer relationships (including empathy and affective engagement), and positive relationships with teachers.” *Id.* at 128 (citations omitted). In contrast, children without secure attachments “not only were significantly less competent in all of these respects, but also showed distinctive patterns of maladaptation.” *Id.*

When a child’s attachment relationship with a parent has been severed, the psychological impact can be dramatic. Children assume that they can depend on both parents and “[w]hen that assumption proves incorrect, a child may question many other assumptions about the world; for example, whether he or she can count on the availability of *any* parent.” WILLIAM F. HODGES, *INTERVENTIONS FOR CHILDREN OF DIVORCE: CUSTODY, ACCESS, AND PSYCHOTHERAPY* 8 (2d ed. 1991). When separated from a parent, the child experiences a predictable sequence of four phases: denial, protest, despair, and detachment. Rayford W. Thweatt, *Divorce: Crisis Intervention Guided by Attachment Theory*, 34 *AM. J. PSYCHOTHERAPY* 240, 241 (1980). Children may even “conclude that a parent’s absence is due to their own unlovability. Thus, abandonment by a noncustodial parent is a particularly devastating experience.” Hodges, *supra*, at 9.

Breaking an attachment bond can be so traumatizing as to completely change the child's style of forming attachments, leading to "insecure or avoidant attachment [in future relationships], interference with healthy object relations, and reorganization of cognitive understandings." *Id.* at 8-9. Breaking this bond can transform a securely attached child into "[a]n insecurely attached person [who] will anticipate rejection, unpredictability, or even cruelty . . . [e]ven when reality does not indicate these outcomes." James X. Bembry & Carolyn Ericson, *Therapeutic Termination with the Early Adolescent Who Has Experienced Multiple Losses*, 16 CHILD & ADOLESCENT SOC. WORK J. 177, 182-83 (1999). *See also* Frank J. Dyer, *Termination of Parental Rights in Light of Attachment Theory: The Case of Kaylee*, 10 PSYCHOL. PUB. POL'Y & L. 5, 11 (2004) (numerous empirical findings "provide a solid research basis for predictions of long term harm associated with disrupted attachment [relationships]"); *Young Children*, *supra*, at 1146 (finding that interruptions in a child's care are often detrimental); Joan B. Kelly & Michael E. Lamb, *Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children*, 38 FAM. & CONCILIATION CTS. REV. 297, 303 (2000) (explaining that "there is a substantial literature documenting the adverse effects of disrupted parent-child relationships on children's development and adjustment").

When a child's attachment bond with a person who has functioned as his or her parent is severed, this can lead to behavioral problems because "attachments buffer young children against the development of serious behavior problems, in part by strengthening the human connections and providing the structure and monitoring that curb violent or aggressive tendencies." *Neurons, supra*, at 265. Thus, severing an attachment can lead to anxiety, aggression, academic problems and elevated psychopathology. Marty, *supra*, at 274; Byrne, *supra*, at 118. Other behavioral difficulties that may develop due to disrupted attachment include "hiding or hoarding food, excessive eating . . . or drinking . . ., rumination, self-stimulating and repetitive behaviors . . ., and sleep disturbance." Mark Simms et al., *Health Care Needs of Children in the Foster Care System*, 106 PEDIATRICS 909, 912 (2000). The research also demonstrates that a child experiences the same distress when an attachment bond is severed with a parental figure regardless of whether there is a biological connection between parent and child. *See, e.g.*, Yvon Gauthier et al., *Clinical Application of Attachment Theory in Permanency Planning for Children in Foster Care: The Importance of Continuity of Care*, 25 INFANT MENTAL HEALTH J. 379, 394 (2004) (explaining that children suffer greatly when separated from non-biological parent figures).

In sum, children raised by a gay or lesbian parent have the same need for a continued relationship with that person who has functioned as a parent, just as

children of heterosexual parents. *See, e.g.*, FIONA L. TASKER & SUSAN GOLOMBOK, GROWING UP IN A LESBIAN FAMILY: EFFECTS ON CHILD DEVELOPMENT 12 (1997) (finding that cessation of the parent-child bond between a child and a lesbian psychological parent “can cause [the child] extreme distress”). It is clear that when a same-sex couple separates, their children will mourn for the absent non-biological parent just as they would for an absent biological or married parent after separation. *See, e.g.*, Martha Kirkpatrick et al., *Lesbian Mothers & Their Children: A Comparative Study*, 51 AM. J. ORTHOPSYCHIATRY 545, 549-50 (1981).

### **PRAYER**

Nearly thirty years of social science research confirms that (1) when an adult fully participates in raising a child, the child generally develops significant attachment bond with that parent; (2) that this bond forms notwithstanding the absence of a biological connection to the parent; and (3) breaking this parent-child attachment bond can be devastating to the child. Children’s best interests may compel custody, visitation, and support decrees that preserve children’s relationships with parents irrespective of biological tie and parent’s sexual orientation. This Court’s review of the trial court decision should be informed by the social science research addressing the importance of children’s strong attachment bonds to non-biological parents. Accordingly, the Court should *affirm*

the trial court's finding that Wagner is a legal parent and reject Berwick's efforts to declare Wagner a non-parent.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I certify that this brief complies with the type-volume limitation for an Appellee's brief under Texas Rule of Appellate Procedure 9.4(i)(2)(B) because this brief contains 2,652 words, excluding the parts of the brief exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

This brief complies with the typeface and type style requirements of Texas Rule of Appellate Procedure 9.4(e) because this brief has been prepared in a proportionally spaced, conventional typeface using Microsoft® Office Word 2013 in Times New Roman 14-point font.

Dated: April 15, 2013.

/s/ Mitchell Katine  
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## CERTIFICATE OF SERVICE

As required by Texas Rule of Appellate Procedure 9.5 and local Rule 4(d), I certify that on April 15, 2013, I served the above and foregoing Amicus Brief on the following parties through their counsel of record by serving it through the Court's Electronic Filing Service Provider:

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