

IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT, STATE OF FLORIDA

CASE NO.: 3D08-3044

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES

Appellant,

vs.

IN RE MATTER OF ADOPTION OF: X.X.G. and N.R.G.,

Appellees.

CORRECTED
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THE FOSTER CHILDREN'S PROJECT OF THE LEGAL AID SOCIETY OF
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THE NATIONAL ASSOCIATION OF SOCIAL WORKERS ("NASW") AND
THE FLORIDA CHAPTER OF THE NASW;

THE NATIONAL CENTER FOR ADOPTION LAW AND POLICY;

THE NATIONAL CENTER FOR YOUTH LAW; AND

THE NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
IDENTITY AND INTEREST OF AMICI CURIAE.....	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT	3
I. Florida’s Categorical Ban On Adoption By Gay And Lesbian Parents Is A Striking Departure From Well-Established Child Welfare Policy And Is Detrimental To The Best Interests Of Children.....	3
A. As Florida Recognizes, Adoption Is In The Best Interests Of Children Whose Biological Parents Either Cannot Or Will Not Raise Them	3
B. Well-Established Child Welfare Practice Rejects Categorical Exclusions Of Adoption Applicants In Favor Of Individualized Evaluations Of Each Potential Parent-Child Match	6
C. Florida’s Categorical Exclusion Of Gay And Lesbian Individuals Undermines The Best Interests Of Its Children And Should Not Be Allowed To Stand	8
II. There Is No Scientific Basis To Conclude That Adoption By Gay And Lesbian Parents Disadvantages Children.....	11
CONCLUSION	20

TABLE OF AUTHORITIES

CASES

	Page(s)
<i>G.S. v. T.B.</i> , 985 So. 2d 978 (Fla. 2008).....	6
<i>In the Matter of the Adoption of John Doe & James Doe</i> , 2008 WL 5006172 (Fla. 11th Cir. Ct., Nov. 25, 2008).....	6, 9, 10
<i>Jacoby v. Jacoby</i> , 763 So. 2d 410 (Fl. 2d. DCA 2000).....	19
<i>Lofton v. Kearney</i> , 157 F. Supp. 2d 1372 (S.D. Fla. 2001).....	14
<i>Lofton v. Secretary of Department of Children & Families</i> , 358 F.3d 804 (11th Cir. 2004).....	14
<i>Palmore v. Sidoti</i> , 466 U.S. 429, 433 (1984)	19

STATUTES

42 U.S.C.	
§ 671	3
§ 673	3
Fla. Admin. Code r.	
65C-16.002.....	9
65C-16.005.....	8
65C-24.001 to 24.012.....	8
Fla. Stat.	
§ 39.001	3
§ 39.621	3
§ 39.5085	8
§ 63.022.....	1, 2
§ 63.042.....	1, 8
§ 63.092.....	2
§ 63.125.....	2
§ 409.1673	4

OTHER AUTHORITIES

American Academy of Child and Adolescent Psychiatry, <i>Policy Statement: Gay, Lesbian, and Bisexual Parents</i> (1999), at http://www.aacap.org/publications/policy/ps46.htm	11
American Academy of Pediatrics, <i>Developmental Issues for Young Children in Foster Care</i> , 106 <i>Pediatrics</i> 1145 (2000)	5
American Academy of Pediatrics, <i>Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents</i> , 109 <i>Pediatrics</i> 341 (2002)	11, 13
American College of Pediatricians, <i>History of the College</i> , at http://www.acpeds.org	16
American Psychiatric Association, <i>Adoption and Co-parenting of Children by Same-sex Couples: Position Statement</i> (2002), at http://www.psych.org/du/other_res/lib_archives/archives/200214.pdf	11, 13
American Psychological Association, <i>Lesbian and Gay Parenting: A Resource for Psychologists</i> (1995), at http://www.apa.org/pi/parent.html	11
American Psychological Association, <i>Resolution on Sexual Orientation, Parents, and Children</i> (2004), at http://www.apa.org/pi/lgbc/policy/parentschildren.pdf	11
Berrick, J. D., <i>Take Me Home: Protecting America's Vulnerable Children and Families</i> (2009).....	4
Bohman, M. & S. Sigvardsson, <i>Outcome in Adoption</i> , in <i>The Psychology of Adoption</i> 93 (1990).....	5
Brodzinsky, D. & E. Pinderhughes, <i>Parenting and Child Development in Adoptive Families</i> , in <i>1 Handbook of Parenting</i> 279 (2002).....	5
Brodzinsky, D., et al., <i>Children's Adjustment to Adoption</i> (1998).....	4

Bussiere, A., <i>The Development of Adoption Law</i> , 1 Adoption Q. 3 (1998).....	7
Child Welfare League of America, <i>CWLA Standards of Adoption Excellence</i> (rev. ed. 2000).....	6
Child Welfare League of America, <i>Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults</i> (2005), at http://www.cwla.org/programs/culture/glbtposition.htm	12, 13
Children’s Bureau, Department of Health and Human Services, <i>Time Between TPR and Finalization</i> (Apr. 1, 2008), at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/tpr_tbl4_2006.htm	9
Department of Health and Human Services, <i>Prior Relationship of Adoptive Parent(s) to Child</i> (Mar. 2008), at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/priorrel_tbl6_2006.htm	9
Department of Health and Human Services, <i>The Adoption Home Study Process</i> (2004), at http://www.childwelfare.gov/pubs/f_homstu.cfm	8
Donaldson Adoption Institute, <i>Expanding Resources for Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care</i> (2008).....	10, 13, 15
Freundlich, M., <i>The Future of Adoption for Children in Foster Care: Demographics in a Changing Socio-Political Environment</i> (1999), at http://www.adoptioninstitute.org/policy/polfos.html	10
Gartrell, N., et al., <i>Interviews with 10-Year-Old Children</i> , <i>American Journal of Orthopsychiatry</i> , 70(4) (Oct. 2005)	15
Hollinger, J.H., <i>Uniform Adoption Act of 1994</i> , in 2 <i>The Praeger Handbook of Adoption</i> (Stolley & Bullough eds. 2006).....	7
James, B., <i>Handbook for Treatment of Attachment-Trauma Problems in Children</i> (1994).....	4

Marty, A., et al., <i>Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver</i> , 175:3 <i>Early Childhood Dev. and Care</i> 271 (2005)	5
National Association of Social Workers, <i>Social Work Speaks: Policy Statements 2000-03</i> (2000)	12, 13
North American Council on Adoptable Children, <i>Position Statement on Eliminating Categorical Restrictions in Foster Care and Adoption</i> (2007), at http://www.nacac.org/policy/positions.html#eliminating	12
North American Council on Adoptable Children, <i>Position Statement on Permanency Planning/Continuity of Relationships</i> (Dec. 3, 2005), at http://www.nacac.org/policy/positions.html	7
Perrin, E., <i>Sexual Orientation in Child and Adolescent Health Care</i> (2002)	13
Pew Institute, <i>Time for Reform: Aging Out on Their Own</i> (Aug. 2007), at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster_care_reform/Kids_are_Waiting_TimeforReform0307.pdf	5
Sarantakos, S., <i>Children in three contexts</i> , 21 <i>Children Australia</i> 23 (1996)	14
Sirota, T., <i>Adult Attachment Style Dimensions in Women Who Have Gay or Bisexual Fathers</i> , Unpublished Dissertation (2009).....	14
Stacey, J. & T. Biblarz, <i>(How) Does the Sexual Orientation of Parents Matter?</i> , 66 <i>Am. Soc. Rev.</i> 159 (2001).....	13, 16
Tasker, F. & S. Golombok, <i>Do Parents Influence the Sexual Orientation of Their Children?</i> , 32 <i>Dev. Psychol.</i> 3 (1996).....	13
Triseliotis, J., <i>Long-term foster care or adoption? The evidence examined</i> , 7 <i>Child and Family Soc. Work</i> 23 (2002)	4

Vanfraussen, K., et al., *What Does It Mean for Youngsters to Grow Up in a Lesbian Family Created by Means of Donor Insemination?*, 20 *J. Reprod. & Infant Psychol.* 237 (2002) 14, 18

Wald, M., *Adults' Sexual Orientation & State Determinations Regarding Placement of Children*, 40 *Fam. L.Q.* 381 (2006) 18

IDENTITY AND INTEREST OF AMICI CURIAE

Amici curiae (“Amici”)¹ are non-profit organizations dedicated to improving child welfare and adoption policy in Florida and across the United States through research, policy development and advocacy. Collectively, we possess an extraordinary breadth and depth of knowledge about adoption and child welfare, have performed extensive research focused on adoption by gay and lesbian individuals, have promulgated national standards for best practices in adoption services and are recognized leaders in the field. On the basis of our collective knowledge and experience, Amici urge this Court to uphold the trial court’s judgment striking down § 63.042(3), Fla. Stat. (2006), which bars adoption by gay and lesbian individuals.

SUMMARY OF ARGUMENT

Florida’s goals for adoptive children have long been clear. The Legislature recognizes the State’s compelling interest in providing stable and permanent homes for adoptive children, Fla. Stat. § 63.022(1)(a), and mandates that, “in every adoption, the best interest of the child should govern and be of foremost concern in

¹ Amici include the Center for Adoption Policy, the Child Welfare League of America (“CWLA”), the Florida Chapter of the American Academy of Pediatrics (“AAP”), the Foster Care Alumni of America, the Foster Children’s Project of the Legal Aid Society of Palm Beach County, the National Association of Social Workers (“NASW”) and the Florida Chapter of the NASW, the National Center for Adoption Law and Policy, the National Center for Youth Law, and the North American Council on Adoptable Children (“NACAC”).

the court's determination," *id.* § 63.022(2). To carry out its own articulated objectives, the Legislature requires case-by-case evaluations designed to assess parental suitability and to match the needs of each child with the abilities and circumstances of prospective adoptive parents. *Id.* §§ 63.092(3), 63.125(1). The sole exception to Florida's otherwise coherent and rational adoption framework is the categorical ban on adoption by gay and lesbian individuals. Florida bans these prospective parents from adopting even when, as this case vividly demonstrates, they pass the rigorous screening process and are selected by experienced caseworkers as the best match for a particular child or sibling group in need of a permanent home.

Rather than protecting children like John and James Doe in this case, Florida's ban does just the opposite—it profoundly harms them by denying them a permanent adoptive family. Moreover, the exclusion worsens the already formidable plight faced by *all* children in need of a permanent family. By shrinking the pool of suitable adoptive parents, it delays—and in many cases denies—these children the numerous benefits that flow from adoption. Finally, for Florida children placed by birth parents with gay or lesbian prospective adoptive parents, the categorical exclusion forecloses legal recognition of the child's relationship with the individual or couple chosen by the birth parents. Florida maintains this ban despite the lack of any scientific or child welfare basis for

excluding gay men and lesbian women as parents. In sum, the Florida law irrationally and needlessly harms, rather than serves, the best interests of children.

ARGUMENT

I. FLORIDA’S CATEGORICAL BAN ON ADOPTION BY GAY AND LESBIAN PARENTS IS A STRIKING DEPARTURE FROM WELL-ESTABLISHED CHILD WELFARE POLICY AND IS DETRIMENTAL TO THE BEST INTERESTS OF CHILDREN

A. As Florida Recognizes, Adoption Is In The Best Interests Of Children Whose Biological Parents Either Cannot Or Will Not Raise Them

Florida recognizes adoption as “the primary permanency” option for an abused or neglected child who cannot be reunited with his or her biological parents, Fla. Stat. § 39.621(6), and mandates the permanent placement of foster children with an adoptive family “as soon as possible” once a court finds that reunification with the biological parents is not possible, *id.* § 39.001(1)(h).² This commitment to achieving permanency through adoption is supported by substantial research and a consensus among family and child development specialists as well as social service providers that adopted children fare better than children who

² Similarly, federal child welfare laws and policy recognize adoption as the most appropriate permanent placement for maltreated children who cannot be reunified with their birth families. For example, the Adoption and Safe Families Act of 1997 identifies permanency as the primary goal in placing foster children, 42 U.S.C. § 671(a)(15)(C), sets strict time limits for states to approve and implement permanency plans, *id.* § 671(a)(15)(E), and incentivizes states to increase the number of adoptions of children in public custody, *id.* § 673(b).

remain in foster care or in other non-permanent custodial placements.³

The legal permanency of adoption provides a framework within which a child can flourish. In particular, adoption facilitates the development of attachment relationships, “reciprocal, enduring, emotional, and physical affiliation[s] between the child and a caregiver.”⁴ These relationships form “the cornerstone for healthy psychological adjustment, affecting development not only in infancy and childhood but in adulthood as well.”⁵

In contrast, non-adoptive placements tend to be less stable.⁶ The State itself recognizes that the foster care system “often fails to meet the needs of children,” Fla. Stat. § 409.1673(1)(a)(1), in part because children “are often inappropriately and repeatedly placed in the foster care system [and] lack a stable environment,” *id.* § 409.1673(1)(b). Multiple placements mean multiple caregivers, which can

³ See, e.g., Triseliotis, *Long-term foster care or adoption? The evidence examined*, 7 Child and Family Soc. Work 23-33 (2002); Berrick, *Take Me Home: Protecting America's Vulnerable Children and Families* 55-56 (2009).

⁴ James, *Handbook for Treatment of Attachment-Trauma Problems in Children* 2 (1994) (emphasis omitted).

⁵ Brodzinsky et al., *Children's Adjustment to Adoption* 13 (1998); Berrick, *supra* note 3, at 56 (“Adopted children are more likely to report a sense of security about their living arrangements and clarity about their position within the family compared with children living in long-term foster care. And outcomes in adulthood suggest that children adopted from foster care fare very well.”).

⁶ See Berrick, *supra* note 3, at 55 (“[T]he stability and durability of adoption is notably stronger than [] long-term foster care [and a]doption disruption rates are markedly lower.”).

inhibit children from forming lasting attachments to a nurturing adult,⁷ and place them at risk for separation anxiety as well as long-term emotional, cognitive, and psychological difficulties.⁸ Not surprisingly, children who age out of the foster care system without ever becoming a permanent member of a family are far more likely to drop out of school, become homeless, and be arrested or incarcerated than children who are adopted.⁹

In addition, as the Department of Children and Families acknowledged at trial, adopted children enjoy legal, economic, and other societal benefits that long-

⁷ See Brodzinsky & Pinderhughes, *Parenting and Child Development in Adoptive Families*, in 1 *Handbook of Parenting* 279, 288 (2002) (“risk for attachment problems” increases when children “experience multiple caregivers”); Am. Acad. of Pediatrics, *Developmental Issues for Young Children in Foster Care*, 106 *Pediatrics* 1145, 1146 (2000) (multiple placements inhibit child’s “relationship with an adult who is nurturing, protective, and fosters trust and security”).

⁸ Marty et al., *Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver*, 175:3 *Early Childhood Dev. and Care* 271, 274 (2005) (addressing potential negative outcomes for children who experience multiple placements); Bohman & Sigvardsson, *Outcome in Adoption*, in *The Psychology of Adoption* 93, 106 (1990) (“Any unnecessary prolongation of the socially, legally, and psychologically insecure limbo-situation of foster care should be avoided, in the best interest of the child.”).

⁹ See Pew Institute, *Time for Reform: Aging Out on Their Own* (Aug. 2007), at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster_care_reform/Kids_are_Waiting_TimeforReform0307.pdf (citing statistics from different studies that found remarkably negative outcomes for “aged-out” foster care youth: e.g., approximately one-quarter of such children were arrested within first two years; more than one-fifth became homeless; fewer than two-thirds received high school diplomas by age 19; and less than 5% went on to receive college degrees). For a more detailed discussion of the harms experienced by children whose attachment relationships are disrupted, see University of Florida Center on Children and Families Amicus Br. 5-7.

term foster care or guardianships do not provide.¹⁰ Adopted children are treated as their adoptive parents' children in all respects—entitled to support, inheritance, and coverage under private and public health insurance, Social Security, and other benefits programs. Thus, even for a fortunate child in a favorable long-term foster care or guardianship placement, adoption is preferable.

B. Well-Established Child Welfare Practice Rejects Categorical Exclusions Of Adoption Applicants In Favor Of Individualized Evaluations Of Each Potential Parent-Child Match

Child welfare experts overwhelmingly agree that placement decisions for children awaiting adoption are best made on the basis of individualized assessments of the needs of each child and the capabilities of each prospective adoptive parent. For decades, the *CWLA Standards of Adoption Excellence* (“*CWLA Standards*”) have incorporated what are generally recognized as “best practices” for adoption. In particular, the *CWLA Standards* recommend that placement decisions should be based on a “careful review of the information collected in the child assessment and on a determination of which . . . adoptive families could most likely meet the child’s needs.” *CWLA Standards* (rev. ed.

¹⁰ *In the Matter of the Adoption of John Doe & James Doe*, 2008 WL 5006172, at *15, 19 (Fla. 11th Cir. Ct., Nov. 25, 2008) (“Judgment”); *see also G.S. v. T.B.*, 985 So. 2d 978, 983-984 (Fla. 2008) (finding adoption preferable to guardianship because it confers the legal rights and other advantages of parent-child relationships).

2000) § 4.7.¹¹

This preference for individualized evaluations reflects the awareness that each child has distinct needs and that each person seeking to adopt offers distinct skills and family environments. For example, a child with a disabling health condition might fare better with a parent who is familiar with various treatment options. Similarly, some children might thrive in a family with multiple siblings, while others might not. The larger the pool of prospective parents, the greater is the likelihood that adoption caseworkers will be able to make a placement that serves a particular child's best interest.

Notably, over the past forty years, federal and state lawmakers have moved away from categorical exclusions of prospective adopters, for example, on the basis of marital status, age, income, race, ethnicity, or disabilities, and towards a more inclusive approach that does not rule out an applicant unless specific concerns arise from an individualized evaluation suggesting that he or she would not be an appropriate parent.¹² With the one exception of the categorical ban that

¹¹ Every other reputable child welfare group similarly recommends individualized evaluations. *See, e.g.,* North American Council on Adoptable Children, *Position Statement on Permanency Planning/Continuity of Relationships* (Dec. 3, 2005), at <http://www.nacac.org/policy/positions.html> (recognizing that, in light of the uniqueness of each child, each potential caregiver and "each situation requires careful evaluation").

¹² *See* Bussiere, *The Development of Adoption Law*, 1 *Adoption Q.* 3, 8 (1998); Hollinger, *Uniform Adoption Act of 1994*, in 2 *The Praeger Handbook of Adoption*,

is the subject of this constitutional challenge, Florida has participated in this national development of best adoption practices, and categorically excludes no other group from adopting. Married couples, single adults, adults with physical disabilities, divorced men and women, unmarried heterosexual couples, and adults of a different race or ethnicity than the adoptive child—all may adopt. *See* Fla. Stat. § 63.042(2), (4); Fla. Admin. Code r. 65C-16.005(1). The State’s categorical exclusion of gay men and lesbian women is therefore a striking departure from an otherwise consistent child welfare and legal framework for matching the needs of individual children with the suitability and parenting capacity of individual adults.

C. Florida’s Categorical Exclusion Of Gay And Lesbian Individuals Undermines The Best Interests Of Its Children And Should Not Be Allowed To Stand

If allowed to stand, Florida’s prohibition on adoption by gay and lesbian individuals will continue to prevent its child welfare experts and family courts from making an appropriate child-parent match even when a prospective gay or lesbian adoptive parent can best meet the needs of a particular child or sibling group. For example, Florida has recognized the desirability of placing children permanently with relatives, *see* Fla. Stat. § 39.5085 and Fla. Admin. Code r. 65C-

at 653-656 (Stolley & Bullough eds. 2006); *see also* Dep’t of Health and Human Services (“HHS”), *The Adoption Home Study Process* (2004), at http://www.childwelfare.gov/pubs/f_homstu.cfm (“many agencies are looking for ways to rule families in rather than rule them out, to meet the needs of children waiting to be adopted from foster care”).

24.001 to 24.012 (“Relative Caregiver Program”), and with “current custodians,” such as foster parents with whom they have formed strong attachment relationships. *See* Fla. Admin Code r. 65C-16.002(3)(C). Yet, Florida forecloses these promising adoption avenues, which allow a child to maintain relationships with relatives and known caregivers, when the prospective parent happens to be gay or lesbian.¹³

Because of the severe and chronic shortage of qualified adoptive parents, Florida’s prohibition exacerbates the plight of all children in State custody, not just those currently living with a gay or lesbian caregiver. The exclusion of individuals who are qualified to adopt means that fewer foster children whose birth parents’ rights were terminated are ultimately adopted.¹⁴ Even children fortunate enough to be adopted often spend years in foster or group homes as legal orphans awaiting adoption.¹⁵ As discussed above, this places them at risk for irreversible emotional

¹³ *See* HHS, *Prior Relationship of Adoptive Parent(s) to Child* (Mar. 2008), at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/priorrel_tbl6_2006.htm (finding that, as of September, 2006, 37.7% of adoptions in Florida were by a child’s foster parents and 39.6% of adoptions were by relatives). The fact that Florida does not prohibit gay and lesbian individuals from serving as foster parents or guardians further highlights the irrationality of the ban.

¹⁴ Despite Florida’s significant efforts to recruit adoptive parents, there is still a substantial shortage of adults willing to adopt the thousands of children in need of adoptive homes. *See* Judgment *18 (citing stipulated fact that 3,535 children were in Florida custody and waiting to be adopted in 2006).

¹⁵ As of September 2006, 39% of the children adopted in Florida had spent more than one year in foster care. *See* Children’s Bureau, HHS, *Time Between TPR and*

and psychological difficulties.

Florida's categorical exclusion is especially detrimental to children like the brothers John and James Doe who enter the foster system with special needs as a result of the neglect or mistreatment they experienced while living with their biological families. These children are generally difficult to place and often wait the longest before being adopted. As this case demonstrates, even when they are cared for by a capable and loving gay foster parent or guardian,¹⁶ they are denied the legal protections and emotional security of adoption. In addition, they remain at risk of being removed from the only stable placement they have known if the State is someday able to recruit adoptive parents who are not gay. This could have devastating consequences for their emotional and psychological well-being.¹⁷

Finalization (Apr. 1, 2008), at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/statistics/tpr_tbl4_2006.htm. Notably, the likelihood of being adopted decreases dramatically as a child gets older. See, e.g., Freundlich, *The Future of Adoption for Children in Foster Care: Demographics in a Changing Socio-Political Environment* (1999), at <http://www.adoptioninstitute.org/policy/polfos.html> (analyzing adoption statistics showing percentage of children placed for adoption decreases dramatically by age: 7.7% for children ages 13-18 vs. 55% for children five years old and younger).

¹⁶ Research has shown that gay and lesbian individuals are more willing to adopt children who have special needs. See Donaldson Adoption Institute, *Expanding Resources for Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care* 5 (2008).

¹⁷ Judgment *4 (summarizing testimony of psychologist David Brodzinsky that "John and James [Doe] would be emotionally devastated if removed from the Petitioner-Roe home. . . . [A] second separation would cause academic regression, separation anxiety, sleep problems, and trust issues.").

As noted above, the detrimental effects of this ban are not limited to children in state custody. The ban also denies children placed privately by their birth parents the opportunity to be adopted by individuals who happen to be gay or lesbian even if they are found to be qualified to adopt as a result of the same kind of individualized assessment that prospective parents of children in state custody undergo. These children lose out on the multiple benefits of a permanent legal relationship with the prospective adoptive parents chosen by their birth parents for no other reason than those individuals' sexual orientation.

II. THERE IS NO SCIENTIFIC BASIS TO CONCLUDE THAT ADOPTION BY GAY AND LESBIAN PARENTS DISADVANTAGES CHILDREN

The Court's findings below are consistent with the resounding consensus among the country's leading pediatric, psychological, psychiatric and child welfare service providers and scholars that children of gay and lesbian parents are as well adjusted and as psychologically, emotionally, educationally, and socially successful as children of heterosexual parents.¹⁸ This consensus stems both from

¹⁸ See, e.g., AAP, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341, 341 (2002); American Psychiatric Association ("APA"), *Adoption and Co-parenting of Children by Same-sex Couples: Position Statement* (2002), at http://www.psych.org/du/other_res/lib_archives/archives/200214.pdf ("APA Position Statement"); American Psychological Ass'n, *Resolution on Sexual Orientation, Parents, and Children* (2004), at <http://www.apa.org/pi/lgbc/policy/parentschildren.pdf> (formalizing conclusion previously reached in *Lesbian and Gay Parenting: A Resource for Psychologists* (1995), at <http://www.apa.org/pi/parent.html>); American Academy of Child and Adolescent Psychiatry, *Policy Statement: Gay, Lesbian, and Bisexual*

the professional experiences of these experts and their review and analysis of the social science research related to the effects of parenting by gay and lesbian individuals on children's development and well-being. This consensus belies the State's assertion that there are "conflicting studies and opinions" among experts in this area, *see* Appellant's Br. 16, and further demonstrates that Florida's prohibition on adoption by gay and lesbian individuals is not rationally related, but directly contrary, to the best interests of adoptive children.

The social science research pertaining to the effects on children of having gay or lesbian parents spans over thirty years and is published in reputable, peer-reviewed journals. This considerable body of research—which relies on well-established scientific methodologies and consists of scores of different studies, including numerous longitudinal studies that examine the circumstances of children and their families at various intervals during their lives—has consistently demonstrated the following key findings:

- Lesbian mothers and gay fathers are as devoted to their children and

Parents (1999), at <http://www.aacap.org/publications/policy/ps46.htm>; CWLA, *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults* (2005), at <http://www.cwla.org/programs/culture/glbtposition.htm> ("CWLA Position Statement") (reaffirming prior opposition to assessing adopting applicants on their sexual orientation, which was incorporated into the 2000 Standards); NASW, *Social Work Speaks: Policy Statements 2000-03*, 194 (2000) ("NASW Policy Statement"); NACAC, *Position Statement on Eliminating Categorical Restrictions in Foster Care and Adoption* (2007), at <http://www.nacac.org/policy/positions.html#eliminating> ("NACAC Position Statement").

perform at least as well as heterosexual parents on every measure of parenting skill.¹⁹

- No adverse relationship exists between parental sexual orientation and a child's cognitive abilities and development.²⁰
- Children of gay and lesbian parents do not experience higher rates of, or more severe, emotional or behavioral problems than children of heterosexual parents.²¹
- Children of gay and lesbian parents are not more likely to experience gender identity confusion or to be gay or lesbian themselves.²²

¹⁹ See, e.g., CWLA Position Statement, *supra* note 18 (“[T]here are no systematic differences between gay or lesbian and non-gay or lesbian parents in emotional health, parenting skills, and attitudes toward parenting.”); NASW Policy Statement, *supra* note 18 (“[It is striking] how similar the groups of gay and lesbian parents and their children are to the heterosexual parents and their children that were included in the studies.”).

²⁰ See, e.g., Stacey & Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159, 172 (2001) (“[A]cross studies, no relationship has been found between parental sexual orientation and measures of children’s cognitive ability.”); Donaldson, *supra* note 16, at 6 (noting that some studies have found that children of lesbian and gay parents fare better on some measures than their peers, including school involvement and ability to discuss sexual development with parents).

²¹ See, e.g., Perrin, *Sexual Orientation in Child and Adolescent Health Care* 118-126 (2002) (review of literature reveals no significant differences in emotional and conduct difficulties between children of gay or lesbian parents and children of heterosexual parents); APA Position Statement, *supra* note 18 (“Numerous studies over the last three decades consistently demonstrate that children raised by gay or lesbian parents exhibit the same level of emotional, cognitive, social, and sexual functioning as children raised by heterosexual parents. This research indicates that the optimal development for children is based not on the sexual orientation of the parents, but on stable attachments to committed and nurturing adults.”).

²² See, e.g., AAP, *Technical Report*, *supra* note 18, (summarizing research showing that gender identity of children raised by lesbian mothers is consistently in line with the child’s biologic sex); Tasker & Golombok, *Do Parents Influence the Sexual Orientation of Their Children?*, 32 Dev. Psychol. 3, 8 (1996) (longitudinal study finding no statistically significant difference in sexual orientation of young adults raised by lesbian parents and those raised by heterosexual parents).

- Children of gay and lesbian parents fare as well on assessments of peer relationship quality and popularity among peers as children of heterosexual parents.²³

In sum, this research demonstrates that lesbian and gay parents can and do provide the same loving and secure parent-child relationships (with attendant benefits) that heterosexual parents provide. In contrast, no reliable peer-reviewed study has found higher rates of emotional or behavioral problems or long-term disadvantages among children being raised by gay or lesbian parents.²⁴

²³ See, e.g., Vanfraussen et al., *What Does It Mean for Youngsters to Grow Up in a Lesbian Family Created by Means of Donor Insemination?*, 20 J. Reprod. & Infant Psychol. 237, 250 (2002) (children of lesbian and heterosexual parent families showed no differences with respect to perceived acceptance by peers).

²⁴ The consistency and longstanding nature of this research disproves the State's current suggestion—and the *Lofton* court's statement in 2004, which was made without the benefit of factual findings—that the social science regarding the quality of gay and lesbian parenting is “in its nascent stages and so far has yielded inconclusive and conflicting results.” See Appellant's Br. 17 (citing and quoting *Lofton v. Sec'y of Dep't of Children & Families*, 358 F.3d 804, 826 (11th Cir. 2004)); see also *Lofton v. Kearney*, 157 F. Supp. 2d 1372, 1383-1384 (S.D. Fla. 2001) (granting summary judgment). On pages 38-39 of its brief, the State cites to three studies, which it erroneously suggests demonstrate that children of gay and lesbian parents do, in fact, exhibit behavioral and other adjustment problems at a higher rate than children of heterosexual parents. One of these is a non-peer-reviewed, unpublished student dissertation, which is at best an outlier to the cumulative body of research and the consensus expert view in this area. Sirota, *Adult Attachment Style Dimensions in Women Who Have Gay or Bisexual Fathers*, Unpublished Dissertation (2009). In the second study, teachers in Australia were asked to identify differences they had observed between a group of children of gay and lesbian parents, almost all of whom had experienced divorce—a known catalyst for poorer outcomes for children—and a group of children of heterosexual parents, almost none of whom had experienced divorce. Sarantakos, *Children in three contexts*, 21 Children Australia 23 (1996). The third study, which the State cites for the proposition that children raised by lesbian parents experience

Based on this research, the leading professional organizations dedicated to children's health and well-being have approved formal policies opposing the categorical exclusion of gay men and lesbian women as adoptive parents.²⁵ These include the Child Welfare League of America, established in 1920, and the National Association of Social Workers, established in 1955—which together consist of over 150,000 members and serve over 700 child welfare groups nationwide—and such venerable medical associations as the American Academy of Pediatrics (60,000 members), the American Psychiatric Association (38,000 members), the American Psychological Association (150,000 members), and the American Academy of Child and Adolescent Psychiatry (7,500 members). Indeed, Amici are unaware of any authoritative child welfare or medical organizations that have taken a contrary view of the research and its policy implications.²⁶

emotional distress related to feelings of homophobia, is a longitudinal study that ultimately concludes that these children have no higher incidence of psychological or developmental problems and are on par with national norms. Gartrell et al., *Interviews with 10-Year-Old Children*, *American Journal of Orthopsychiatry*, 70(4) (Oct. 2005). The fact that the State could find no other or better support for the alleged “harms” experienced by children of gay and lesbian children confirms the absence of any disagreement among mainstream experts in the relevant fields. *See* Donaldson, *supra* note 16, at 9 (quoting a noted sociologist: “there is not a single legitimate scholar who argues that growing up with gay parents is somehow bad for children”).

²⁵ *See, e.g.*, position and policy statements *supra* note 18.

²⁶ Amici are aware that the American College of Pediatricians (“ACP”) filed an amicus brief in support of the State. The ACP was formed in 2002 by a small splinter group of former AAP members who resigned from the AAP after it

In light of this well-established body of research and commentary, no reasonable person—including no reasonable legislator—could come to the conclusion that it is harmful for a child to be adopted by a gay or lesbian adult or couple.²⁷ The State nonetheless proffers several arguments that “sound” in social science in an effort to construct a rational basis for its ban. Close examination of these arguments, however, compels the conclusion that the ban not only fails to serve the State’s compelling interest of promoting the well-being of children, but, in fact, causes irreparable harm to the very children whom the State is obligated to protect.

First, the State argues that the relationships of gay and lesbian couples are less stable than those of heterosexual couples (*see* Appellant’s Br. 34) and that gay

adopted its policy statement on gay parent adoption. *See* ACP, *History of the College*, at <http://www.acpeds.org>. ACP’s brief ignores the decades of research showing that children raised by gay and lesbian parents experience the same outcomes as those raised by heterosexual parents. It instead cites to articles in non-peer reviewed journals and other studies showing that children in single-parent families experience more negative outcomes than children in two-parent families, and then concludes, by unsupported extrapolation, that children raised by gay or lesbian parents will experience similar negative outcomes. *See* ACP Amicus Br., 5-7. The overwhelming consensus of the AAP and other respected and mainstream medical and child welfare authorities negates the positions of this small splinter group.

²⁷ *See* Stacey & Biblarz, *supra* note 20, at 176 (“Because every relevant study to date shows that parental sexual orientation, per se, has no measurable effect on the quality of parent-child relationships or on children’s mental health or social adjustment, there is no evidentiary basis for considering parental sexual orientation in decisions about children’s best interest.”).

men and lesbian women experience higher levels of “distressing conditions” than heterosexuals, such as psychiatric disorders, smoking, alcohol dependency, and illegal drug use, “that could affect children placed in their care” (*id.* at 26). The State cites statistics comparing the overall population of gay men and lesbian women to the overall population of heterosexuals and suggests that the observed differences provide a rational basis for excluding all gay and lesbian individuals from adopting. As the court found, however, disparities in the rates of mental health problems and the dissolution of couples’ relationships exist among many demographic groups. Notably, there is no evidence that children raised by gay and lesbian parents are exposed to household instability or other stressors at higher rates than children raised by heterosexual parents. Moreover, the child welfare system could not function if everyone who is a member of a demographic group with elevated rates of psychiatric disorders or divorce were excluded from adopting. Florida, like all states, therefore mandates case-by-case assessments of all would-be adoptive parents. Accordingly, there is nothing to be gained from a wholesale exclusion of any one category of prospective parents. Instead, the categorical ban needlessly excludes from consideration as adoptive parents thousands of individuals who will never exhibit the risk factors the State fears.

Second, the State erroneously asserts that research has shown that gay and lesbian parents “tolerate and support sexual activity and experimentation that may

be contrary to the best interests of *minor* children.” Appellant’s Br. 31 (emphasis added). In making this argument, the State mischaracterizes the testimony of Dr. Lamb discussing a study that demonstrates the unsurprising fact that individuals raised by gay and lesbian parents may be more likely—*when they grow up*—to act on same-sex attractions, if they have them. Contrary to the State’s claim, Dr. Lamb did not testify that minor children of gay and lesbian parents are more likely to engage in sexual activity than minor children of heterosexual parents.²⁸ There is, in fact, no data indicating that children raised by gay parents are more sexually active or engage in sexual activity at an earlier age than other children.

Third, the State contends that its categorical ban serves children’s best interests by sparing them the social stigmatization and teasing sometimes meted out to children of gay or lesbian parents. *See* Appellant’s Br. 38. Yet, there is no evidence to support the proposition that children raised by gay parents are teased more than those raised by heterosexual parents²⁹ or that they are disproportionately affected by teasing.³⁰ Moreover, teasing is a part of growing up; few children are

²⁸ Compare Appellant’s Br. 31-32 with Lamb Testimony, Trial Court Transcript 521-526.

²⁹ *See, e.g.,* Vanfraussen et al., *supra* note 23, at 237 (finding that children raised by gay and lesbian parents are not more likely to be teased than children raised by heterosexual parents, although any teasing, not surprisingly, is more likely to be related to child’s family structure).

³⁰ *See, e.g.,* Wald, *Adults’ Sexual Orientation & State Determinations Regarding Placement of Children*, 40 Fam. L.Q. 381, 399 (2006) (summarizing research and

spared some form of teasing—whether related to race, ethnicity, religion, appearance, or a host of other characteristics. Thus, it strains credulity to suggest that the Legislature enacted the blanket exclusion in order to shield a child from the potential stigma or teasing associated with having a gay or lesbian parent.³¹

In sum, there is no rational basis for Florida's categorical prohibition on adoption by gay and lesbian individuals. In continuing to exclude gay men and lesbian women as adoptive parents, Florida drastically departs, without justification, from its own legislatively-mandated permanency goals and individualized assessments designed to best match the needs of individual children with suitable adoptive parents. Moreover, Florida's statute is at odds with the resounding consensus of child welfare and social science experts that the categorical exclusion of gay and lesbian parents serves no child welfare purpose. The exclusion harms Florida's most vulnerable children by needlessly removing thousands of willing and capable gay and lesbian adults from the potential adoptive

noting that it does not find that the stigma experienced by some children of gay parents "has a significant harmful impact on the children's mental health. No study has found evidence of higher rates of emotional problems among children living with gay parents.").

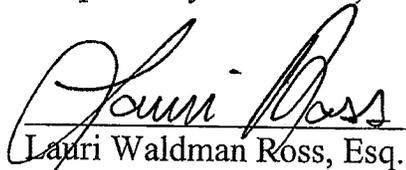
³¹ Notably, in *Jacoby v. Jacoby*, 763 So. 2d 410 (Fl. 2d. DCA 2000), the District Court of Appeal of Florida, Second District, held that private biases against a parent's sexual orientation and the stigma that might flow therefrom are inappropriate considerations in child placement determinations. *See id.* at 413 (citing *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984)).

parent pool, prolonging the amount of time children spend in foster care or other non-permanent placements, and denying some children the opportunity of ever being placed in permanent adoptive families. The more closely the consequences of the categorical exclusion and the State's proffered justifications for it are examined, the clearer it is that the exclusion bears no rational relationship to the State's articulated commitment to serving the needs and promoting the best interests of its children. In fact, the exclusion undermines the State's goals and works directly contrary to children's needs and interests. Amici respectfully urge the court to safeguard the best interests of Florida's adoptive children by upholding the trial court's decision.

CONCLUSION

Amici respectfully request that this Court affirm the order of the trial court under review.

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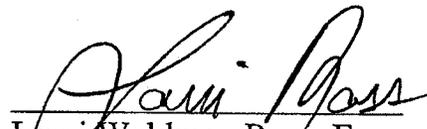
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I HEREBY CERTIFY that this brief is submitted in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a), Florida Rules of Appellate Procedure.

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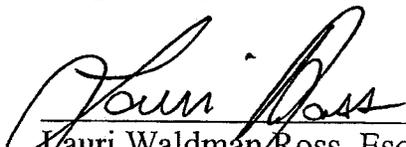
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