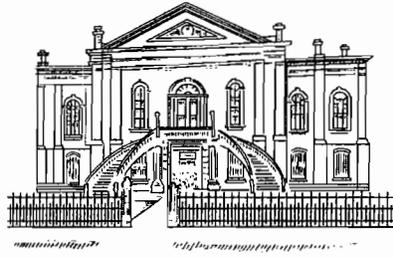


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**STATE OF ILLINOIS  
APPELLATE COURT  
FIFTH DISTRICT  
14TH & MAIN STREETS  
P.O. Box 867  
MT. VERNON, IL 62864-0018**

March 1, 2011

Michael L. Brody  
Winston & Strawn  
35 West Wacker Drive  
Chicago, IL 60601

Re: *In the Matter of T.P.S., a Minor (People v. Catherine D.W.)*  
Gen. No. 5-10-0617

Dear Counsel:

Enclosed herewith please find a copy of the Order entered today in the above cause.

Please be further advised nine copies of the Amicus Curiae briefs, with Notice of Filing, Certificate of Service and Certificate of Compliance, were filed instanter today in the above cause.

Yours very truly,

A handwritten signature in black ink, appearing to read 'John J. Flood'. The signature is stylized and fluid, with a large loop at the end.

John J. Flood, Clerk

JJF/dsk

Enc.

cc: Michelle M. Schafer  
John Knight  
David B. Goroff  
Teresa Machicao-Hopkins



Prepared by:  
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## STATEMENT OF INTEREST

The National Association of Social Workers (NASW or *amicus*) is the largest organization of professional social workers in the world, with 145,000 members and 56 chapters. The NASW, Illinois Chapter has 6,640 members. Created in 1955 by the merger of seven predecessor social work organizations, the NASW has as its purpose to develop and disseminate high standards of practice while strengthening and unifying the social work profession as a whole. In furtherance of its purpose, the Association promulgates professional standards and the *NASW Code of Ethics*, supports and publishes research, provides continuing education and advocates for sound policies relating to its membership's core capabilities, responsibilities and mission. NASW and its members are in particular committed to improving the lives of the most vulnerable members of the family unit, the children. In this case, NASW offers empirical research to demonstrate that children are likely to be significantly harmed when a parenting relationship is terminated without consideration of the child's best interests. This evidence demonstrates that harm to the child can arise regardless of the presence or absence of biological ties between the child and the terminated parenting figure, and irrespective of whether the terminated parenting relationship was initially established in a same sex, heterosexual, or single parent family unit. NASW urges this Court to hold that a legal guardian must be heard before her guardianship can be terminated, as such a rule allows the court to make a fully informed decision regarding the best interests of the child.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

As understood by NASW, Catherine D.W. is arguing that Illinois law requires that a court consider the best interests of a minor child before terminating a legal guardianship of the child, both because such a termination is permissible only where there is a material change in circumstance – which necessarily implicates the best interests of the child – and because such a change should only be effected where, on balance, the best interest of the child warrants it. Correlatively, NASW understands

Catherine D.W. to be arguing that a joint guardian who has played a primary parenting role in the life of a child but is not biologically related to the child should be granted standing to be heard on the question of whether termination of her guardianship is in the child's best interests.

The rule advocated by Catherine D.W. places the child's interests at center stage when a court terminates a legally recognized parenting relationship – whatever its biological, familial, or legal origins. The propriety of such a focus on the best interests of the child is supported by a large body of research that demonstrates the importance of attachment relationships between a child and the people who fill the parenting role for that child. These relationships are profoundly important to the child's development, including the child's emotional and cognitive growth. Consequently, any rule of law which allows such relationships to be terminated without consideration of the child's best interests, or without hearing from the parenting figures, necessarily puts the child at risk of potentially severe and long term emotional, social and cognitive injury.

Such a rule needs to be applicable to any legal proceeding directed at terminating any legally recognized parenting relationship. That is because these relationships can develop between the child and any parental figure, regardless of whether there is a biological link between the two. Emotionally and psychologically significant parent-child relationships grow out of the parent-child interaction itself. Once such bonds are created, breaking them can have a crushing impact on a child's healthy development. Effects can range from anxiety to excessive eating to a state of insecure attachment.

In light of this research, the child is generally best served by maintaining relationships with both parenting figures, and a parenting relationship should not legally be terminated, therefore, unless the child's best interests support that decision.

## **ARGUMENT**

The trial court's decision in this case terminated an indisputably legal joint guardianship between two children and the partner of the biological mother of the

children. It is not contested that the terminated guardian was a parenting figure to both of the children. The only evidence adduced below to suggest that the termination was in the best interests of the children was a single conclusory sentence in the biological mother's motion to terminate asserting that this was the case. Countering that conclusory assertion was an extensive proffer tending to show that the children were deeply attached to the terminated guardian. The circuit court refused to consider the proffered evidence because it refused to grant standing to the terminated guardian.

As *amicus* understands the record, the rule of law advocated by Catherine D.W. is that a guardianship of a minor child may not be terminated without demonstrating that: (1) circumstances have changed, and (2) the termination is in the best interests of the child. *Amicus* further understands Catherine D.W. to be advocating that consideration of these issues necessarily requires that the terminated guardian be given standing to be heard on the termination issue.

As a preliminary matter, *amicus* notes that all of these issues revolve around the principle that the best interests of a child should be consulted before terminating a parental relationship between that child and its guardian. Thus, where a guardianship is established because it is in the best interests of the child, the only material change of circumstance is a change that implicates the child's best interests and the guardianship should be terminated only where the child's best interests are served by doing so. Most crucially, a rule which fails to allow a legally recognized parenting figure to be heard on the question of termination silences a centrally-interested voice, making it impossible for the court in an adversarial system to make a sound decision regarding the child's interests.

At the empirical root of a rule which focuses on the child's best interests in guardian termination proceedings is a substantial body of well structured and documented studies demonstrating the significance of a parenting relationship to a child, regardless of whether the parenting relationship has a biological antecedent. Emotionally supportive

parent-child relationships that do not have biological roots are ubiquitous. Happy and well-adjusted families created by adoption, remarriage, foster care, and other family configurations are to be found in every community in this country. Such families thrive notwithstanding the absence of a biological connection between the children and one or more of the adults who fill the parental role. Guardianship is one means of establishing the legal recognition of family ties, and the circuit court erred in terminating this guardianship without investigating the impact of that decision on the children involved. Below, we discuss the extensive empirical literature supporting this conclusion.

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

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

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

Byrne et al., *Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments*, 46 *J. Child Psychol. & Psychiatry* 115, 118 (2005).

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

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

The circuit court denied standing to Catherine D.W., and declined to consider the tendered evidence of her parental bond with the minor children, apparently because it believed that the biological mother's interests trumped the legal guardian's interests and because the legal guardian had acted as parent in the context of a same-sex partnership. In so doing, the circuit court was acting contrary to the extensive literature on parent-child attachment, which has found that the nature and quality of the parent-child interaction itself, not a biological link, fosters attachment relationships.

Attachment bonds develop regardless of whether a parent and child are linked by biology or law. See Joseph Goldstein et al., *Beyond the Best Interests of the Child* 27 (2d ed. 1979). Children develop these bonds with adults who "on a continuing, day-to-day

basis, through interaction, companionship, interplay, and mutuality, fulfill[] the child's psychological needs for a parent, as well as the child's physical needs." *Id.* at 98. For example, preliminary studies of families who had used assisted reproduction methods found no evidence to indicate that "the missing genetic link" between parent and child had affected the father-child relationship in young children. Anne Brewaeys, *Review: Parent-Child Relationships and Child Development in Donor Insemination Families*, 7 *Hum. Reprod. Update* 38, 44 (2001). Another study found that children adopted by lesbian couples "developed bonds of attachment to both adoptive mothers and showed preference for the parents over other caregivers." Susanne Bennett, *Is There a Primary Mom? Parental Perceptions of Attachment Bond Hierarchies Within Lesbian Adoptive Families*, 20 *Child & Adolescent Soc. Work J.* 159, 166 (2003). *See also* Raymond W. Chan et al., *Psychosocial Adjustment Among Children Conceived via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 *Child Dev.* 443, 454 (1998) ("[O]ur results are consistent with the general hypothesis that children's well-being is more a function of parenting and relationship processes within the family [than] household composition or demographic factors.").

Children are equally likely to form close bonds with gay and lesbian parents as with heterosexual parents, despite the lack of a biological link. Parental sexual orientation does not affect the quality of parent-child relationships. *Am. Acad. of Pediatrics, Family Pediatrics: Report of the Task Force on the Family*, 111 *Pediatrics* 1541, 1550 (2003). Relationships and processes *within* the family, not family type, generate a demonstrable impact on children's peer relations and general child development. Jennifer L. Wainright & Charlotte J. Patterson, *Peer Relations Among Adolescents with Female Same-Sex Parents*, 44 *Developmental Psychol.* 117, 124 (2008) (adolescent peer relations); *Am. Acad. of Pediatrics, Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 *Pediatrics* 341, 341 (2002) (optimal development). *See also* A. Brewaeys et al., *Donor Insemination: Child Development and*

*Family Functioning in Lesbian Mother Families*, 12 Hum. Reprod. 1349, 1358 (1997) (finding that the non-biological mother in lesbian families “was regarded by the child as just as much a ‘parent’ as the father in the heterosexual families”).

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

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

Given the centrality of a healthy attachment relationship, it is only to be expected that disruption of such a relationship will injure the child involved, and this is again confirmed by the empirical research. When a child’s relationship with an attachment figure is terminated, the impact can be “devastating.” William F. Hodges, *Interventions of Children of Divorce: Custody, Access, and Psychotherapy* 8-9 (2d ed. 1991). Children

predictably experience a period of denial, followed by periods of protest, despair and detachment. Rayford W. Thweatt, *Divorce: Crisis Intervention Guided by Attachment Theory*, 34 *Am. J. Psychotherapy* 240, 241 (1980). Children may also “conclude that a parent’s absence is due to their own unlovability. Thus, abandonment by a noncustodial parent is a particularly devastating experience.” Hodges, *supra*, at 8-9.

Severing an attachment has both short- and long-term consequences. It can lead to anxiety, aggression, academic problems, and elevated psychopathology. Ana H. Marty et al., *Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver*, 175 *Early Childhood Dev. & Care* 271, 274 (2005); *see also* Byrne, *supra*, at 118. Severing an attachment can also lead to “hiding or hoarding food, excessive eating or drinking, rumination, self-stimulating and repetitive behavior, and sleep disturbance.” Mark Simms et al., *Health Care Needs of Children in the Foster Care System*, 106 *Pediatrics* 909, 912 (2000). In addition to these short-term behavioral effects, severing a strong attachment bond can leave the child as “[a]n insecurely attached person [who] will anticipate rejection, unpredictability, or even cruelty . . . [e]ven when reality does not indicate these outcomes.” James X. Bembry & Carolyn Ericson, *Therapeutic Termination with the Early Adolescent Who Has Experienced Multiple Losses*, 16 *Child & Adolescent Soc. Work J.* 177, 182-83 (1999); *see also* Frank J. Dyer, *Termination of Parental Rights in Light of Attachment Theory: The Case of Kaylee*, 10 *Psychol. Pub. Pol’y & L.* 5, 11 (2004) (stating that numerous empirical findings “provide a solid research basis for predictions of long term harm associated with disrupted attachment [relationships]”); Joan B. Kelly & Michael E. Lamb, *Using Child Development Research to Make Appropriate Custody & Access Decisions for Young Children*, 38 *Fam. & Conciliation Cts. Rev.* 297, 303 (2000) (explaining that “there is a substantial literature documenting the adverse effects of disrupted parent-child relationships on children’s development and adjustment”).

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

Importantly, the harm that results when a child is separated from a parent does not depend on a biological link between the parent and child, or on the parent’s sexual orientation. Yvon Gauthier et al., *Clinical Application of Attachment Theory in Permanency Planning for Children in Foster Care: The Importance of Continuity of Care*, 25 *Infant Mental Health J.* 379, 394 (2004) (explaining that children suffer greatly when separated from non-biological parent figures); Fiona L. Tasker & Susan Golombok, *Growing Up in a Lesbian Family: Effects on Child Development* 12 (1997) (finding that cessation of the parent-child bond between a child and a lesbian psychological parent “can cause [the child] extreme distress”).

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

The obvious way to avoid injury arising from termination of a healthy parent-child bond is to avoid disrupting it in the first place.

Because the parent-child bond is so crucial to a child’s welfare, children benefit from stable, continued interaction with both parents. *See* Denise Donnelly & David Finkelhor, *Does Equality in Custody Arrangement Improve Parent-Child Relationship?*, 54 *J. Marriage & Fam.* 837, 838 (1992) (“Children who maintain contact with both parents tend to be better adjusted.”). Participation in everyday activities promotes trust and strengthens the attachment relationship between parent and child. *See* Michael E.

Lamb, *Placing Children's Interests First: Developmentally Appropriate Parenting Plans*, 10 Va. J. Soc. Pol'y & L. 98, 103, 113-14 (2002).

This continued interaction is just as critical for the children of same-sex couples as it is for children of heterosexual couples. Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 Child Dev. 1025, 1037 (1992) (concluding that, when same-sex parents who have jointly raised a child since birth separate, "it is reasonable to expect that the best interests of the child will be served by preserving the continuity and stability of the child's relationship with both parents"). Additionally, the benefits of continued interaction with the attachment figure are not counterbalanced by any adverse effects; repeated studies have shown that sexual orientation of parents is not related to a child's adjustment. *See, e.g.*, Wainright & Patterson, *supra*, at 124 (finding no significant differences in adolescent peer relations as a function of family type); Bos et al., *supra*, at 45 (finding that "children in planned lesbian-parent families do not differ in well-being or child adjustment compared with their counterparts in heterosexual-parent families").

In light of these considerations, the American Psychoanalytic Association and the American Academy of Pediatrics, as well as *amicus*, all believe that children of gay and lesbian parents should have the same permanent parental relationships as children of heterosexual parents. *See* Nat'l Ass'n of Soc. Workers, "Policy Statement: Lesbian, Gay, and Bisexual Issues" in *Social Work Speaks* (8th ed. 2009), 218, 220-221; Am. Psychoanalytic Ass'n, *Position Statement on Gay and Lesbian Parenting*, (May 16, 2002), <http://www.apsa.org/aboutapsaa/positionstatements/gayand%20lesbianparenting/tabid/471/Default.aspx>; Comm. on Psychosocial Aspects of Child and Family Health, Am. Acad. of Pediatrics, *Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 Pediatrics 339 (2002).

In short, examining the best interests of the child before terminating a guardianship is an important step toward fostering this permanence and giving a child a chance to grow up emotionally healthy and strong.

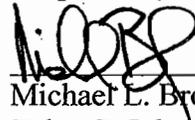
**CONCLUSION**

For all of the foregoing reasons, *Amicus* the National Association of Social Workers prays that this court reverse the ruling of the circuit court and grant the relief prayed for by Appellant.

Dated: February 14, 2011

Respectfully submitted,

By:



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## CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 11 pages.

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**NOTICE OF FILING AND CERTIFICATE OF SERVICE**

I, Michael L. Brody, an attorney, hereby certify that on February 14, 2011, I caused to be filed with the Clerk of the Fifth District Appellate Court the foregoing BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF SOCIAL WORKERS. I further certify that I caused three copies of the foregoing Brief of *Amicus Curiae* to be mailed to the following attorneys at the following addresses, via United States mail, postage prepaid, on February 14, 2011.

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Dated: February 14, 2011



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