

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

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|                        |   |                           |
|------------------------|---|---------------------------|
| DEBRA H.,              | : | X                         |
|                        | : |                           |
| Petitioner-Respondent, | : |                           |
|                        | : |                           |
| - against -            | : |                           |
|                        | : | N.Y. County Clerk's Index |
| JANICE R.,             | : | No. 106569/08             |
|                        | : |                           |
| Respondent-Appellant.  | : |                           |
|                        | : |                           |
|                        | : |                           |
|                        | : | X                         |

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**NOTICE OF MOTION OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, THE NATIONAL ASSOCIATION OF SOCIAL WORKERS' NEW YORK STATE CHAPTER, AND THE NATIONAL ASSOCIATION OF SOCIAL WORKERS' NEW YORK CITY CHAPTER TO FILE AN *AMICI CURIAE* BRIEF IN SUPPORT OF PETITIONER-RESPONDENT DEBRA H.'S MOTION FOR LEAVE TO APPEAL**

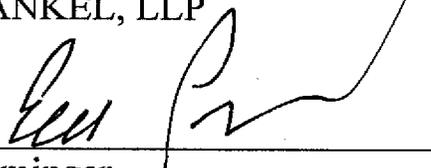
PLEASE TAKE NOTICE that, upon the affirmation of Eve Preminger, dated the 15th of May 2009, and annexed hereto as Exhibit A, the undersigned will move this Court, at the courthouse thereof, located at 27 Madison Avenue, New York, NY 10010 on the 1st of June 2009, or as soon thereafter as counsel may be heard, for an order granting permission to the National Association of Social Workers, the National Association of Social Workers' New York State chapter, and the National Association of Social Workers' New York City chapter to file an *amici curiae* brief in support of Petitioner-Respondent Debra H.'s motion for leave to appeal in the above-referenced matter, and for such other and further

relief as the Court may deem just and proper. A copy of the proposed brief is annexed hereto as Exhibit B.

Respectfully submitted,

KRAMER LEVIN NAFTALIS  
& FRANKEL, LLP

Dated: May 15, 2009

By: 

Eve Preminger

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**Exhibit A**

SUPREME COURT OF THE STATE OF NEW YORK  
 APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

|            |                        |                           |
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| DEBRA H.,  |                        | :                         |
|            |                        | :                         |
|            | Petitioner-Respondent, | :                         |
|            |                        | :                         |
|            | - against -            | :                         |
|            |                        | :                         |
|            |                        | N.Y. County Clerk's Index |
|            |                        | No. 106569/08             |
| JANICE R., |                        | :                         |
|            |                        | :                         |
|            |                        | <b>AFFIRMATION OF</b>     |
|            | Respondent-Appellant.  | <b>EVE PREMINGER</b>      |
|            |                        | :                         |
| <hr/>      |                        | x                         |

Eve Preminger, an attorney duly admitted to practice before the courts of the State of New York, hereby affirms under penalty of perjury as follows:

1. I am Counsel at Kramer Levin Naftalis & Frankel LLP and a member of the Bar of the State of New York. I make this affirmation in support of the application of the National Association of Social Workers ("NASW"), the NASW New York State chapter, and the NASW New York City chapter to file an *amici curiae* brief in support of Petitioner-Respondent Debra H.'s Motion for Leave to Appeal. I am authorized by the proposed *amici* to bring this motion and to submit the proposed brief filed together with this motion.

2. A decision in favor of Respondent-Appellant Janice R. was rendered

by this Court on April 9, 2009. That decision reversed the New York County Supreme Court's granting of a hearing to determine if Petitioner-Respondent Debra H. has standing to petition for custody and visitation rights with M.R.

3. NASW is the largest association of professional social workers in the world, with 145,000 members. The New York State chapter and the New York City chapter, with 11,000 members and 10,000 members respectively, are two of 56 NASW chapters in the United States and abroad. As part of its mission to improve the quality and effectiveness of social work practice, NASW promulgates professional standards and the NASW Code of Ethics, conducts research, provides continuing education, and advocates for sound public policies (including by filing *amicus curiae* briefs in appropriate cases).

4. NASW seeks to develop and disseminate high standards of social work practice, while strengthening and unifying the profession as a whole by establishing and maintaining professional standards of practice, promulgating sound social policies, and providing services that protect its members and enhance their professional status. In addition to these services, NASW supports and publishes social science research on topics significant to the social work profession, provides continuing education and professional conferences for its

members, and enforces its Code of Ethics.

5. Like the social work profession itself, NASW historically has addressed – among many other things – the interaction between people and their environments with an eye toward understanding how biological, psychological, interpersonal, environmental, and cultural factors shape and influence them. Additionally, social workers have a long tradition of direct work with children in a wide range of practice settings, including hospitals, schools, mental health clinics, shelters, group homes, and private practice.

6. NASW also develops and adopts policy statements to encourage the development of organizational responses to various social issues. 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 to other family members. In 1977, NASW adopted its policy on gay, lesbian, and bisexual issues, and subsequently revised and expanded that policy in 1987, 1993, 1996, and 2005. NASW is committed by its policy, as well as its Code of Ethics, to advancing policies and practices that will improve the lives of all children, including those raised in same-sex-parent families.

7. NASW anticipates that Petitioner-Respondent's briefing will fully address the legal reasons why it is in the best interests of New York children to grant Debra H.'s motion for leave to appeal on this case of public importance. As *amici curiae*, NASW and its New York State and New York City chapters seek to assist the Court by supplementing Petitioner-Respondent's legal arguments with peer-reviewed social science research supporting the conclusion that because children suffer significant psychological and developmental harm when forcibly separated from adults who have functioned as their parents, this case is one of great public importance. Given its preeminent role in the field of social work, NASW is uniquely qualified to furnish the Court with this information.

8. On February 26, 2009, this Court already granted the motion of NASW and its New York State and New York City chapters to file an *amici* motion in support of Petitioner-Respondent's response to Janice R.'s appeal to the Appellate Division, First Department.

WHEREFORE, the National Association of Social Workers, the National Association of Social Workers' New York State chapter, and the National Association of Social Workers' New York City chapter respectfully request that this Court grant their motion to file an *amici curiae* brief in support of Petitioner-Respondent Debra H.'s Motion For Leave to Appeal.

Respectfully submitted,

KRAMER LEVIN NAFTALIS  
& FRANKEL LLP

Dated: New York, NY  
May 15, 2009

By:  \_\_\_\_\_

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and The National Association of Social  
Workers' New York City Chapter*

Exhibit B

# New York Supreme Court

## Appellate Division — First Department

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DEBRA H.

*Petitioner-Respondent,*

—against—

JANICE R.,

*Respondent-Appellant.*

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**BRIEF OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS,  
THE NATIONAL ASSOCIATION OF SOCIAL WORKERS' NEW YORK STATE  
CHAPTER, AND THE NATIONAL ASSOCIATION OF SOCIAL WORKERS' NEW  
YORK CITY CHAPTER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER-  
RESPONDENT'S MOTION FOR LEAVE TO APPEAL**

---

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Social Workers' New York State Chapter, and the National Association of Social Workers' New  
York City Chapter*

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## INTEREST OF AMICI CURIAE

Founded in 1955 as a non-profit professional association, the National Association of Social Workers (“NASW”) is the largest association of professional social workers in the world, with 145,000 members and 56 chapters throughout the United States and abroad (including the New York State and New York City chapters, which have 11,000 members and 10,000 members, respectively). As part of its mission to improve the quality and effectiveness of social work practice, NASW promulgates professional standards and the NASW Code of Ethics, conducts research, provides continuing education, and advocates for sound public policies (including by filing *amicus curiae* briefs in appropriate cases).

NASW seeks to develop and disseminate high standards of social work practice, while strengthening and unifying the profession as a whole by establishing and maintaining professional standards of practice, promulgating sound social policies, and providing services that protect its members and enhance their professional status. In addition to these services, NASW supports and publishes social science research on topics significant to the social work profession, provides continuing education and professional conferences for its members, and enforces its Code of Ethics. NASW also

develops and adopts policy statements to encourage the development of organizational responses to various social issues.

Like the social work profession itself, NASW historically has addressed – among many other things – the interaction between people and their environments with an eye toward understanding how biological, psychological, interpersonal, environmental, and cultural factors shape and influence them. Additionally, social workers have a long tradition of direct work with children in a wide range of practice settings, including hospitals, schools, mental health clinics, shelters, group homes, and private practice.

For these reasons, NASW, along with its New York State and New York City chapters, supports Petitioner-Respondent Debra H.'s standing to obtain a hearing to determine whether she should be awarded custody and visitation of M.R., and consequently we support her motion for leave to appeal the judgment of this Court that the law compels a denial of her standing. NASW files this brief in support of M.R.'s development and well-being—and in support of the development, well-being, and best interests of all similarly situated children in the State of New York.

## PRELIMINARY STATEMENT

The chief issue in this case is one of acute public importance: advancing the best interests of New York's children. To hold that *Matter of Alison D. v. Virginia M.*, 77 N.Y.2d 651, 599 N.Y.S.2d 586 (1991) denies standing in custody and visitation matters to all parents without biological or formal adoptive ties to their children, no matter how critical those parents may be to their children's happiness and development, does a grave and perilous disservice to New York's children and families. Vast bodies of social science research confirm this, as does the experience of the many social work professionals who are *amici* members and who know firsthand from their work with New York families the pressing need for Court of Appeals intervention. Because advancing the best interests of children is the paramount concern of New York's child custody and visitation laws, any rendering of those laws which constrains courts to undermine a child's well-being and development, let alone which establishes precedent to the detriment of countless other children, warrants review by the Court of Appeals. For the reasons stated below, Debra H.'s ("Debra") motion for leave to appeal should be granted because children's wellbeing — in particular, children kept from adults who have been loving, nurturing parents to them — is an issue of great "public importance" meriting review. *See* 22 N.Y.C.R.R. 500.22(b)(4).

## BACKGROUND

The Court is already familiar with the facts of the case, but we set them forth briefly for the Court's convenience. The facts of this case as set forth by Debra indicate that she and Janice R. ("Janice") were raising a family together before they separated. Janice gave birth to their child, M.R., after the two of them moved in together. *Debra H. v. Janice R.*, No. 106569/08, Slip. Op. at 1-2 (Sup. Ct. N.Y. Cty. Oct. 2, 2008). Debra alleges that she was M.R.'s psychological parent because she, among other things, provided critical emotional, physical, and financial support to M.R. *Id.* at 5-6. While Janice contends that Debra significantly overstates her relationship with M.R., *id.* at 6-9, the hearing directed by the trial court is the only way to resolve this factual dispute. Without a hearing, the court would be unable to decide whether Debra is M.R.'s psychological parent. Should the petition court find Debra's allegations to be true and that therefore she has functioned as M.R.'s psychological parent, then depriving her of the right to seek custody or visitation could rupture M.R.'s attachment bonds to her and jeopardize M.R.'s emotional and physical development.

## ARGUMENT<sup>1</sup>

Children form strong bonds of attachment to their parents early in life, bonds which grow stronger as children grow older. *See, e.g.*, Melvin Konner, CHILDHOOD 84–87 (1991); *see generally, e.g.*, John Bowlby, ATTACHMENT (2d ed. 1982). Modern developmental psychology and neurology confirm that 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). Additional research findings illustrate that “what 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 parents.” 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). *See also* Am. Acad. of Pediatrics, *Developmental Issues for Young Children in Foster Care*, 106

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<sup>1</sup> For a more comprehensive review of the social science compelling a decision in favor of Debra’s motion for leave to appeal on this issue of great “public importance,” *see* our *amicus curiae* brief previously filed in this Court for this case, NASW *Amicus Curiae* Br. in Support of Pet.-Resp., Case No. 106569/08, dated Jan. 29, 2009.

PEDIATRICS 1145, 1146 (2000) (“Attachment to a primary caregiver is essential to the development of emotional security and social conscience.”).

The development of attachment bonds has nothing to do with biology or the formal adoption process. See Joseph Goldstein et al., BEYOND THE BEST INTERESTS OF THE CHILD 27 (2d ed. 1979) (concluding the parent-child relationship can develop without reference to biology or formal adoption). A child’s relationship to a psychological parent is defined by the “interaction, companionship, interplay, and mutuality” which “on a continuing, day-to-day basis . . . fulfills the child’s psychological needs for a parent, as well as the child’s physical needs.” *Id.* at 98. It is therefore the *quality* and *nature* of the interaction between parent and child, rather than any biological or legal connection, that creates and sustains these attachment relationships which have such a critical impact on children’s development. See Am. Acad. of Pediatrics, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 PEDIATRICS 341, 341 (2002) (finding that “[c]hildren’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”); see also Susanne Bennett, *Is There a Primary Mom? Parental Perceptions of Attachment Bond Hierarchies Within Lesbian Adoptive Families*, 20 CHILD & ADOLESCENT SOC. WORK J. 159, 167–68

(2003) (finding, in a qualitative study of lesbian couples, that “quality of care was the salient factor in the establishment of an attachment hierarchy” and that “legal parent status” was not a “defining factor[ ] contributing to the attachment hierarchy.”). For these reasons, the absence of a biological or formal adoptive connection between Debra and M.R. cannot conclude inquiry about the attachment bonds between them.

The research also consistently shows that, in all relevant respects, lesbians and gay men parent as heterosexuals do. *See, e.g.,* G. Dorsey Green & Frederick W. Bozett, *Lesbian Mothers & Gay Fathers*, in *HOMOSEXUALITY: RESEARCH APPLICATIONS 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). “[T]he weight of evidence gathered during several decades using diverse samples and methodologies” demonstrates “that there is no systemic difference between gay and nongay parents in emotional health, parenting skills, and attitudes towards parenting.” *Am. Acad. of Pediatrics, Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *PEDIATRICS* 341, 343 (2002). Thus, not surprisingly, studies have concluded that a parent’s sexual orientation is immaterial to the formation

and importance of children's attachments, and children are just as likely to form close bonds with same-sex parents as with different-sex parents. *See* Am. Acad. of Pediatrics, *Family Pediatrics: Report of the Task Force on the Family*, 111 PEDIATRICS 1541, 1550 (2003) (finding "that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships").

Continuity of the parent-child relationship, no matter the sexual orientation or legal or biological status of the parent, is essential to a child's healthy development and overall well-being. Goldstein et al., *supra*, at 31–33; *see also* Ana H. Marty, et al., *Supporting Secure Parent-Child Attachments: The Role of the Non-parental Caregiver*, 175 EARLY CHILD DEV. & CARE 271, 274 (2005) ("[T]he quality of the attachment has profound effects on the child's social adjustment."); Am. Acad. of Pediatrics, *Developmental Issues for Young Children in Foster Care*, *supra*, at 1145 ("Paramount in the lives of . . . children is their need for continuity with their primary attachment figures."); Nat'l Research Council & Inst. of Med., *supra*, at 265. Because children typically assume that they can depend on ongoing relationships with both parents, severance or curtailment of the parent-child bond—including bonds like the one alleged to subsist between Debra and M.R.—can be "a particularly

devastating experience.” William F. Hodges, INTERVENTIONS OF CHILDREN OF DIVORCE: CUSTODY, ACCESS, & PSYCHOTHERAPY 8–9 (2d ed. 1991).

Numerous empirical findings “provide a solid research basis for predictions of long term harm associated with disrupted attachment [relationships] and loss of a child’s central parental love objects.” 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). For example, interference with children’s attachment relationships can lead to “aggression, fearful relationships, academic problems in school, and . . . elevated psychopathology.” Marty et al., *supra*, at 274; Nat’l Research Council & Inst. of Med., *supra*, at 265 (“[A]ttachments buffer young children against the development of serious behavior problems, in part by strengthening the human connections.”). *See also, 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”). For these reasons, “[c]hildren who maintain contact with both parents tend to be better adjusted.” Denise Donnelly & David Finkelhor, *Does Equality in Custody Arrangement Improve Parent- Child Relationship?*, 54 J. MARRIAGE & FAM. 837, 838 (1992).

The findings are no different for children of same-sex parenting relationships. See Am. Acad. of Pediatrics, *Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 PEDIATRICS 339 (2002), available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;109/2/339> (last visited Apr. 24, 2009) (stating that children of gays and lesbians need the same permanence and security in parental relationships as children of heterosexual parents); Am. Psychoanalytic Ass'n, *Position Statement on Gay & Lesbian Parenting*, May 16, 2002, available at <http://www.apsa.org/ABOUTAPSAA/POSITIONSTATEMENTS/GAYANDLESBIANPARENTING/tabid/471/Default.aspx> (last visited Apr. 24, 2009) (concluding that the best interests of children require attachment to committed, nurturing, and competent parents, and that gay and lesbian individuals and couples are capable of meeting those requirements).

Thus, Debra should be permitted to assert whether she has standing to petition for custody or visitation of M.R. To do otherwise could result in the dissolution of a critical parent-child attachment bond, and could be devastating to M.R.'s development, happiness, and well-being. As the Court of Appeals recently articulated in *Shondel J. v. Mark D.*, "[t]he potential damage to a child's psyche caused by suddenly ending established parental support need only be stated to be appreciated. Cutting off that support,

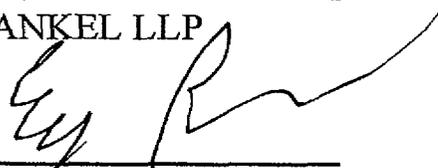
whether emotional or financial, may leave the child in a worse position than if that support had never been given.” 7 N.Y.3d 320, 330, 820 N.Y.S.2d 199, 204-05 (2006).

CONCLUSION

So that the Court of Appeals may review an area of the law of grave public importance and so that the Court of Appeals may confirm for the trial and appellate courts that the law of New York conforms not only with decades of social science and child development research but also with the guidepost of New York child custody and visitation law, namely, the best interests of New York's children, we respectfully submit that this Court should grant Petitioner-Respondent Debra H.'s motion for leave to appeal its reversal of the petition court's grant of a hearing to determine Debra H.'s standing to seek custody or visitation of M.R.

Respectfully submitted,

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& FRANKEL LLP



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Dated: New York, NY  
May 15, 2009

*Counsel for Amici Curiae  
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The National Association of Social  
Workers' New York City Chapter*

**APPELLATE DIVISION—FIRST DEPARTMENT  
PRINTING SPECIFICATION STATEMENT**

I hereby certify pursuant to Rule 600.10(d)(1)(v) that the foregoing brief was prepared on a computer using Microsoft Word.

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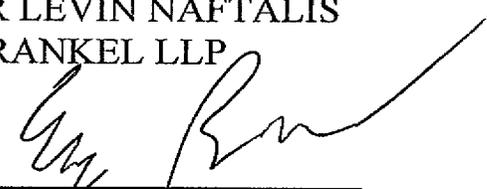
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Respectfully submitted,

KRAMER LEVIN NAFTALIS  
& FRANKEL LLP

Dated: New York, NY  
May 15, 2009

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The National Association of Social  
Workers' New York City Chapter*

N.Y. County Clerk's Index No.  
106569/08

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

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DEBRA H.,

Petitioner-Respondent,

-against-

JANICE R.,

Respondent-Appellant.

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**NOTICE OF MOTION OF THE NATIONAL  
ASSOCIATION OF SOCIAL WORKERS, THE  
NATIONAL ASSOCIATION OF SOCIAL  
WORKERS' NEW YORK STATE CHAPTER, AND  
THE NATIONAL ASSOCIATION OF SOCIAL  
WORKERS' NEW YORK CITY CHAPTER TO FILE  
AN AMICI CURIAE BRIEF IN SUPPORT OF  
PETITIONER-RESPONDENT DEBRA H.'S MOTION  
FOR LEAVE TO APPEAL**

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