

THIS APPEAL INVOLVES A QUESTION OF CHILD CUSTODY, ADOPTION,
TERMINATION OF PARENTAL RIGHTS OR OTHER MATTER AFFECTING
THE BEST INTERESTS OF A CHILD.

RECEIVED
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ILLINOIS APPELLATE COURT FOR THE

FIFTH DISTRICT

NO. 05-12-0176

MAILED _____

OTHER _____

In the matter of Parentage, Custody
Visitation and Child Support With

Respect to)

T.P.S. and K.M.S.)

) Appeal from the 1st Judicial
) Circuit, Williamson County

Catherine D.W., Petitioner/Appellant)

) Case No. 2012 F 2

v.)

) Honorable Judge Brian
) D. Lewis Presiding

Deanna C.S., Respondent/Appellee)

**BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF SOCIAL
WORKERS AND ITS ILLINOIS CHAPTER IN SUPPORT OF PETITIONER-
APPELLANT CATHERINE D.W.**

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POINTS AND AUTHORITIES

	Page
STATEMENT OF INTEREST	1
INTRODUCTION AND SUMMARY OF THE ARGUMENT	2
ARGUMENT	4
I. Empirical research confirms that the formation of parent-child attachment bonds is critical to a child's healthy development	5
Melvin Konner, <i>Childhood</i> 84 (1991)	5
John Bowlby, <i>Attachment</i> (2d ed. 1982).....	5
Beverly James, <i>Handbook for Treatment of Attachment-Trauma Problems in Children</i> 1 (1994)	5
Mary D. Ainsworth et al., <i>Patterns of Attachment: A Psychological Study of the Strange Situation</i> 20 (1978)	5
Daniel J. Siegel, <i>The Developing Mind: Toward a Neurobiology of Interpersonal Experience</i> 67 (1999)	6
Nat'l Research Council & Inst. of Med., <i>From Neurons to Neighborhoods: The Science of Early Childhood Development</i> 265 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000)	6
James G. Byrne et al., <i>Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments</i> , 46 <i>J. Child Psychol. & Psychiatry</i> 115 (2005)	6
Barry Schneider et al., <i>Child-Parent Attachment and Children's Peer Relations: A Quantitative Review</i> , 37 <i>Developmental Psychol.</i> 86 (2001)	6
Danielle H. Dallaire & Marsha Weinraub, <i>Infant-Mother Attachment Security and Children's Anxiety and Aggression at First Grade</i> , 28 <i>J. of Applied Developmental Psychol.</i> 477 (2007).....	6
II. Attachment relationships develop despite the absence of a biological connection between parent and child	7
Joseph Goldstein et al., <i>Beyond the Best Interests of the Child</i> 27 (2d ed. 1979)	7

**POINTS AND AUTHORITIES
(Continued)**

	Page
Anne Brewaeys, <i>Review: Parent-Child Relationships and Child Development in Donor Insemination Families</i> , 7 <i>Hum. Reprod. Update</i> 38 (2001)	7
Susanne Bennett, <i>Is There a Primary Mom? Parental Perceptions of Attachment Bond Hierarchies Within Lesbian Adoptive Families</i> , 20 <i>Child & Adolescent Soc. Work J.</i> 159 (2003)	7
Raymond W. Chan et al., <i>Psychosocial Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers</i> , 69 <i>Child Dev.</i> 443 (1998).....	7
Am. Acad. of Pediatrics, <i>Family Pediatrics: Report of the Task Force on the Family</i> , 111 <i>Pediatrics</i> 1541 (2003)	8
Rachel H. Farr & Charlotte J. Patterson, <i>Coparenting & Child Adjustment among Lesbian, Gay, & Heterosexual Adoptive Parent Families</i> , Presentation at the Rudd Adoption Research Program Annual Conference 2011, available at http://www.psych.umass.edu/uploads/people/789/Farr_-_Rudd_Conf_poster_-_final.pdf (2011)	8
Jennifer L. Wainright & Charlotte J. Patterson, <i>Peer Relations Among Adolescents with Female Same-Sex Parents</i> , 44 <i>Developmental Psychol.</i> 117 (2008).....	8
Am. Acad. of Pediatrics, <i>Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents</i> , 109 <i>Pediatrics</i> 341 (2002).....	8
A. Brewaeys et al., <i>Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families</i> , 12 <i>Hum. Reprod.</i> 1349 (1997)	8, 9
Elizabeth Short et al., <i>Lesbian, Gay, Bisexual and Transgender (LGBT) Parented Families: A Literature Review prepared for the Australian Psychological Society</i> , 14 (August 2007), available at http://www.psychology.org.au/Assets/Files/LGBT-Families-Lit-Review.pdf	9
Henry M.W. Bos et al., <i>Child Adjustment and Parenting in Planned Lesbian-Parent Families</i> , 77 <i>Am. J. of Orthopsychiatry</i> 38 (2007).....	9

POINTS AND AUTHORITIES
(Continued)

	Page
III. Children experience severe emotional and psychological harm when their attachment relationships with their parents are severed....	9
William F. Hodges, <i>Interventions of Children of Divorce: Custody, Access, and Psychotherapy</i> 8 (2d ed. 1991)	9, 10
Rayford W. Thweatt, <i>Divorce: Crisis Intervention Guided by Attachment Theory</i> , 34 <i>Am. J. Psychotherapy</i> 240 (1980)	10
Ana H. Marty et al., <i>Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver</i> , 175 <i>Early Childhood Dev. & Care</i> 271 (2005).....	10
James G. Byrne et al., <i>Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments</i> , 46 <i>J. Child Psychol. & Psychiatry</i> 115 (2005)	10
Mark Simms et al., <i>Health Care Needs of Children in the Foster Care System</i> , 106 <i>Pediatrics</i> 909 (2000).....	10
James X. Bembry & Carolyn Ericson, <i>Therapeutic Termination with the Early Adolescent Who Has Experienced Multiple Losses</i> , 16 <i>Child & Adolescent Soc. Work J.</i> 177 (1999)	10
Frank J. Dyer, <i>Termination of Parental Rights in Light of Attachment Theory: The Case of Kaylee</i> , 10 <i>Psychol. Pub. Pol’y & L.</i> 5 (2004).....	10
Joan B. Kelly & Michael E. Lamb, <i>Using Child Development Research to Make Appropriate Custody & Access Decisions for Young Children</i> , 38 <i>Fam. & Conciliation Cts. Rev.</i> 297 (2000).....	10
Brooke Ashlee Gershon, <i>Throwing the Baby Out With the Bath Water: Adoption of Kelsey S. Raises Rights of Unwed Fathers Above the Best Interests of the Child</i> , 28 <i>Loy. L.A. L. Rev.</i> 741 (1995).....	11
Judith S. Wallerstein & Sandra Blakeslee, <i>Second Chances: Men, Women & Children a Decade After Divorce</i> 145 (1989)	11
Judith S. Wallerstein & Joan B. Kelly, <i>Surviving the Breakup: How Children & Parents Cope with Divorce</i> 307 (1980)	11

POINTS AND AUTHORITIES
(Continued)

	Page
Yvon Gauthier et al., <i>Clinical Application of Attachment Theory in Permanency Planning for Children in Foster Care: The Importance of Continuity of Care</i> , 25 <i>Infant Mental Health J.</i> 379 (2004).....	11
Fiona L. Tasker & Susan Golombok, <i>Growing Up in a Lesbian Family: Effects on Child Development</i> 12 (1997)	11
IV. A child’s health and welfare are best served by nurturing and maintaining attachment bonds with both parents	12
Denise Donnelly & David Finkelhor, <i>Does Equality in Custody Arrangement Improve Parent-Child Relationship?</i> , 54 <i>J. Marriage & Fam.</i> 837 (1992).....	12
Michael E. Lamb, <i>Placing Children’s Interests First: Developmentally Appropriate Parenting Plans</i> , 10 <i>Va. J. Soc. Pol’y & L.</i> 98 (2002).....	12
Charlotte J. Patterson, <i>Children of Lesbian and Gay Parents</i> , 63 <i>Child Dev.</i> 1025 (1992)	12
Jennifer L. Wainright & Charlotte J. Patterson, <i>Peer Relations Among Adolescents with Female Same-Sex Parents</i> , 44 <i>Developmental Psychol.</i> 124 (2008).....	12
Nat’l Ass’n of Soc. Workers, <i>Policy Statement: Lesbian, Gay, and Bisexual Issues</i> , <i>Social Work Speaks</i> 219 (9th ed. 2012).....	13
Am. Psychoanalytic Ass’n, <i>Position Statement on Gay and Lesbian Parenting</i> (May 16, 2002), available at http://www.apsa.org/aboutapsaa/positionstatements/gayand%20lesbianparenting /tabid/471/Default.aspx	13
Comm. on Psychosocial Aspects of Child and Family Health, Am. Acad. of Pediatrics, <i>Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents</i> , 109 <i>Pediatrics</i> 339 (2002).....	13
CONCLUSION	14

STATEMENT OF INTEREST

The National Association of Social Workers (NASW or *amicus*) is the largest organization of professional social workers in the world, with 145,000 members and 56 chapters. The Illinois Chapter has 6,626 members. Created in 1955 by the merger of seven predecessor social work organizations, the NASW seeks to develop and disseminate high standards of practice while strengthening and unifying the social work profession as a whole. In furtherance of its purpose, the Association promulgates professional standards and the *NASW Code of Ethics*, supports and publishes research, and provides continuing education. The organization also advocates for sound policies concerning its membership's core capabilities, responsibilities and mission. NASW and its members are particularly committed to improving the lives of the most vulnerable members of the family unit, the children. In this case, NASW offers empirical research to demonstrate that children are likely to be significantly harmed when a parenting relationship is terminated without consideration of the child's best interests. The child can be harmed regardless of the presence or absence of biological ties between the child and the terminated parenting figure, and irrespective of whether the terminated parenting relationship was initially established in a same sex, heterosexual, or single parent family unit. NASW urges this Court to hold that on the facts alleged here, most notably when two individuals jointly served as parental figures from the child's conception, both parental figures have standing to seek custody. As a result of such a holding, both parental figures would be heard on the best interests of the child, enabling the court to make a fully informed decision on the matter.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

A large number of children are currently being raised by gay and lesbian same-sex couples. Many of these gay and lesbian parents lack a biological or a legal connection to their children, but nevertheless function on every level as genuine parents to their children. When a child may be taken from a biological or adoptive parent, the law treads very softly. When a court is forced to consider an appropriate custody arrangement in such a case, the touchstone is always the best interests of the child. Such a standard is undoubtedly proper, as a large body of research demonstrates the importance of attachment relationships between a child and the people who fill the child's parenting role. But those same relationships develop in the absence of any biological link—and they are no less strong in such a case. The harms of severing those relationships are no less great. Here, according to the pleadings, two individuals jointly acted as parents from the conception of their children, even going so far as to legally recognize that relationship to the fullest extent they thought possible. Accordingly, a court should not allow the children to be taken from either parenting figure without hearing facts on the children's best interests. And full consideration of the children's best interest requires that both parental figures have standing to be heard on the child's custody.

As the case has been pleaded, Catherine D.W. ("Cathy") and Deanna C.S. ("Deanna") jointly decided to have children together through artificial insemination, jointly encouraged the children to see them both as parents, jointly loved and cared for the children, and jointly sought full parental rights for Cathy, the non-biological parent (ultimately making her a co-guardian). Indeed, the only reason Cathy is not the children's adoptive parent is that the two women believed such an arrangement was not

legally possible. In short, NASW understands that Cathy and Deanna both acted as the children's parents, each woman acting with full consent of the other. It is NASW's position that in such a case, the children will be at significant risk of long-term harm if they are taken from either parent without a consideration of the children's best interests.

The child's interests should always be at center stage when a parent-child relationship is at issue. These relationships are profoundly important to the child's development, including the child's emotional and cognitive growth. To terminate them without consideration of the child's best interests necessarily puts the child at risk of potentially severe and long-term emotional, social and cognitive injury. All of these ideas inform the well-settled and uncontroversial rule that a biological or adoptive parent may petition for custody of his or her child under the best interest standard.

But attachment relationships can develop between the child and any parental figure, regardless of whether there is a biological link between the two. Emotionally and psychologically significant parent-child relationships grow out of the parent-child interaction itself. Once such bonds are created, breaking them can have a crushing impact on a child's healthy development. Effects can range from anxiety to excessive eating to a state of insecure attachment.

The attachment bonds are just as strong in families involving gay and lesbian parents. The research shows that relationships within the family are far more important than family type to a child's development. And the children here are at risk of the same harms as children of heterosexual parents would be in an analogous situation.

In light of this research, the child is generally best served by maintaining relationships with both parenting figures. Therefore, a child's custody arrangement, as

between the two parenting figures, should reflect the child's best interests. Here, on this record, Cathy and Deanna were both parenting figures. They both should be heard.

ARGUMENT

Under the circuit court decision, Cathy was not permitted to be heard on the proper custody arrangement for her two children—even though she and the biological mother had jointly served as parents since conception. Further, she and the biological mother had jointly sought to make her the children's adoptive parent. Only because they had been told that this was not legally possible, because the parents were a same-sex couple, did she become the children's co-guardian. Cathy had acted as a parent in every practical sense. But because she was deemed a "nonparent," which presumably meant not a biological or adoptive parent, the court held that she lacked standing to seek parental rights to custody or even visitation. By issuing this ruling, the court refused to even consider what custody arrangement would be in the children's best interests.

As *amicus* understands the record, Cathy emphasizes that two individuals have served as joint parents since conception. Cathy has formed a genuine, fully-developed parent-child relationship with the children, which the legal parent has consented to and encouraged. Deanna, the biological mother, *intended* for Cathy to be a parent. She fostered the parent-child relationships and sought to have those parent-child relationships recognized to the fullest extent Deanna and Cathy believed to be allowed by law. In such a case, Cathy argues, both individuals should be heard on the appropriate custody arrangement, just as if both individuals were biological or adoptive parents.

Cathy correctly recognizes that a child forms attachment bonds with both of its parents, and these bonds have a tremendous impact on the child's development. The law

recognizes this truism as well, and treads very softly when the child may be taken from one of those parents. Just so it should be here. A substantial body of well-structured and well-documented studies demonstrates the significance of a parenting relationship to a child, *regardless* of whether the parent and child are connected by biology and regardless of whether the parents are gay, lesbian or heterosexual. Emotionally supportive parent-child relationships that do not have biological roots are ubiquitous. Happy and well-adjusted families created by adoption, remarriage, foster care, and other family configurations are to be found in every community in this country. Such families thrive notwithstanding the absence of a biological connection between the children and one or more of the adults who fill the parental role. In this case, the circuit court erred in dismissing the petition for custody filed by a legally-recognized parental figure without investigating the impact of that decision on the children involved. Below, we discuss the extensive empirical literature supporting this conclusion.

I. Empirical research confirms that the formation of parent-child attachment bonds is critical to a child's healthy development.

Children develop strong attachment relationships with their parents early in life, and these relationships strengthen over time. *See, e.g.*, Melvin Konner, *Childhood* 84-87 (1991). *See generally* John Bowlby, *Attachment* (2d ed. 1982). An “attachment relationship” is a “reciprocal, enduring, emotional, and physical affiliation” through which a child forms his or her “concepts of self, others, and the world.” Beverly James, *Handbook for Treatment of Attachment-Trauma Problems in Children* 1-2 (1994). “Attachment figures are one’s most trusted companions.” Mary D. Ainsworth et al., *Patterns of Attachment: A Psychological Study of the Strange Situation* 20 (1978).

The attachment relationship has profound biological, psychological and sociological effects on a child's development. A child's attachment relationships are the major environmental factor shaping brain development during the period of maximal brain growth. See Daniel J. Siegel, *The Developing Mind: Toward a Neurobiology of Interpersonal Experience* 67-120 (1999). Moreover, attachment relationships "shape the development of self-awareness, social competence, conscience, emotional growth and emotion regulation, [and] learning and cognitive growth." Nat'l Research Council & Inst. of Med., *From Neurons to Neighborhoods: The Science of Early Childhood Development* 265 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000); see also James G. Byrne et al., *Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments*, 46 *J. Child Psychol. & Psychiatry* 115, 118 (2005).

Examples demonstrating the importance of the parent-child attachment abound. One study has found a statistically significant correlation between secure attachment and successful peer relations. Barry Schneider et al., *Child-Parent Attachment and Children's Peer Relations: A Quantitative Review*, 37 *Developmental Psychol.* 86, 90 (2001). Another study has shown that secure attachment between the infant, at 15 months of age, and the mother may help prevent children from developing anxiety in stressful family situations upon reaching school age. Danielle H. Dallaire & Marsha Weinraub, *Infant-Mother Attachment Security and Children's Anxiety and Aggression at First Grade*, 28 *J. of Applied Developmental Psychol.* 477, 489 (2007). This study also found that secure attachment at 36 months may help prevent children from behaving aggressively when they have reached school age. *Id.* Additional empirical research

confirming this link between a strong parent-child bond and a healthy child is collected in the various works cited throughout this brief.

II. Attachment relationships develop despite the absence of a biological connection between parent and child.

The extensive literature on parent-child attachment has found that the nature and quality of the parent-child interaction itself, not a biological link, fosters attachment relationships. Further, the attachment bonds between children and their gay and lesbian parents are no less strong than any other attachment bonds. Accordingly, the circuit court's focus on Cathy's status as a "nonparent," which presumably meant the lack of a biological or adoptive link, was misplaced.

Attachment bonds develop regardless of whether a parent and child are linked by biology or law. See Joseph Goldstein et al., *Beyond the Best Interests of the Child* 27 (2d ed. 1979). Children develop these bonds with adults who "on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfill[] the child's psychological needs for a parent, as well as the child's physical needs." *Id.* at 98. For example, preliminary studies of families who had used assisted reproduction methods found no evidence to indicate that "the missing genetic link" between parent and child had affected the father-child relationship in young children. Anne Brewaeys, *Review: Parent-Child Relationships and Child Development in Donor Insemination Families*, 7 *Hum. Reprod. Update* 38, 44 (2001). Another study found that children adopted by lesbian couples "developed bonds of attachment to both adoptive mothers and showed preference for the parents over other caregivers." Susanne Bennett, *Is There a Primary Mom? Parental Perceptions of Attachment Bond Hierarchies Within Lesbian Adoptive Families*, 20 *Child & Adolescent Soc. Work J.* 159, 166 (2003). See also Raymond W.

Chan et al., *Psychosocial 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 processes within the family [than] household composition or demographic factors.”).

Children are equally likely to form close bonds with gay and lesbian parents as with heterosexual parents, despite the lack of a biological link. Parental sexual orientation does not affect the quality of parent-child relationships. *Am. Acad. of Pediatrics, Family Pediatrics: Report of the Task Force on the Family*, 111 *Pediatrics* 1541, 1550 (2003). Relationships and processes *within* the family, not family type, generate a demonstrable impact on children’s peer relations and general child development. Rachel H. Farr & Charlotte J. Patterson, *Coparenting & Child Adjustment among Lesbian, Gay, & Heterosexual Adoptive Parent Families*, Presentation at the Rudd Adoption Research Program Annual Conference 2011, http://www.psych.umass.edu/uploads/people/789/Farr_-_Rudd_Conf_poster_-_final.pdf (2011) (comparing gay, lesbian and heterosexual parents); Jennifer L. Wainright & Charlotte J. Patterson, *Peer Relations Among Adolescents with Female Same-Sex Parents*, 44 *Developmental Psychol.* 117, 124 (2008) (adolescent peer relations); *Am. Acad. of Pediatrics, Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341, 341 (2002) (optimal development). *See also* A. Brewaeys et al., *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*, 12 *Hum. Reprod.* 1349, 1358 (1997) (finding that the non-biological mother in

lesbian families “was regarded by the child as just as much a ‘parent’ as the father in the heterosexual families”).

The fact that Cathy was a parent in a same-sex partnership does not alter the emotional significance of her connection with the children. Again, the empirical literature confirming this is abundant, for where both same-sex parents have participated in a child’s upbringing, the child will form a significant attachment relationship with each parent. *See, e.g., id.* at 1356 (confirming “a strong mutual attachment” developed between non-biological mother and child). In practice, both parents do participate in the upbringing of their children; in lesbian-parented families, studies suggest the possibility that the non-birth mother’s involvement in parenting may be higher than that of heterosexual fathers. Elizabeth Short et al., *Lesbian, Gay, Bisexual and Transgender (LGBT) Parented Families: A Literature Review prepared for the Australian Psychological Society*, 14 (August 2007), <http://www.psychology.org.au/Assets/Files/LGBT-Families-Lit-Review.pdf> (collecting studies); Henry M.W. Bos et al., *Child Adjustment and Parenting in Planned Lesbian-Parent Families*, 77 *Am. J. of Orthopsychiatry* 38, 45 (2007) (“Based on our results, one could perhaps come to the provocative conclusion that lesbian social mothers show more effective and committed parental behavior than do heterosexual fathers.”).

III. Children experience severe emotional and psychological harm when their attachment relationships with their parents are severed.

Given the centrality of a healthy attachment relationship, it is only to be expected that disruption of such a relationship will injure the child involved, and this is again confirmed by the empirical research. When a child’s relationship with an attachment figure is terminated, the impact can be “devastating.” William F. Hodges, *Interventions*

of Children of Divorce: Custody, Access, and Psychotherapy 8-9 (2d ed. 1991). Children predictably experience a period of denial, followed by periods of protest, despair and detachment. Rayford W. Thweatt, *Divorce: Crisis Intervention Guided by Attachment Theory*, 34 *Am. J. Psychotherapy* 240, 241 (1980). Children may also “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 8-9.

Severing an attachment has both short- and long-term consequences. It can lead to anxiety, aggression, academic problems, and elevated psychopathology. Ana H. Marty et al., *Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver*, 175 *Early Childhood Dev. & Care* 271, 274 (2005); *see also* Byrne, *supra*, at 118. Severing an attachment can also lead to “hiding or hoarding food, excessive eating or drinking, rumination, self-stimulating and repetitive behavior, and sleep disturbance.” Mark Simms et al., *Health Care Needs of Children in the Foster Care System*, 106 *Pediatrics* 909, 912 (2000). In addition to these short-term behavioral effects, severing a strong attachment bond can leave the child as “[a]n insecurely attached person [who] will anticipate rejection, unpredictability, or even cruelty . . . [e]ven when reality does not indicate these outcomes.” James X. Bemby & 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) (stating that numerous empirical findings “provide a solid research basis for predictions of long term harm associated with disrupted attachment [relationships]”); Joan B. Kelly & Michael E. Lamb, *Using Child Development Research*

to Make Appropriate Custody & 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”); Brooke Ashlee Gershon, *Throwing the Baby Out With the Bath Water: Adoption of Kelsey S. Raises Rights of Unwed Fathers Above the Best Interests of the Child*, 28 Loy. L.A. L. Rev. 741, 761 (1995) (“According to psychiatric professionals, removing a child from the only parents he or she has ever known, substantially after placement, is not only traumatic and painful for the child, but may cause permanent psychological damage as well.”).

Studies of children of divorced parents confirm that separation from a parent creates a risk of psychological harm. *See, e.g.*, Judith S. Wallerstein & Sandra Blakeslee, *Second Chances: Men, Women & Children a Decade After Divorce* 145-60 (1989) (finding that children who do not maintain contact with parents suffer a continuing sense of loss and sadness); Judith S. Wallerstein & Joan B. Kelly, *Surviving the Breakup: How Children & Parents Cope with Divorce* 307 (1980) (finding that the self-image of children from divorced families is “firmly tied to their relationship with both parents”).

Importantly, the harm that results when a child is separated from a parent does not depend on a biological link between the parent and child, or on the parent’s sexual orientation. 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); 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”). Even the non-adoptive children of gay and lesbian parents should maintain their relationships with both parents.

IV. A child’s health and welfare are best served by nurturing and maintaining attachment bonds with both parents.

The obvious way to avoid injury arising from termination of a healthy parent-child bond is to avoid disrupting it in the first place. Because the parent-child bond is so crucial to a child’s welfare, children benefit from stable, continued interaction with both parents. See Denise Donnelly & David Finkelhor, *Does Equality in Custody Arrangement Improve Parent-Child Relationship?*, 54 J. Marriage & Fam. 837, 838 (1992) (“Children who maintain contact with both parents tend to be better adjusted.”). Participation in everyday activities promotes trust and strengthens the attachment relationship between parent and child. See Michael E. Lamb, *Placing Children’s Interests First: Developmentally Appropriate Parenting Plans*, 10 Va. J. Soc. Pol’y & L. 98, 103, 113-14 (2002).

This continued interaction is just as critical for the children of same-sex couples as it is for children of heterosexual couples. Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 Child Dev. 1025, 1037 (1992) (concluding that, when same-sex parents who have jointly raised a child since birth separate, “it is reasonable to expect that the best interests of the child will be served by preserving the continuity and stability of the child’s relationship with both parents”). Additionally, the benefits of continued interaction with the attachment figure are not counterbalanced by any adverse effects; repeated studies have shown that sexual orientation of parents is not related to a child’s adjustment. See, e.g., Wainright & Patterson, *supra*, at 124 (finding no significant

differences in adolescent peer relations as a function of family type); Bos et al., *supra*, at 45 (finding that “children in planned lesbian-parent families do not differ in well-being or child adjustment compared with their counterparts in heterosexual-parent families”).

In light of these considerations, the American Psychoanalytic Association and the American Academy of Pediatrics, as well as *amicus*, all believe that children of gay and lesbian parents should have the same permanent parental relationships as children of heterosexual parents. See Nat’l Ass’n of Soc. Workers, “Policy Statement: Lesbian, Gay, and Bisexual Issues” in *Social Work Speaks* (9th ed. 2012), 219, 221-222; Am. Psychoanalytic Ass’n, *Position Statement on Gay and Lesbian Parenting*, (May 16, 2002), <http://www.apsa.org/aboutapsaa/positionstatements/gayand%20lesbianparenting/tabid/471/Default.aspx>; Comm. on Psychosocial Aspects of Child and Family Health, Am. Acad. of Pediatrics, *Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 339 (2002).

In short, giving both parental figures the opportunity to seek custody of their child is an important step toward fostering this permanence and giving a child a chance to grow up emotionally healthy and strong.

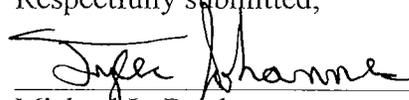
CONCLUSION

For all of the foregoing reasons, *amicus* the National Association of Social Workers and its Illinois Chapter prays that this Court reverse the ruling below, and remand the matter to consider Cathy's claims on the merits.

Dated: June 4, 2012

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14 pages.

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

I, Tyler G. Johannes, an attorney, hereby certify that on June 4, 2012, I caused to be filed with the Clerk of the Fifth District Appellate Court the foregoing BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF SOCIAL WORKERS. I further certify that I caused three copies of the foregoing Brief of *Amicus Curiae* to be mailed to the following attorneys at the following addresses, via United States mail, postage prepaid, on June 4, 2012.

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