

**IN THE
COURT OF APPEALS OF MARYLAND**

SEPTEMBER TERM, 2006

NO. 122

Filed

**JANICE M.
Petitioner/Cross-Respondent**

APR 1 2 2007

Alexander L. Cummings, Clerk
Court of Appeals

vs.

**MARGARET K.
Respondent/Cross-Petitioner**

**ON APPEAL FROM THE CIRCUIT COURT
FOR BALTIMORE COUNTY
(THE HONORABLE MICHAEL J. FINIFTER PRESIDING)**

**BRIEF OF AMICI CURIAE NATIONAL ASSOCIATION OF SOCIAL
WORKERS, NATIONAL ASSOCIATION OF SOCIAL WORKERS,
MARYLAND CHAPTER**

LATHAM & WATKINS LLP
Clara M. Martone-Boyce
Robyn L. Ginsberg
Kendall C. Burman
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004-1304
(202) 637-2200

Barbara Bennett Woodhouse
Center on Children and Families
Fredric G. Levin College of Law
PO Box 117625
University of Florida
Gainesville, FL 32611-7625
(352) 273-0969

Counsel for Amici

TABLE OF CONTENTS

TABLE OF CONTENTS	i
INTEREST OF AMICI CURIAE AND INTRODUCTION	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT	4
I. THE <i>DE FACTO</i> PARENT DOCTRINE IS CRITICAL TO PROTECT THE BEST INTEREST OF CHILDREN	4
II. SOCIAL SCIENCE RESEARCH CONFIRMS THAT, IN APPROPRIATE CASES, THE ATTACHMENT RELATIONSHIP BETWEEN CHILDREN AND THEIR NON-BIOLOGICAL, NON-ADOPTIVE GAY & LESBIAN PARENTS SHOULD BE PROTECTED AND MAINTAINED	7
A. The Formation Of Parent-Child Attachments Is Critical To A Child’s Healthy Development.....	8
B. Attachment Relationships Develop Despite The Absence Of A Biological Or Legal Connection Between The Parent And Child.....	10
C. Sexual Orientation Is Irrelevant To The Development Of Strong Attachment Bonds	12
D. Children Experience Severe Emotional And Psychological Harm When Their Attachment Relationships Are Severed	15
E. A Child’s Health And Well-Being Is Best Served By Nurturing And Maintaining Parent-Child Attachments.....	19
CONCLUSION	23

TABLE OF AUTHORITIES

CASES

<u>In re Custody of H.S.H-K,</u> 533 N.W.2d 419 (Wis. 1995)	5
<u>In re E.L.M.C.,</u> 100 P.3d 546 (Colo. Ct. App. 2004)	7
<u>Gestl v. Frederick,</u> 133 Md. App. 216 (2000).....	6
<u>Karen P. v. Christopher J.B.,</u> 163 Md. App. 250 (2005), <u>cert. denied</u> , <u>Pope v. Brush</u> , 390 Md. 501 (2006).....	6
<u>Lipiano v. Lipiano,</u> 89 Md. App. 571 (1991).....	6
<u>McDermott v. Dougherty,</u> 385 Md. 320 (2005).....	5, 6
<u>Monroe v. Monroe,</u> 329 Md. 758 (1993).....	6
<u>Rideout v. Riendeau,</u> 761 A.2d 291 (Me. 2000).....	7
<u>S.F. v. M.D.,</u> 132 Md. App. 99 (2000).....	5, 6
<u>Troxel v. Granville,</u> 530 U.S. 57 (2000)	6
<u>V.C. v. M.J.B.,</u> 748 A.2d 539 (N.J. 2000).....	5, 7

OTHER AUTHORITY

- The American Academy of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care, Developmental Issues For Young Children in Foster Care 106 Pediatrics 1145 (2000) 9, 15
- The American Academy of Pediatrics, Family Pediatrics: Report of the Task Force on the Family 111 Pediatrics 1541 (2003) 12
- The American Academy of Pediatrics, Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents 109 Pediatrics 341 (2002)..... 11
- American Psychoanalytic Association, Position Statement on Gay and Lesbian Parenting (May 16, 2002) available at [http://www.apsa.org/ ABOUTAPSAA/ POSITIONSTATEMENTS/ GAYANDLESBIANPARENTING/tabid/471/Default.aspx](http://www.apsa.org/ABOUTAPSAA/POSITIONSTATEMENTS/GAYANDLESBIANPARENTING/tabid/471/Default.aspx) 22
- James X. Bembry & Carolyn Ericson, Therapeutic Termination with the Early Adolescent Who Has Experienced Multiple Losses, 16 Child & Adolescent Social Work J. 177, 182-83 (1999) 17
- Susanne Bennett, Is There a Primary Mom? Parental Perceptions of Attachment Bond Hierarchies Within Lesbian Adoptive Families, 20 Child & Adolescent Soc. Work J. 159, 161 (2003) 11, 12, 13
- John Bowlby, Attachment (2d ed. 1982)..... 8
- John Bowlby, Attachment and Loss: Retrospect and Prospect, 52 Am. J. Orthopsychiatry 664 (1982) 15
- A. Brewaeys, et al., Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families, 12 Human Reproduction 1349 (1997) 13, 14, 15
- James G. Byrne et al., Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments, 46 J. of Child Psychol. & Psychiatry 115 (2005) 9, 17

Raymond W. Chan et al., <u>Psychosocial Adjustment Among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers</u> , 69 Child Dev. 443, 454 (1998)	11
Denise Donnelly & David Finkelhor, <u>Does Equality in Custody Arrangement Improve Parent-Child Relationship?</u> , 54 J. Marriage & the Fam. 837, 838 (1992)	20
Frank J. Dyer, <u>Termination of Parental Rights in Light of Attachment Theory: The Case of Kaylee</u> , 10 Psychol. Pub. Pol'y & L. 5, 11 (2004).....	15
David K. Flaks et al., <u>Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children</u> , 31 Developmental Psychol. 105 (1995).....	14
Joseph Goldstein, et al., <u>Beyond the Best Interests of the Child</u> 27 (2d ed. 1979).....	10, 15, 17
S. Golombok et al., <u>The European Study of Assisted Reproduction Families: Family Functioning and Child Development</u> 11 Human Reproduction 2324, 2330 (1996)	14
G. Dorsey Green & Frederick W. Bozett, <u>Lesbian Mothers and Gay Fathers, in Homosexuality: Research Applications for Public Policy</u> 197 (John C. Gonsiorek & James D. Weinrichs eds., 1991)	14
E. Mavis Hetherington et al., <u>What Matters? What Does Not? Five Perspectives on the Association Between Marital Transitions and Children's Adjustment</u> , 53 Am. Psychol. 167, 177 (1998)	18
William Hodges, <u>Interventions of Children of Divorce: Custody, Access, and Psychotherapy</u> 8-9 (2d. ed. 1991)	16
Mellisa Holtzman, <u>Definitions of the Family as an Impetus for Legal Change in Custody Decision Making: Suggestions from an Empirical Case Study</u> , 31 Law & Social Inquiry 1, 2-3 (2006)	19
Beverly James, <u>Handbook for Treatment of Attachment-Trauma Problems in Children</u> , 1-3 (1994).....	8

Joan B. Kelly & Michael E. Lamb, <u>Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children</u> , 38 Family & Conciliation Courts Rev. 297 (2000)	16, 20
Martha Kirkpatrick et al, <u>Lesbian Mothers and Their Children: A Comparative Study</u> , 51 Am. J. Orthopsychiatry 545, 547-51 (1981).....	19
Melvin Konner, <u>Childhood</u> 84-87 (1991)	8
Michael E. Lamb, <u>Placing Children's Interests First: Developmentally Appropriate Parenting Plans</u> , 10 Va. J. of Social Pol'y & the Law 98 (2002).....	20, 21
Ana H. Marty, et al., <u>Supporting Secure Parent-Child Attachments: The Role of the Non-parental Caregiver</u> , 175 Early Childhood Dev. and Care 271 (2005)	11, 15, 17
Barbara M. McCandlish, <u>Against All Odds: Lesbian Mother Family Dynamics</u> , in <u>Gay and Lesbian Parents</u> 23 (Frederick W. Bozett ed., 1987).....	13
Nat'l Association of Social Workers, <u>Policy Statement: Lesbian, Gay, and Bisexual Issues</u> , in <u>Social World Speaks</u> 245 (2006).....	22
Nat'l Research Council & Inst. of Medicine, <u>From Neurons to Neighborhoods: The Science of Early Childhood Development</u> 226 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000)	8, 9, 10, 15, 17
Charlotte J. Patterson, <u>Children of Lesbian and Gay Parents</u> , 63Child Develop. 1025 (1992)	20
Ellen C. Perrin, M.D. & the Committee on Psychosocial Aspects of Child and Family Health, American Academy of Pediatrics, <u>Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents</u> 109 Pediatrics 339 (February 2002) <u>available at http://www.aap.org/policy/020008.html</u>	21
J. Seglow et al., <u>Growing Up Adopted: A Long-term National Study of Adopted Children and Their Families</u> (1972).....	10
Daniel J. Siegel, <u>The Developing Mind: Toward a Neurobiology of Interpersonal Experience</u> 67-120 (1999).....	9

Mark Simms, et al., <u>Health Care Needs of Children in the Foster Care System</u> , 106 Pediatrics 909 (2000)	17
Leslie M. Singer et al., <u>Mother-Infant Attachment in Adoptive Families</u> , 56 Child Dev. 1543 (1985).....	10
Fiona L. Tasker & Susan Golombok, <u>Growing Up in a Lesbian Family: Effects on Child Development</u> 12 (1997).....	18, 19
Deborah Tharinger and Greg Wells, <u>An Attachment Perspective on the Developmental Challenges of Gay and Lesbian Adolescents: The Need for Continuity of Caregiving from Family and Schools</u> , 29 School Psychol. Rev. 158, 164 (2000)	9
Rayford W. Thweatt, <u>Divorce: Crisis Intervention Guided By Attachment Theory</u> , 34 Am. J. of Psychotherapy 240, 241 (1980).....	16
United Nations General Assembly, Resolution 44/25, November 20, 1989, Article 9, ¶ 3, Convention on the Rights of the Child.....	20
Judith S. Wallerstein & Sandra Blakeslee, <u>Second Chances: Men, Women and Children a Decade After Divorce</u> (1989)	18
Judith Wallerstein & Joan B. Kelly, <u>Surviving the Breakup: How Children and Parents Cope with Divorce</u> , 307 (1980).....	18
Yvon Gauthier et al., <u>Clinical Application of Attachment Theory in Permanency Planning for Children in Foster Care: The Importance of Continuity of Care</u> , 25 Infant Mental Health J. 379, 394 (2004).....	18

**IN THE
COURT OF APPEALS OF MARYLAND**

SEPTEMBER TERM, 2006

NO. 122

**JANICE M.
Petitioner/Cross-Respondent**

vs.

**MARGARET K.
Respondent/Cross-Petitioner**

**ON APPEAL FROM THE CIRCUIT COURT
FOR BALTIMORE COUNTY
(THE HONORABLE MICHAEL J. FINIFTER PRESIDING)**

**BRIEF OF AMICI CURIAE NATIONAL ASSOCIATION OF SOCIAL
WORKERS, NATIONAL ASSOCIATION OF SOCIAL WORKERS,
MARYLAND CHAPTER**

INTEREST OF AMICI CURIAE¹ AND INTRODUCTION

The National Association of Social Workers (“NASW”) was founded in 1955 as a non-profit professional association dedicated to the practice and interests of the social work profession. It is the largest membership organization of social

¹ *Amici* accept and adopt the Statement of the Case, Statement of Questions Presented, and Statement of Facts as set forth in the brief of Respondent/Cross-Petitioner.

workers in the world, with nearly 150,000 members and 56 chapters throughout the United States and abroad. The NASW, Maryland Chapter has 4,087 members. NASW seeks to develop and disseminate high standards of social work practice, while strengthening and unifying the profession as a whole by establishing and maintaining professional standards of practice, promulgating sound social policies, and providing services that protect its members and enhance their professional status. In addition to these services, NASW supports and publishes social science research on topics significant to the social work profession, provides continuing education and professional conferences for its members, and enforces its Code of Ethics.

NASW also develops and adopts policy statements to encourage the development of organizational responses to various social issues. These statements address such diverse and significant matters as end of life care, youth suicide, and disasters. In 1977, NASW adopted its policy on gay, lesbian, and bisexual issues and subsequently revised and expanded that policy in 1987, 1993, 1996 and 2005. NASW is committed by its policy, as well as its Code of Ethics, to advancing policies and practices that will improve the lives of all children, including those raised in same-sex parent families. For these reasons, NASW submits this brief in support of the best interest of the child, Maya, and all similarly situated children in the State of Maryland. *Amici* contend that the social science research, spanning

over two decades, regarding parenting by lesbian and gay couples, and specifically the parent-child bonds formed by non-biological and non-legal parents in same-sex parenting couples, demonstrates that lesbian and gay *de facto* parents should be granted full parental rights and responsibilities in appropriate cases.

SUMMARY OF ARGUMENT

A large number of children are currently being raised by gay and lesbian same-sex couples. Many of these gay and lesbian parents lack a biological or a legal connection to their children, but nevertheless function on every level as genuine parents to their children. Maryland law recognizes that persons who have established true, fully-developed parent-child relationships, with the support and encouragement of the legal parent,² are *de facto* parents. The law establishes that *de facto* parents may seek and be granted custody or visitation with the child when it is in the child's best interest.

More than two decades of peer-reviewed social science research firmly demonstrates the following principles: (1) children form significant bonds of attachment to parent figures early in life and these attachment bonds are central to the well-being and development of the child; (2) strong parent-child attachments develop despite the absence of a legal or biological connection between parent and child; (3) when both same-sex parents participate in the child's upbringing, the

² The term "legal" parent includes biological and adoptive parents.

non-biological, non-adoptive parent functions fully as a parent and the child will perceive both individuals as true parents; and (4) when a child's attachment relationship with a parent is severed, the emotional and psychological harm to the child can be significant, and this is so regardless of the parent's sexual orientation and the absence of a biological or legal tie to the child. These empirical findings conclusively establish that the existence of a biological or legal link is not a significant factor in determining the strength, significance, or integrity of the parent-child relationship. Therefore, gay and lesbian *de facto* parents must be allowed to demonstrate that full parental rights in their favor would meet the best interest of the child.

ARGUMENT

I. THE *DE FACTO* PARENT DOCTRINE IS CRITICAL TO PROTECT THE BEST INTEREST OF CHILDREN

Maryland courts recognize that parent-child relationships are critical to children's development and well-being, and that these relationships should therefore be protected. For this reason, Maryland's Court of Special Appeals has held that persons who establish a genuine, fully-developed parent-child relationship with a child, with the consent and encouragement of the legal parent: (1) are *de facto* parents; and (2) may seek and be granted custody or visitation with the child, despite the absence of any legal status as a parent by blood or adoption, if determined to be in the child's best interest. *Amici* contend that the Court of

Appeals should continue to recognize a *de facto* parent's rights to visitation and custody.

Maryland courts have adopted a four-part test to determine whether a person qualifies as a *de facto* (or "psychological") parent: (1) the legal parent must consent to and foster the relationship between the third party and the child; (2) the third party must have lived with the child; (3) the third party must perform parental functions for the child to a significant degree; and (4) most importantly, a parent-child bond must be forged. See S.F. v. M.D., 132 Md. App. 99, 111 (2000) (citing In re Custody of H.S.H-K, 533 N.W.2d 419 (Wis. 1995)); see also V.C. v. M.J.B., 748 A.2d 539 (N.J. 2000). This test is narrowly construed and difficult to meet: one cannot be deemed a *de facto* parent unless the court finds as a fact that the legal parent consented to and fostered the parent-child relationship. See McDermott v. Dougherty, 385 Md. 320, 356 (2005) (distinguishing between "pure third-party cases" and cases involving "third parties who have, in effect, become parents," *i.e.*, *de facto* parents, and narrowly limiting its holding to cases involving "pure third parties").

In Maryland, *de facto* parents are legally entitled to visitation with their non-biological, non-adoptive children when visitation is determined to be in the best interest of the child. See S.F., 132 Md. App. at 111-12. An individual who is found to be a *de facto* parent is not required to show unfitness of the legal parent or

exceptional circumstances to be awarded visitation. Id. at 112. Rather, the court can, and should, grant visitation to a *de facto* parent over the objections of a legal parent if visitation with the non-custodial parent is determined to be in the best interest of the child.³ Id. This right extends to lesbian and gay *de facto* parents. S.F., 132 Md. App. 99; see also Gestl v. Frederick, 133 Md. App. 216 (2000).

Moreover, *de facto* parents should be granted standing to seek custody of their child where the legal parent is unfit *or* exceptional circumstances are found to exist. See Monroe v. Monroe, 329 Md. 758 (1993); Karen P. v. Christopher J.B., 163 Md. App. 250 (2005), cert. denied, Pope v. Brush, 390 Md. 501 (2006).

Exceptional circumstances can be found to exist when an adult who is not a legal parent has formed a genuine, fully-developed parent-child relationship with a child, which the legal parent has consented to and encouraged. Monroe, 329 Md. at 775-76; Gestl, 133 Md. App. at 239; Karen P., 163 Md. App. at 274. In such cases, the *de facto* parent has standing to seek custody and may be awarded custody if it is in the best interest of the child. See Monroe, 329 Md. at 775-76; Gestl, 133 Md. App. at 239; Karen P., 163 M.d. App. at 274; Lipiano v. Lipiano, 89 Md. App. 571 (1991).

³ *Amici* accept and adopt Respondent/Cross-Petitioner's argument, as set forth in her brief, that neither the United States Supreme Court's decision in Troxel v. Granville, 530 U.S. 57 (2000), nor the Court of Appeals' decision in McDermott, 385 Md. 320 (2005), modifies S.F.'s holding regarding the appropriate standard to apply in determining whether a *de facto* parent should be granted visitation rights.

In light of the emotional and developmental harm that can result when a relationship between a parent and child is severed, it is critical that the State of Maryland recognize the standing of Margaret K. and other *de facto* parents to petition for custody of their children, so that the best interest of the child can be appropriately considered. See V.C., 748 A.2d at 550 (“At the heart of the psychological parent cases is a recognition that children have a strong interest in maintaining the ties that connect them to adults who love and provide for them.”); In re E.L.M.C., 100 P.3d 546, 561 (Colo. Ct. App. 2004) (holding it is in the best interest of the child to protect the child from the “emotional harm...intrinsic in the termination or significant curtailment of the child’s relationship with a psychological parent”); see also Rideout v. Riendeau, 761 A.2d 291, 301 (Me. 2000).

II. SOCIAL SCIENCE RESEARCH CONFIRMS THAT, IN APPROPRIATE CASES, THE ATTACHMENT RELATIONSHIP BETWEEN CHILDREN AND THEIR NON-BIOLOGICAL, NON-ADOPTIVE GAY & LESBIAN PARENTS SHOULD BE PROTECTED AND MAINTAINED

Finding that Respondent/Cross-Petitioner has standing to seek custody or visitation comports not only with Maryland case law, but also with more than two decades of social science research that has been conducted pursuant to the scientific method and has generally been subject to critical review by outside experts (typically during the peer review process that precedes publication in a

scholarly journal or adoption of a position by a professional peer organization).

These social science findings demonstrate that protecting the relationship between children and their parents is essential to children's healthy development and overall well-being, and this is so irrespective of the parents' sexual orientation or their biological or legal connection to the child.

A. The Formation Of Parent-Child Attachments Is Critical To A Child's Healthy Development

Child development research overwhelmingly shows that children form strong bonds of attachment to their parents early in life, which strengthen and develop as children grow older. See, e.g., John Bowlby, *Attachment* (2d ed. 1982); Melvin Konner, *Childhood* 84-87 (1991). An "attachment relationship" is defined as a "reciprocal, enduring, emotional, and physical affiliation between a child and a caregiver" through which "children form their concepts of self, others and the world." Beverly James, *Handbook for Treatment of Attachment-Trauma Problems in Children*, 1-3 (1994).

The 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 Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development* 226 (Jack P. Shonkoff & Deborah A. Phillips eds., 2000). Modern developmental psychology and neurology confirm that attachment

relationships are the major environmental factor that shapes the development of the child's brain during its period of maximal growth and create the central foundation of a child's development. See Daniel J. Seigel, *The Developing Mind: Toward a Neurobiology of Interpersonal Experience* 67-120 (1999); see also American Academy of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care, *Developmental Issues For Young Children in Foster Care* 106 Pediatrics 1145 (2000) (stating that "emotional and cognitive disruptions in the early lives of children have the potential to impair brain development").

Among other things, "[attachment] relationships shape the development of self-awareness, social competence, conscience, emotional growth and emotion regulation, [and] learning and cognitive growth." National Research Council and Institute of Medicine, supra, at 265; see also James G. Byrne et al., *Practitioner Review: The Contribution of Attachment Theory to Child Custody Assessments*, 46 J. of Child Psychol. and Psychiatry 115, 118 (2005) (finding that secure attachment relationships provide children with a sense of emotional security, the ability to cope with stress, and protection against harm); American Academy of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care, supra, at 1146 ("Attachment to a primary caregiver is essential to the development of emotional security and social conscience."); Deborah Tharinger & Greg Wells, An Attachment Perspective on the Developmental Challenges of Gay and Lesbian

Adolescents: The Need for Continuity of Caregiving from Family and Schools, 29

School Psychol. Rev. 158, 164 (2000) (“Individuals who develop secure attachments to caregivers...are expected to be more self reliant [and] able to meet challenges and demands in a flexible manner”).

B. Attachment Relationships Develop Despite The Absence Of A Biological Or Legal Connection Between The Parent And Child

Attachment bonds invariably develop regardless of whether the parent and child are biologically or legally linked. 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); see also Leslie M. Singer et al., Mother-Infant Attachment in Adoptive Families, 56 Child Dev. 1543 (1985); J. Seglow et al., Growing Up Adopted: A Long-Term National Study of Adopted Children and Their Families (1972). In fact, a child can develop an attachment relationship with any adult who:

on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child’s psychological needs for a parent, as well as the child’s physical needs. The psychological parent may be a biological, adoptive, foster, or common-law parent,⁴ or any other person.

Goldstein, supra, at 98. See also National Research Council and Institute of Medicine, supra, at 234 (“[C]riteria for identification of attachment

⁴ The authors use the term “common law parent” to describe someone in Margaret K.’s position, namely an adult whose parental role developed outside of adoption, custody, or biology.

figures...[include] provision of physical and emotional care, continuity or consistency in the child's life, and emotional investment in the child.”).

It is the quality and nature of the interaction between parent and child, not any biological or legal connection, that creates and sustains these attachment relationships that have such a critical impact on a child's development. 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, 161 (2003) (“[T]he nature of the interaction...is more important than the person's legal or biological tie to the child.”); see also Ana H. Marty, et al., Supporting Secure Parent-Child Attachments: The Role of the Non-Parental Caregiver, 175 Early Childhood Dev. and 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.”); The American Academy of Pediatrics, Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents 109 Pediatrics 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”); 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.”).

This finding extends to attachment bonds between children and their same-sex parents. In 2003, a qualitative study of lesbian couples was conducted, where each couple had one internationally adopted child and in over 75% of the couples only one of the women had obtained legal parent status. See Bennett, supra, at 161. That study found that “quality of care was the salient factor in the establishment of an attachment hierarchy” and that “parental legal status” was *not* a “decisive variable[] in the development of a primary attachment bond.” Id. at 161, 167-68 (concluding that “the nature of the interaction...is more important than the person’s legal or biological tie to the child”).

C. Sexual Orientation Is Irrelevant To The Development Of Strong Attachment Bonds

Studies have also 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 lesbian parents. See The Am. Acad. of Pediatrics, Family Pediatrics: Report of the Task Force on the Family, 111 Pediatrics, 1541, 1550 (2003) (“[R]esearch has found that parental sexual orientation per se has no measurable effect on the quality of parent-child relationships.”).

Where both same-sex parents participate in the child's upbringing, the child will form a significant attachment relationship with each parent. A study evaluating child development in lesbian families found that

[b]oth women in the lesbian mother family were actively engaged in child care and a strong mutual attachment had been developed between [the non-biological] mother and the child. It seems therefore at odds with reality to consider a lesbian household as a single mother family unit.

A. Brewaeys, et al., Donor Insemination: Child Development and Family

Functioning in Lesbian Mother Families, 12 Human Reproduction 1349, 1356

(1997). Likewise, a clinical evaluation of preschool children of lesbian couples

determined that when both women in the relationship care for a child, the child

becomes attached to both. Barbara M. McCandlish, Against All Odds: Lesbian

Mother Family Dynamics, in Gay and Lesbian Parents 23-38 (Frederick W. Bozett

ed., 1987). It is clear in this case that Margaret K. cared deeply for Maya and

assumed full parenting responsibilities, such as participating in Maya's schooling

(E. 365-67, 85), providing for her health care (E. 74), and preparing her meals (E.

70-71). Margaret K. was actively engaged in caring for Maya on a regular basis

and formed a deep attachment relationship with her.

As with heterosexual parent relationships, the fact that Margaret K. is not biologically or legally linked to Maya does not affect their attachment relationship.

See Bennett, supra, at 167-68 (finding that the lack of a legal (*i.e.*, adoptive)

connection between a lesbian parent and child does not negatively influence the child's attachment to the parent); Brewaeys, supra, at 1354 (“[A]mong the lesbian mothers, the quality of the parent-child interaction [does] not differ significantly between the biological and the [non-biological] mother.”); S. Golombok et al., The European Study of Assisted Reproduction Families: Family Functioning and Child Development 11 Human Reproduction 2324, 2330 (1996) (finding that the lack of a genetic link between one or both same-sex parents and the child did not have negative consequences for parent-child relationships).

In fact, the research consistently shows that in all relevant respects lesbians and gay men parent as heterosexuals do. See G. Dorsey Green & Frederick W. Bozett, Lesbian Mothers and 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 David K. Flaks et al., Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children, 31 Developmental Psychol. 105, 109 (1995) (finding remarkable similarity between children raised from birth by lesbian couples and matched group of children raised by heterosexual parents with respect to behavioral adjustment). It is not surprising, then, that the attachments formed

between children and their same-sex parents are virtually identical to those formed between children and their heterosexual parents. See Brewaeys, supra, at 1358 (“Children’s own perception of their parents was similar in all family types in that the [non-biological] mother in the lesbian families was regarded by the child as just as much a ‘parent’ as the father in heterosexual families.”).

D. Children Experience Severe Emotional And Psychological Harm When Their Attachment Relationships Are Severed

Continuity of the parent-child attachment relationship is essential to a child’s healthy development and overall well-being. Goldstein, supra, at 31-33; see also Marty, supra, at 274 (“[T]he quality of the attachment has profound effects on the child’s social adjustment.”); The Am. Acad. of Pediatrics: Committee on Early Childhood, Adoption, and Dependent Care, supra, at 1145 (“Paramount in the lives of...children is their need for continuity with their primary attachment figures.”); National Research Council and Institute of Medicine, supra, at 265; John Bowlby, Attachment and Loss: Retrospect and Prospect, 52 Am. J. Orthopsychiatry 664, 665-66 (1982).

Numerous empirical findings “provide a solid research basis for predictions of long term harm associated with disrupted attachment [relationships].” 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 American Academy of Pediatrics: Committee on Early Childhood, Adoption, and Dependent 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 and Access Decisions for Young Children, 38 Family & Conciliation Courts Rev. 297, 303 (2000) (explaining that “relationships with parents play a crucial role in shaping children’s social, emotional, personal, and cognitive development, and there is a substantial literature documenting the adverse effects of disrupted parent-child relationships on children’s development and adjustment”).

When a child’s attachment relationship with a parent has been forcibly severed, the psychological impact on the child can be astounding:

Young children typically have operated on the assumption that they could depend on the predictable availability of both parents. When that assumption proves incorrect, a child may question many other assumptions about the world; for example, whether he or she can count on the availability of *any* parent. Such concerns lead to insecure or avoidant attachment, interference with healthy object relations, and reorganization of cognitive understandings. The egocentrism of young children may lead them to conclude that a parent’s absence is due to their own unlovability. Thus, abandonment by a noncustodial parent is a particularly devastating experience.

William Hodges, Interventions of Children of Divorce: Custody, Access, and Psychotherapy 8-9 (2d. ed. 1991); see also Rayford W. Thweatt, Divorce: Crisis Intervention Guided By Attachment Theory, 34 Am. J. of 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”).

For example, interference with children’s attachment relationships can lead to “aggression, fearful relationships, academic problems in school, and...elevated psychopathology.”⁵ Marty, supra, at 274; see also Byrne, supra, at 118 (“[T]hreats to or disruptions in the attachment relationships...lead to fear/anxiety.”); National Research Council and Institute of Medicine, supra, at 265 (“[A]ttachments buffer young children against the development of serious behavior problems, in part by strengthening the human connections and providing the structure and monitoring that curb violent or aggressive tendencies.”); James X. Bembry & Carolyn Ericson, Therapeutic Termination with the Early Adolescent Who Has Experienced Multiple Losses, 16 Child & Adolescent Social Work J. 177, 182-83 (1999)(“An insecurely attached person will anticipate rejection, unpredictability, or even cruelty....[e]ven when reality does not indicate these outcomes.”); Goldstein, supra, at 33 (explaining that the forcible disruption of attachment relationships causes children to “not only suffer separation distress and anxiety but also setbacks in the quality of their next attachments, which will be less trustful”).

⁵ Other behavioral difficulties that may develop as a result of attachment disorders include “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).

Studies of children of divorced parents confirm the psychological 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 and Children a Decade After Divorce (1989) (Children who do not maintain contact with parents suffer a continuing sense of loss and sadness.); E. Mavis Hetherington et al., What Matters? What Does Not? Five Perspectives on the Association Between Marital Transitions and Children's Adjustment, 53 *Am. Psychol.* 167, 177 (1998) (same); Judith Wallerstein & Joan B. Kelly, Surviving the Breakup: How Children and Parents Cope with Divorce, 307 (1980) (finding that self-image of children from divorced families is "firmly tied to their relationship with both parents" and that children "thought of themselves as children with two parents who had elected to go their separate ways").

The research demonstrates that the "extreme distress" experienced by a child upon termination of an attachment figure's regular and customary role as a parent will occur even where there is no biological connection between parent and child. See Fiona L. Tasker & Susan Golombok, Growing Up in a Lesbian Family: Effects on Child Development 12 (1997); 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); see also Mellisa Holtzman, Definitions of the Family as an Impetus for Legal Change in Custody Decision Making: Suggestions from an Empirical Case Study, 31 Law & Social Inquiry 1, 2-3 (2006) (“[W]here nonbiological attachments already exist, it is not to the child’s benefit to sever either those ties or the biological ties in order to satisfy the demands of exclusive parenthood.”).

Specific research on children in lesbian households demonstrates the same need for continuity, and resulting harm from disruption of attachment relationships, as that manifested in children of heterosexual parents. See, e.g., Tasker, supra, at 12 (twenty-year longitudinal study in the United Kingdom which found that cessation of the parent-child bond between a child and a lesbian *de facto* parent “can cause [the child] extreme distress”). Researchers have found that, when lesbian couples separate, the children mourn for the absent caretaker just as they would for an absent biological or married parent after separation. See Martha Kirkpatrick et al., Lesbian Mothers and Their Children: A Comparative Study, 51 Am. J. Orthopsychiatry 545, 547-51 (1981).

E. A Child’s Health And Well-Being Is Best Served By Nurturing And Maintaining Parent-Child Attachments

In light of the importance of the parent-child bond, and the primacy of that bond to the overall health and well-being of children, researchers believe that

children generally benefit from continued contact with both parents.⁶ See Kelly, supra at 303-04; Denise Donnelly & David Finkelhor, Does Equality in Custody Arrangement Improve Parent-Child Relationship?, 54 J. Marriage & the Fam. 837, 838 (1992) (stating that “[c]hildren who maintain contact with both parents tend to be better adjusted”). Children profit from being “actively involved in routine everyday activities” with the nonresidential parent and from interacting frequently with *both* parents in a variety of contexts. See Michael E. Lamb, Placing Children’s Interests First: Developmentally Appropriate Parenting Plans, 10 Va. J. of Social Pol’y & the Law 98, 103, 113 (2002). These everyday activities promote and maintain trust and confidence in the parents, while deepening and strengthening child-parent attachments, and thus need to be encouraged when decisions about custody and access are made. Id. at 113-14. Additionally, when children “are deprived of meaningful relationships with one of their parents they are more susceptible to psychosocial difficulties, and this is so *“even when they are able to maintain relationships with their other parents.”* Id. at 111-12 (emphasis added).

⁶ The concept that children should have contact with both parents, in appropriate circumstances, is recognized throughout the world. For example, the United Nations Convention on the Rights of the Child, adopted to deter the violation of children’s human rights in all countries, specifies that nations “shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.” United Nations General Assembly, Resolution 44/25, November 20, 1989, Article 9, ¶ 3, Convention on the Rights of the Child.

The findings are no different for children of same-sex parenting relationships. See Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 Child Develop. 1025, 1037 (1992) (concluding that when a lesbian couple that has 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”) (emphasis added). The American Academy of Pediatrics advises that children of gays and lesbians need and deserve the same permanence and security in parental relationships as children of heterosexual parents, and recognizes that “[w]hen [two] adults participate in parenting a child, they and the child deserve the serenity that comes with legal recognition,” and that full legal recognition of both parents will allow children to enjoy “the psychologic and legal security that comes from having [two] willing capable and loving parents.” See Ellen C. Perrin, M.D. & the Committee on Psychosocial Aspects of Child and Family Health, American Academy of Pediatrics, Policy Statement: Coparent or Second-Parent Adoption by Same-Sex Parents 109 Pediatrics 339 (February 2002) available at <http://www.aap.org/policy/020008.html>.⁷

⁷ Although the Academy’s policies were formulated in the context of its recommendation for second-parent adoption, their reasoning is equally applicable to the issues presented in this case.

Similarly, the American Psychoanalytic Association and the National Association of Social Workers have concluded that gay and lesbian parents are capable of meeting the best interest of the child and should be afforded the same rights and should accept the same responsibilities as heterosexual parents. See American Psychoanalytic Association, [Position Statement on Gay and Lesbian Parenting](#) (May 16, 2002) available at <http://www.apsa.org/ABOUTAPSAA/POSITIONSTATEMENTS/GAYANDLESBIANPARENTING/tabid/471/Default.aspx>; Nat'l Association of Social Workers, [Policy Statement: Lesbian, Gay, and Bisexual Issues](#), in [Social World Speaks](#) 245, 247 (2006) (stating lesbian, gay and bisexual persons should “be granted all rights, privileges, and responsibilities that are granted to heterosexual people, including but not limited to...child custody”).

Social science research overwhelmingly shows that it is in the best interest of children to protect and maintain their established attachment relationships. It is critical to children's development, psychological health, and general well-being to foster and promote, rather than destroy, parental attachments, whether or not the parent is legally or biologically related, and whether or not the parents are same-sex or heterosexual. For this reason, each parent in a same-sex relationship must be given the opportunity to establish that a grant of custody in his or her favor would further the best interest of the child. This is especially so for parents, such

as Margaret K., who have met the high threshold of establishing *de facto* parenthood.

CONCLUSION

In summary, Maryland law recognizes that persons who have established true, fully-developed parent-child relationships, with the support and encouragement of the legal parent, are *de facto* parents and therefore may be granted custody and visitation rights when determined to be in the best interest of the child. Additionally, more than two decades of social science research confirms that (1) when each member of a same-sex parenting relationship fully participates in raising a child, the child generally develops significant attachment bonds with *both* parents; (2) this is so despite the absence of a biological or legal connection to the parent; and (3) severance of the parent-child attachment bond is devastating to the child and often causes extreme distress. Thus, Margaret K., as a *de facto* parent involved in a same-sex parenting relationship, must be given the opportunity to show that the continuity and maintenance of her parental role will be in Maya's best interest.

Dated: April 12, 2007

Respectfully submitted,



Barbara Bennett Woodhouse
Center on Children and Families
Fredric G. Levin College of Law
PO Box 117625
University of Florida
University of Florida
Gainesville, FL 32611-7625
(352) 273-0969

LATHAM & WATKINS LLP
Clara M. Martone-Boyce
Robyn L. Ginsberg
Kendall C. Burman
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004-1304
(202) 637-2200

Counsel for Amici

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2007, I mailed first class, postage prepaid, two copies of the foregoing motion to each of the following:

Stephen A. Drazin
10420 Little Patuxent Parkway
Suite 100
Columbia, Maryland 21044

Cynthia E. Young
1200 West Street
Annapolis, Maryland 21401

Scott M. Strickler
Jennifer S. Fairfax
Strickler, Sachitano & Hatfield, P.A.
4550 Montgomery Avenue
Suite 900 N
Bethesda, Maryland 20814

Matt M. Paavola
Matt M. Paavola & Assoc.
2113 Orems Rd.
Baltimore, Maryland 21220


