

IN THE SUPREME COURT OF IOWA

Heather Martin Gartner, et al.

Plaintiffs-Appellees,

v.

Iowa Department of Public Health

Defendant-Appellant.

Supreme Court No. 12-0243

District Court No. 67807

**Brief of *Amicus Curiae* National Association of Social Workers and
National Association of Social Workers, Iowa Chapter
In Support of Plaintiffs-Appellees**

Appeal from The Iowa District Court in and for Polk County
The Honorable Eliza J. Ovrom, Judge

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STATEMENT OF INTEREST AND IDENTITY OF *AMICUS 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. NASW’s Iowa chapter (“NASW-Iowa Chapter”) includes more than 1,155 members. 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’s family policy recognizes that gay men and lesbians are a part of existing families and provide important caregiving to children, as well as other family members. The policy further identifies discrimination against lesbian and gay parents as undermining survival of their families.

Consistent with the NASW *Code of Ethics* and NASW national policies, the NASW-Iowa Chapter issued a Position Statement in 2008 advocating that same-sex couples be allowed to marry and receive all accompanying rights, privileges, and protections of marriage recognized by law. The Position Statement enumerates the benefits and protections available

exclusively through marriage, including those enjoyed only by children whose parents are allowed to marry.

NASW and NASW-Iowa Chapter are devoted to the improvement of child and family welfare and hold a strong interest in promoting the welfare of all children in Iowa, including children raised by same-sex couples. As such they can serve an important role in this case by providing independent comment as a friend of the Court in support of Plaintiffs-Appellees Heather Martin Gartner, et al. and affirming the District Court's ruling.

INTRODUCTION TO ARGUMENT

The best interests of children are served by stable parent-child relationships and by legal documents that reflect and support those relationships. The refusal of the Iowa Department of Public Health (hereafter, “IDPH”) to list the same-sex spouse of a birth mother as a parent on their child’s birth certificate both threatens the parent-child relationship and countermands this Court’s ruling in *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 02009). The State should not compel any Iowa child or parent to endure the emotional and financial harm that accompanied Mackenzie Gartner’s already stressful medical emergency simply because the parents share the same sex and the IDPH refuses to follow established law.

Iowa law has long supported the parent-child relationship regardless of the genetic links between parent and child. The District Court correctly identified the illegality of the IDPH’s policy of interpreting Iowa’s spousal presumption of parentage to exclude same-sex parents and required the IDPH to act consistently with the letter and spirit of *Varnum* by holding that the same-sex spouse of the birthing mother must be listed on their child’s birth certificate without requiring that spouse to go through the adoption process. NASW and NASW-Iowa Chapter respectfully submit that this Court should affirm the District Court’s ruling.

ARGUMENT

I. Iowa Law Recognizes the Importance of Protecting and Preserving Parent-Child Attachment Bonds Regardless of Genetic Connection or Sexual Orientation of the Parents

Protection of family relationships is an important Iowa value that informs the state's laws and social policy. Iowa law honors the myriad ways such relationships are created without blind adherence to genetic ties or outdated notions of what it means to be a family. Just as sex may not determine whom one may choose to marry, it does not determine who is a legal parent. In Iowa, legal parentage has long been untethered from genetics. As the District Court and the parties to this action agree, "a birth certificate is the primary way to demonstrate legal parentage."¹ District Court Opinion at 2. IDPH's policy of requiring the same-sex parents of a child to go through the process of adoption in order to list both on a birth certificate is not only "intrusive, expensive, and time-consuming," *Id.* at 3, it places families in a

¹ The District Court also noted the birth certificate's practical applications throughout one's life, stating that "it is relied upon and legally required to establish identity, age, and parentage in many contexts," and listing some of the myriad ways both a parent and child would be harmed by the parent's exclusion from the birth certificate. District Court Opinion at 2-3.

vulnerable legal position until such a process is completed,² and it is unconstitutional.

A. Iowa Law Recognizes the Importance of Protecting the Parent-Child Relationship, Regardless of Sexual Orientation of the Parents.

Iowa has a strongly rooted “policy of promoting the sanctity and stability of the family. This is clearly an important value in our society” *Callender v. Skiles*, 591 N.W.2d 182, 191 (Iowa 1999). “The ‘best interests of children’ is, undeniably, an important governmental objective.” *Varnum v. Brien*, 763 N.W.2d 862, 899 (Iowa 2009). This family-oriented policy is flexible and has adjusted with Iowa’s families. *Callender*, 591 N.W.2d at 191 (“[T]he traditional makeup of the family” has “changed in recent generations,” but “[t]he nontraditional circumstances in which parental rights arise do not diminish the traditional parental rights at stake.”); *In re Marriage of Hansen*, 733 N.W.2d 683, 693, 700 (Iowa 2007) (holding that family

² The IDPH’s policy at the very least creates such vulnerabilities until the adoption process is completed, and in cases where a family may not be able to afford to go through the adoption process, forces them to live with the risk that their status as a family may be questioned or even denied at any moment. “Contrary to stereotypes, children being raised by same-sex couples are twice as likely to live in poverty as those being raised by married heterosexual parents.” Movement Advancement Project, Family Equality Council and Center for American Progress, *Strengthening Economic Security for Children Living in LGBT Families*, 2 (2012), available at <http://lgbtmap.org/file/strengthening-economic-security.pdf> (last visited May 11, 2012). See also *id.* at 4 (table highlighting cost of

(footnote continued)

structures have become more diverse and many spouses do not adopt “‘traditional’ roles” in childrearing, so courts adjudicating child custody must avoid gender bias and advance “gender neutral goals of stability and continuity with an eye toward providing the children with the best environment possible for their continued development and growth”); *In re Marriage of Fennell*, 485 N.W.2d 863, 864 (Iowa App. 1992) (avoiding sexual stereotypes in appeal by working mother of custody award to stay-at-home father).

This Court has also recognized that same-sex parents live “in committed and loving relationships, many raising families, just like heterosexual couples,” and that “[s]ociety benefits . . . from providing same-sex couples a stable framework within which to raise their children”). *Varnum*, 763 N.W.2d at 901. *See also id.* at 899 (“[T]he interests of children are served equally by same-sex parents and opposite-sex parents,” and “the traditional notion that children need a mother and a father to be raised into healthy, well-adjusted adults is based more on stereotype than anything else.”); *In re Marriage of Will*, 494 N.W.2d 394, 398 (Iowa 1992) (alleged

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creating legal protection through adoption, *de facto* parenting judgments, and other methods).

lesbian relationship of mother with roommate does not impair mother's ability to parent); *In re Marriage of Walsh*, 451 N.W.2d 492 (Iowa 1990) (holding that trial court improperly restricted visitation of gay father to times when no unrelated adult was present); *In re Marriage of Cupples*, 531 N.W.2d 656, 657 (Iowa App. 1995) (noting that trial court considered lesbian mother's homosexuality a nonissue in custody determination); *In re Marriage of Wiarda*, 505 N.W.2d 506, 508 (Iowa App. 1993) (stating trial court did not consider mother's sexual relationship with a female friend in making custody decision, as daughter's anxiety regarding the relationship would have occurred regardless of whether her mother's friend was male or female); *Hodson v. Moore*, 464 N.W.2d 699, 700 (Iowa App. 1991) (awarding primary physical custody to mother regardless of her relationship with her same-sex roommate and regardless of fact that father was engaged to marry his current opposite-sex roommate).

B. The Spousal Presumption of Parentage Reflects Iowa's View that Genetics Do Not Control Parental Relationships.

Iowa's spousal presumption of parentage on its face establishes that genetic parentage is less important than emotional ties within a family. Iowa Code § 114.13(2) operates to require the listing of the birthing parent's spouse

on a birth certificate, regardless of genetics, unless paternity has been otherwise established by a court.

Other provisions of Iowa law likewise recognize that parenthood means more than biology. *See, e.g.*, Iowa Code § 600A.2 (defining “child” and “parent” as including those “by birth or adoption”). Indeed, non-biological parent-child relationships should garner the same respect as those relationships that result from biological birth. Iowa Code § 633.223 (adopted child is to be treated in the same manner as biological child for purposes of inheritance); Iowa Code § 600.13 (adoption creates parent-child relationship “deemed to have been created at the birth of the child”); *see also Huisman v. Miedema*, 644 N.W.2d 321 (Iowa 2002); *Prince v. Massachusetts*, 321 U.S. 158 (1994) (aunt and legal guardian enjoyed parental autonomy rights); *Caban v. Mohammed*, 441 U.S. 380, 397 (1979) (“Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring”) (Stewart, J., concurring); *Lehr v. Robertson*, 463 U.S. 248, 260 (1983) (citing same).

The spousal presumption of parentage protects every child of married parents regardless of evidence that a spouse is not the child’s genetic parent, or that a married couple is incapable of having children to whom they are genetically related. *See, e.g., In re Marriage of Steinke*, 801 N.W.2d 34 (Iowa

App. 2011) (husband, who indisputably was not biological father to child born during parties' marriage, was the child's "established father" by operation of law as a result of the spousal presumption, and therefore the district court properly awarded him joint legal custody and visitation). The *Varnum* decision requires nothing less for same-sex couples under Iowa law.

Iowa courts have sought to protect the parent-child relationship with a married parent, even where a putative biological unwed father has brought suit to establish paternity. *See, e.g., Callender v. Skiles*, 591 N.W.2d 182, 185 (Iowa 1999) (holding that even though test results demonstrated a 99.98% probability that the petitioner, and not the husband, was the child's genetic parent, the Supreme Court held that the mother's husband was the "established father" of the child by virtue of the spousal presumption of legitimacy); *Huisman*, 644 N.W.2d 321 (Iowa 2002) (affirming dismissal of paternity suit although none of the parties disputed that the petitioner was the biological father, because he had neglected to form a parent-child bond with the child, and had failed to support the child in a formal way). Thus, Iowa courts have permitted putative genetic fathers to make claims of paternity under limited circumstances, but have made clear that a genetic connection to the child alone is not sufficient to overcome the spousal presumption of paternity enjoyed by the mother's spouse. *See also Michael H. v. Gerald D.*,

491 U.S. 110, 124 (1989) (plurality opinion) (purpose of the presumption is to protect children from a declaration of illegitimacy, and to protect the peace and tranquility of families); *Callender*, 591 N.W.2d at 191-92 (describing the state interests favoring application of the spousal presumption to protect husband's parental status against claim by genetic father, as "preserving the marital family" and "the best interests of the child," and noting that "[t]here may also be interests of other children in the family at stake"); *Heath v. Heath*, 269 N.W.2d 761 (Iowa 1936) (under the spousal presumption, "the family relationship [between a child and the mother's spouse] is kept sacred and the peace and harmony thereof preserved").

In addition to protecting the child's bond with the presumed father from attack from a putative father outside of the marital family, the spousal presumption also is meant to protect the child from the stigma of "illegitimacy." By [this] rule, the child is protected in his inheritance and safeguarded against future humiliation and shame." *Heath*, 269 N.W.2d at 761.

Given the foregoing precedent, Iowa law does not favor biological parent-child relationships over other children with legal parent-child relationships. To permit only children who may have a genetic connection to a mother's spouse the benefit of a spousal presumption of parenthood, while

denying the presumption to children who are assumed not to have such a genetic connection, would violate this basic principle. Yet, this is precisely the position advocated by the Iowa Department of Public Health. The IDPH effectively recreates second-class citizen status for the children of same-sex marriages by refusing to recognize both parents on the birth certificate. In doing so, the IDPH abridges the equal protection of Iowa law that otherwise must be afforded to each Iowa child born unto a same-sex marriage lawfully performed in this state and to his or her parents, who exercised their legal rights to marry in Iowa. *Varnum* makes clear that the Iowa Constitution prohibits the state from withholding liberties and rights based on such grounds, as the District Court correctly held. Its ruling should be affirmed.

C. Iowa's Law is Further Supported by the U.S. Constitution's Recognition of the Rights of Children and Their *de Facto* Parents.

Consistent with Iowa's recognition of the importance of parent-child relationships regardless of genetic connection, the U.S. Supreme Court has also recognized that, under some circumstances, constitutionally-protected parental rights extend beyond biological parents and foster children may have constitutionally-protected relationships with their foster parents. *Smith v. Org. of Foster Families for Equality and Reform*, 431 U.S. 816, 843, 849 (1977).

The Supreme Court stated that *de facto* parents are equally as important as those of legal parents:

[T]he importance of the familial relationship to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in 'promoting a way of life' through the instruction of children, as well as from the fact of blood relationship. No one would seriously dispute that a deeply loving and interdependent relationship between an adult and a child in his or her care may exist even in the absence of blood relationship.

Id. at 844 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 231-233 (1972)). See also *Lehr v. Robertson*, 463 U.S. 248, 261 (1983). Once again, the courts have agreed that established parent-child relationships trump genetic ties in certain circumstances and those relationships must be accorded legal recognition and protection. Likewise, the relationship of children to their married same-sex parents must be protected for all of the same reasons that the courts have protected the relationships between foster children and foster parents. A critical method for such protection is through the issuance of birth certificates that include both married same-sex parents through a gender-neutral application of Iowa's spousal presumption of paternity statute.

II. Social Science Emphasizes the Importance of Protecting and Preserving Attachment Bonds Between Children and Their Parents, Regardless of Genetic Relationship

The quality of the parent-child attachment, rather than a parental relationship determined by biology, adoption, or sexual orientation, dictates healthy child development. Severing such attachment bonds to a parent, regardless of genetic connection, could severely harm a child's development and well-being. Here, attachment bonds between children and their parents are best protected by applying Iowa's presumption of paternity statute in a gender-neutral way to allow the legally recognized same-sex spouse of a birthing parent to be listed on a child's birth certificate as that child's parent. To hold otherwise would unjustifiably burden, undermine, and threaten the attachment bonds of same-sex parents and their children.³

A. Formation of Parent-Child Attachment Bonds is Critical to a Child's Healthy Development.

Child development research shows that children form strong bonds of attachment to their parents early in life, and that these bonds grow stronger as children grow older. *See, e.g.,* Melvin Konner, CHILDHOOD 84-87 (1991);

³ As was argued before the District Court, exclusion of the same-sex spouse of the birth parent from a birth certificate creates numerous burdens and risks for both the unlisted parent and child, resulting in their relationship being less certain than that of a child whose married parents are of opposite sexes.

John Bowlby, ATTACHMENT (2d ed. 1982). *See also* Beverly James, HANDBOOK FOR TREATMENT OF ATTACHMENT-TRAUMA PROBLEMS IN CHILDREN 1-2 (1994) (defining an “attachment relationship” as a “reciprocal, enduring, emotional, and physical affiliation between a child and a caregiver” through which a child forms his or her “concepts of self, others, and the world”).

Attachment relationships have profound biological, psychological, and sociological effects on a child’s development. 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, and create the central foundation of a child’s development. *See* Daniel J. Siegel, THE DEVELOPING MIND: TOWARD A NEUROBIOLOGY OF INTERPERSONAL EXPERIENCE 67-120 (1999).

Comprehensive research studies have shown that:

[A] child’s secure and healthy development depends on having one or more sensitive and responsive attachment figures who can correctly read signals for help, provide comforting support and useful assistance, and help the child learn to understand, appropriately express, and regulate emotions; understand social situations; and acquire important life skills.

Phillip R. Shaver, et al., *What’s Love Got To Do With It?*, 16 VA. J. SOC. POL’Y & L. 491 (2009).

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). Among other things, attachment relationships “shape the development of self-awareness, social competence, conscience, emotional growth and emotion regulation, [and] learning and cognitive growth.” *Id.* at 265. As one example, “[t]hrough a history of consistent and sensitive care with the parent, the child develops a model of self and others as lovable and loving/helpful that may make him/her comparatively more likely to cope with challenge and stress (e.g., by relying on others for support or guidance).” James G. Byrne et al., *Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments*, 46 J. CHILD PSYCHOL. & PSYCHIATRY 115, 118 (2005). *See id.* (finding that secure attachment relationships provide children with a sense of emotional security, the ability to cope with stress, and protection against harm); *see also* Am. Acad. of Pediatrics, *Developmental Issues for Young Children in Foster Care*, 106 PEDIATRICS 1145, 1146 (2000) (“Attachment to

a primary caregiver is essential to the development of emotional security and social conscience.”).

B. Attachment Relationships Develop Despite the Absence of a Genetic Connection Between Parent and Child and Regardless of Sexual Orientation of the Parent.

The formation of attachment bonds is unrelated to genetics or adoption. *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). Rather, 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; *see also* Nat’l Research Council & Inst. of Med., *supra*, at 234 (“[C]riteria for identification of attachment figures [include] provision of psychical and emotional care, continuity or consistency in the child’s life, and emotional investment in the child.”).

It is therefore the *quality* and *nature* of the interaction between parents and their child that creates and sustains these attachment relationships which have such a critical impact on children’s development, rather than any genetic or legal connection. *See* Ana H. Marty, et al., *Supporting Secure Parent-Child Attachments: The Role of the Non parental Caregiver*, 175 *EARLY CHILD DEV.*

& CARE 271, 273 (2005) (“[T]he quality of [children’s] attachment relationships is dependent on the nature of the interactions with their parents or other caregivers.”); *see also* 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”). This finding extends to attachment bonds between children and their same-sex parents. *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, 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.”).

Scientific and sociological research also consistently shows that, in all relevant respects, lesbians and gay men raise children as heterosexuals do. *See, e.g.,* D.J. Lick, et al, *The Rainbow Families Scale (RFS): a measure of experiences among individuals with lesbian and gay parents*, 12 J. OF APPLIED MEASUREMENT 3, 222-41 (2011) (noting that “[a]ccording to two decades of research, parental sexual orientation does not affect overall child

development”); 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). *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.”). The Northern District of California recently cited the Iowa Supreme Court’s seminal *Varnum v. Brien* decision for the propositions that “same-sex couples foster the same wholesome environment as opposite-sex couples” and that “the traditional notion that children need a mother and a father to be raised into healthy, well-adjusted adults is based more on stereotype than anything else.” *Golinski v. U.S. Office of Pers. Mgmt.*, 2012 U.S. Dist. LEXIS 22071 (N.D. Cal. Feb. 22, 2012).

“[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); see also, e.g., D.J. Lick, et al, *supra* (noting that in terms of cognitive, psychological, and emotional adjustment, researchers have not found significant differences between children of gay and nongay parents). 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 Stephen Erich, et al., *Early and Late Stage Adolescence: Adopted Adolescents’ Attachment to Their Heterosexual and Lesbian/Gay Parents*, 12 ADOPTION QUARTERLY 3-4, 152-170 (2009) (finding no significant differences in early and late adopted adolescent attachment by parents’ sexual orientation); 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”); A. Brewaeys, et al., *Donor Insemination: Child Development & Family Functioning in Lesbian Mother Families*, 1.2 HUM. REPROD. 1349, 1358 (1997) (finding 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”).

Moreover, the lack of a genetic or adoptive link does not impact the child’s feelings for the same-sex parent. *See* Brewaeys et al., *supra*, at 1354 (“Among the lesbian mothers, the quality of the parent-child interaction did not differ significantly between the biological and the [non-biological] mother.”); *accord* Susan Golombok et al., *The European Study of Assisted Reproduction Families: Family Functioning & 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).

Where both parents have participated in a child’s upbringing, the child will form a significant attachment relationship with each parent, even when both parents are of the same sex. Brewaeys et al., *supra*, at 1356; *see also* Barbara M. McCandlish, *Against All Odds: Lesbian Mother Family Dynamics*, in *GAY & LESBIAN PARENTS 23-38* (Frederick W. Bozett ed., 1987). The research thus demonstrates with extraordinary clarity that neither sexual orientation nor the lack of genetic or adoptive bonds impacts the quality of the attachment bond formed between lesbian or gay parents and their children.

C. Children Suffer when Attachment Bonds with Their Parents are Severed.

Continuity of the parent-child relationship is essential to a child's healthy development and overall well-being. Michael E. Lamb, *Placing Children's Interests First: Developmentally Appropriate Parenting Plans*, 10 VA. J. SOC. POL'Y & L. 98, 103, 113-14 (2002) (explaining that everyday activities with both parents promote and maintain trust and confidence in the parents, while strengthening child parent attachments); 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."); Goldstein et al., *supra*, at 31-33; *see also* Marty et al., *supra*, at 274 ("[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 1 145 ("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 can be "a particularly devastating experience." William F. Hodges,

INTERVENTIONS OF CHILDREN OF DIVORCE: CUSTODY, ACCESS, & PSYCHOTHERAPY 8-9 (2d ed. 1991); *see also* Rayford W. Thweatt, *Divorce: Crisis Intervention Guided by Attachment Theory*, 34 AM. J. PSYCHOTHERAPY 240, 241 (1980) (explaining that upon separation from an attachment figure, children experience “a predictable sequence of behavior with four phases: denial, protest, despair, and detachment”). 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); *see also* Am. Acad. Of Pediatrics, *Developmental Issues for Young Children in Foster Care*, *supra*, at 1146 (“Interruptions in the continuity of a child’s caregiver are often detrimental.”); 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). 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; *see also* Byrne et al., *supra*, at 118 (“[T]hreats or disruptions in the attachment relationships . . . lead to fear/anxiety.”); 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.").

Studies of children of divorced parents confirm the emotional harm that can result when a child is separated from a parent to whom he or she is attached. *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 self-image of children from divorced families is "firmly tied to their relationship with both parents").

Additionally, and not surprisingly, empirical experience confirms that children benefit from access to greater financial resources and security. "One of the most consistent associations in developmental science is between economic hardship and compromised child development." Nat'l Research Council & Inst. of Med., *supra*, at 275. Depriving a child of the financial support of a second parent limits the resources available to support the child and causes greater financial insecurity in the child's life. *See, e.g.*, Wallerstein & Blakeslee, *supra*, at 129-44 (describing the "genteel poverty" in

which a single mother and her children lived, having received only sporadic financial support from the children's father following the parents' divorce).⁴

The findings are no different for children of same-sex parenting relationships. *see, e.g.,* Am. Acad. of Pediatrics, *Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 PEDIATRICS 339

(2002), *available at*

<http://pediatrics.aappublications.org/content/109/2/339.full?sid=ebcd0c2c-6a3a-4729-b64b-d8e87eeffd2d> (last visited Apr. 26, 2012) (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/About_APsaA/Position_Statements/Gay_and_Lesbian_Parenting.aspx (last visited Apr. 26, 2012) (concluding that the best interests of children require attachment to committed, nurturing, and competent parents,

⁴ *See also, e.g.,* Sanders Korenman et al., *Long-Term Poverty and Child Development in the United States: Results from the NLSY*, 17 CHILDREN OF YOUTH SERVICES REVIEW 127 (1996) (finding substantial developmental deficits among children who, on average are poor over a number of years relative to those who are not); Jane D. McLeod et al., *Trajectories of Poverty and Children's Mental Health*, 37 J. HEALTH & SOCIAL BEHAVIOR 207 (1996) (concluding that people with childhood histories of poverty had higher levels of depression and antisocial behavior).

and that gay and lesbian individuals and couples are capable of meeting those requirements). Iowa's courts have recognized that this trauma is the same for children of same-sex parents: "[C]hildren deserve the security of knowing where they will grow up, and we recognize the trauma and uncertainty these proceedings cause all children." *In re Marriage of Sitzes*, 2009 Iowa App. LEXIS 488, 16-17 (Iowa App. May 29, 2009) (treating mother's same-sex relationship as non-issue in refusing to modify custody and noting that mother's partner as well as father's spouse were "responsible people who care for the child").

The "extreme distress" experienced by a child upon termination of an attachment figure's regular and customary role as a parent will occur regardless of whether there is a genetic connection or sexual orientation of the parent. Fiona L. Tasker & Susan Golombok, *GROWING UP IN A LESBIAN, FAMILY: EFFECTS ON CHILD DEV.* 12 (1997); *see also* 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). Specific research on children in gay and lesbian households demonstrates the same need for continuity—and resulting harm from disruption of attachment relationships—

as can be manifested in children of heterosexual parents. *See, e.g.*, Tasker & Golombok, *supra*, at 12 (finding that cessation of the parent-child bond between a child and a lesbian psychological parent “can cause [the child] extreme distress”); Charlotte J. Patterson, *Children of Lesbian & Gay Parents*, 63 CHILD DEV. 1025, 1037 (1992) (noting importance of continuity and stability of child’s relationship with same-sex parents who are separating). When lesbian couples separate, the children mourn for the absent psychological parent just as they would for an absent biological or married parent after separation. *See* Martha Kirkpatrick et al., *Lesbian Mothers & Their Children: A Comparative Study*, 51 AM. J. ORTHOPSYCHIATRY 545, 550 (1981).

Thus, for both psychosocial and practical financial reasons, the research strongly supports that a child’s best interests are met by protection of attachment bonds that naturally form between children and their parents, regardless of genetics or the sex of each parent. Recent research supports the view that children of gay men and lesbians are more legally vulnerable without access to marriage and, along with marriage, to the spousal presumption of parentage. *See* Abbie E. Goldberg & Katherine A. Kovalanka, *Marriage (In)equality: The Perspectives of Adolescents and Emerging Adults With Lesbian, Gay, and Bisexual Parents*, 74 J. MARRIAGE & FAMILY 34, 36

(2012) (explicitly linking spousal presumption to marriage as important protection for children of same-sex parents and discussing social and legal problems children and their parents may face without such protections).

The IDPH's refusal to apply the spousal presumption statute, Iowa Code §144.13(2), to include both same-sex spouses on a birth certificate places the non-birthing parent's legal relationship with the child in question and threatens to disrupt the child's development and well-being, as well as rob him or her of the many benefits inherent in a close and uninterrupted parent-child bond.

CONCLUSION

For the reasons stated in the District Court Ruling, Plaintiffs-Appellees' Brief and this *Amicus* Brief, the District Court correctly entered summary judgment in favor of Heather Martin Gartner and the other named Plaintiffs in this litigation. Accordingly, the District Court's Ruling should be affirmed.

Dated: May 18, 2012.

Respectfully submitted,



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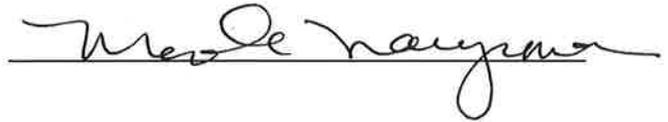
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**Pro hac vice motion pending*

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CERTIFICATE OF FILING

The undersigned hereby certifies that on the 18th day of May, 2012 he/she will file by personally delivering 18 true copies of this Brief of *Amicus Curiae* National Association of Social Workers and National Association of Social Workers' Iowa Chapter to the Clerk of the Supreme Court, Iowa Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa, 50319, in accordance with Iowa Rule of Appellate Procedure 6.906(5).



Mercedes Rayner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that in compliance with Iowa Rule of Appellate Procedure 6.906(5), he/she served the foregoing Brief of *Amicus Curiae* National Association of Social Workers and National Association of Social Workers' Iowa Chapter this 18th day of May, 2012 by mailing (via U.S. mail) one (1) true copy of the Brief of *Amicus Curiae* National Association of Social Workers and National Association of Social Workers' Iowa Chapter with full postage prepaid to each of the following attorneys of record at the addresses shown:



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The undersigned certifies the actual cost of reproducing the necessary copies of the preceding Brief of *Amicus Curiae* National Association of Social Workers and National Association of Social Workers, Iowa Chapter was \$154.68 and that amount has been actually paid by the attorneys for *Amicus Curiae* National Association of Social Workers and National Association of Social Workers' Iowa Chapter.



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The undersigned certifies that this Brief complies with:

1. The type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 5,562 words, excluding parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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