

IN THE SUPREME COURT OF ILLINOIS
Nos. 97531 and 97580 (Consolidated)

IN THE INTEREST OF A.W.,
A Minor,

(Timothy D. Berkley, Guardian ad Litem)

Petitioner-Appellee,

v.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Respondent-Appellant

and

ROSEMARY FONTAINE,

Intervenor-Respondent-Appellant

)
)
) Appeal from the Appellate
) Court of Illinois, Fifth District

) Appellate Court No. 5-02-0390

) Decision rendered October 17, 2003

)
) Appeal from Madison County
) Circuit Court, Third
) Judicial Circuit

) Case No. 1999-JA-103

) Trial Judge: Honorable
) Nelson Metz

BRIEF *AMICI CURIAE*

**NATIONAL ASSOCIATION OF SOCIAL WORKERS,
NATIONAL ASSOCIATION OF SOCIAL WORKERS ILLINOIS CHAPTER,
LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.,
THE CHILDREN AND FAMILY JUSTICE CENTER OF NORTHWESTERN
UNIVERSITY SCHOOL OF LAW'S BLUHM LEGAL CLINIC, AND
THE AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS**

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STATEMENTS OF INTEREST

The statements of interest of *amici curiae* National Association of Social Workers (“NASW”), NASW Illinois Chapter, Lambda Legal Defense and Education Fund, Inc., The Children and Family Justice Center of the Northwestern University School of Law’s Bluhm Legal Clinic and The American Civil Liberties Union of Illinois (collectively “*Amici*”) were included in the motion for leave to file this brief and are attached hereto.

STATEMENT OF FACTS

Amici adopt the Statements of Facts of Respondent Department of Children and Family Services (DCFS) and Intervenor-Respondent Rosemary Fontaine. The following facts about the minor child A.W.’s current home are highlighted as especially pertinent to the issues *amici* will address in this brief:

The child, A.W., has lived continuously in the same home and family setting for four years, more than four-fifths of his life. R. 321; C. 127; Rule 23 Order at 2.

A.W., born June 25, 1999, was removed from the home of his biological mother at age five days because he was at risk of abuse. C. 3-7.

From age five days to two months, A.W. lived in a foster home in Granite City. C. 60.

A.W. then lived in the home of his maternal grandfather and stepgrandmother (the Wards) from August 1999 to March 2000. C. 60. On January 12, 2000, a dispositional order was entered and DCFS was appointed A.W.’s guardian and custodian. C. 19-20. A.W. was removed from the Ward home on March 31, 2000 after suffering a skull fracture, tibia fracture, and other injuries. DCFS Group Ex. 1, 4/3/01 ROP at 93; Rule 23 Order at 2-3. Following an administrative appeal and hearing, the Wards were found to

have abused A.W.; the Wards also admitted to using corporal punishment on him. GAL Ex. 2, ALJ Report. A.W. has not lived there since he was nine months old. Rule 23 Order at 2.

A.W. was placed in the foster home of Rosemary Fontaine on March 31, 2000. GAL Ex. 2, ALJ Report at 8. He was moved to an aunt's home from April 4 to 12, 2000, *Id.* at 9, and then returned to the Fontaine home on April 12, 2000. C. 61.

A.W. has lived continuously in the Fontaine home since April 12, 2000. Rule 23 Order at 2. He had lived there more than two years when the circuit court ruled on the instant matter, and that ruling has been stayed on appeal. C. 85; C. 127. Also in the home are Rosemary's longtime partner, psychotherapist Tammy Johnson, and another foster child whom A.W. considers a brother. R. 71, 217-18, 220. A.W. will turn five on June 25, 2004. C. 3.

A.W. has two biological sisters who live with the Wards. C. 61. Fontaine has worked hard to maintain a relationship between A.W. and his biological sisters. R. 238, 256, 261-62, 278, 295.

The parental rights of A.W.'s biological parents were terminated May 18, 2001. C. 53-4. The circuit court entered a permanency goal of adoption for A.W. in a June 25, 2001 order. C. 56-7. Fontaine's home was identified as the prospective adoptive home. Rule 23 Order at 3. This goal was reaffirmed in a December 2001 order. *Id.* at 4.

On March 6, 2002, A.W.'s guardian *ad litem* (GAL) filed a motion to modify the January 12, 2000 dispositional order, C. 19-20, to change the custody and guardianship of A.W. from DCFS to the Wards. C. 60-65. The GAL alleged nothing adverse about the Fontaine home. *Id.*

At hearing on the GAL's motion, A.W.'s caseworker from Central Baptist Family Services, Heather Kocisko, testified she found nothing wrong with the Fontaine home. Rule 23 Order at 4. She testified that Fontaine had a "very loving and nurturing relationship" with A.W., R. 87, and that Fontaine and Johnson had a long-term, stable relationship and a very stable home. Rule 23 Order at 5. She testified that "[t]hey take excellent care of him" and that the appropriateness of the home for A.W. was not in question. R.70; Rule 23 Order at 5. However, she recommended the child be returned to the Wards. R. 82.

It was stipulated that if called to the stand the DCFS official who monitored the Central Baptist contract with DCFS and A.W.'s case, Printiss Rhodes, who had 22 years of relevant experience, would testify that based on actions in A.W.'s case she had "serious concerns" about the objectivity of Central Baptist and that Central Baptist "appears to be biased and not acting in [A.W.]'s best interests." R. 297-98; Rule 23 Order at 6. It was likewise stipulated that DCFS regional program services manager, Gregg Fliehler, with 28 years of experience and authority to consent to the adoption of A.W.'s sister, would testify that he too had "concerns about the objectivity of the Central Baptist Family Services' case work" in A.W.'s case. R. 298-99; Rule 23 Order at 6.

The senior vice-president of Central Baptist, Nancy Hughes, repudiated Kocisko's recommendation in court. She testified that because the indication of abuse finding as to the Wards had been upheld by the DCFS director, the agency was now opposed to adoption by the Wards and supported keeping A.W. in the Fontaine home as consistent with his best interests. R. 345-46, 350-51; DCFS Ex. 3. She testified the agency had

always felt the Fontaine home provided A.W. love, security and attachment and that his best interests could be served there. R. 351; Rule 23 Order at 6.

In its May 30, 2002 ruling granting the GAL's motion and ordering A.W. returned to the Wards ("Ruling") the circuit court made no negative findings with regard to A.W.'s placement with Rosemary Fontaine or the Fontaine home. The court found: "The Foster Parent, Rosemary Fontaine, would likewise adequately provide for A.W.'s care." Ruling at 3. The circuit court found A.W. had "developed some identity with the Foster Parent," that he "feels love and is bonded with . . . the Fontaine Family" and shows affection toward these family members. A.W. refers to Fontaine as "Mama Ro-Ro" and to Johnson as "Mama Nee-Nee." Ruling at 4. The circuit found "[t]here are likewise no obvious risks to A.W.'s being in the care of Ms. Fontaine." Ruling at 10.

The circuit court found "[t]he least disruptive placement for A.W., at this point, would be with the Fontaine family" and that "returning A.W. to the Wards would be somewhat traumatic." Ruling at 5. The circuit court found "[t]here is a great need for permanence in A.W.'s case." Ruling at 6. The circuit court also noted that Ms. Fontaine wished to adopt A.W.. Ruling at 10.

ARGUMENT

The ruling of the circuit court is a curious and disturbing one that appears to miss the true meaning of providing permanency for children. For four years now, and already two at the time of the court's ruling, young A.W. has had the good fortune of a stable and loving foster home. He has been parented well and safely, and has bonded with his foster mother and family members. This highly successful placement followed A.W.'s removal

from his biological mother and three different foster homes by age nine months. A.W.'s foster mother, Rosemary Fontaine, wishes to adopt him and make his home permanent. The circuit court and Austin's caseworker cited nothing that casts any negative shadow over the Fontaine home. Yet the lower courts would remove A.W., make Mr. Ward his legal guardian and return him to a home where he lived seven months and was badly injured and abused.

Amici ask the Court to focus its attention, as the Juvenile Court Act requires, not on the Wards but on A.W. and what he will lose if the circuit court's order is implemented and he is removed from his longtime home. Children need stability and permanency in their parenting relationships as well as safety in their home settings. Continuity in A.W.'s attachment to his primary caregivers is highly significant for his emotional and behavioral development. Providing A.W. the opportunity to have security in these critical attachments will enhance his well-being and his ability to establish healthy relationships in the future.

The Court should not lightly countenance the removal of A.W. from his daily family setting or abandonment of his permanency plan at such a late date. Certainly nothing suggests Rosemary's sexual orientation or her relationship has had any negative consequences for A.W., and under Illinois law and sound child welfare policy these should not be a factor here. Neither may private bias of any kind be permitted to seep into the resolution of A.W.'s future. The stable and loving home that A.W. has found with the Fontaine family would be the envy of many children. *Amici* believe the decision below should be reversed and DCFS reinstated as A.W.'s legal guardian.

I. THE COURT SHOULD HIGHLY VALUE STABILITY IN A.W.'S PARENTING RELATIONSHIP WITH HIS PRIMARY CAREGIVER, AND IN HIS FAMILY SETTING.

The best interests of the child are paramount in any proceeding under the Juvenile Court Act. *In re K.G.*, 288 Ill. App. 3d 728, 734-35, 682 N.E.2d 96 (1997). The Act's best interests calculus recognizes "the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives." 705 ILCS 1-3(4.05). Section 2-28 "[r]eflects the concern that a lack of permanency in a child's life can be harmful to the child's development." *In re Curtis B.*, 203 Ill.2d 53, 55, 784 N.E.2d 219, 220 (2002), *as modified on denial of rehearing* (2003). These same concerns underlie the preference given under the Illinois Adoption Act to petitions from foster parents who have had a child in their home for one year or more. 750 ILCS 50/15.1. *Johnson v. Barrett*, 182 Ill. App. 3d 574, 582, 538 N.E.2d 892, 898 (1989) ("It is understandable that, after a period of years, a bonding within the foster family would occur which would make separation difficult. * * * It is this bonding which is also the reason the legislature has required that foster parents, who have had custody of their charge for over 12 months, be given first consideration in adopting that child.").¹

Adoption was approved by the trial court as the permanency goal for A.W. in June 2001, and reaffirmed after six months. For those children whose parents are unwilling or unable to care for them, adoption serves an important social, emotional and

¹ The legislative concern with stability in children's home settings extends to disputes between legal parents and is reflected in the elevated proof requirements to modify prior custody rulings or even to bring such motions. 750 ILCS 5/610; *In re Marriage of R.S. and S.S.*, 286 Ill. App. 3d 1046, 1051 (1996) (moving custody from mother because of live-in lesbian relationship would thwart policy of promoting "stability and continuity in the child's custodial and environmental relationships").

psychological function by giving adopted children an opportunity to enter into stable and permanent parent-child relationships.² Mental health professionals have explained that “early parent-child bonds are the cornerstone for healthy psychological adjustment, affecting development not only in infancy and childhood but in adulthood as well.”³ This proposition is overwhelmingly supported by empirical research.⁴ “Children characterized by greater security in their attachment relationships have been found to manifest more positive patterns of adjustment across a host of domains than those youngsters with various forms of insecure attachments.”⁵ The level of attachment that a child experiences affects the child’s self-esteem and ability to establish relationships with others, which are both essential to the child’s proper development.⁶

² See, e.g., U.S. Dep’t of Health and Human Serv., *Adoption 2002: The President’s Institute Initiative on Adoption and Foster Care, Guidelines for Public Policy and State Legislation Governing Permanence for Children*, June 30, 1999, at I, available at <http://www.acf.dhhs.gov/programs/cb> (“‘Permanency’ means that a child has a safe, stable, custodial environment in which to grow up, and a life-long relationship with a nurturing caregiver. The concept of permanency has assumed a central place in American child welfare law and policy because permanency establishes the foundation for a child’s healthy development.”); *Encouraging Adoption, Hearing Before Subcomm. on Human Resources of the House Comm. on Ways and Means*, 105th Cong. 3 (1997) (statement of David Liederman, Executive Director, Child Welfare League of America). See also 42 U.S.C. §§ 673b, 675(5)(E), 678, 679b (Adoption Assistance and Child Welfare Act); 42 U.S.C. §§ 620, 622(b)(10)(B)(iii)(II), 629a(a) (Adoption and Safe Families Act).

³ See David M. Brodzinsky, et al., CHILDREN’S ADJUSTMENT TO ADOPTION: DEVELOPMENT AND CLINICAL ISSUES 13 (1998).

⁴ See *id.* at 13; Patricia M. Crittenden, *Relationships at Risk*, in CLINICAL IMPLICATIONS OF ATTACHMENT THEORY 136-74 (Jay Belsky & Teresa Nezworski eds., 1988).

⁵ See Brodzinsky, *supra* note 3 at 13 (citing Dante Cicchetti, et al., *Bowlby’s Dream Comes Full Circle: The Application of Attachment Theory to Risk and Psychopathology*, in 17 ADVANCES IN CLINICAL CHILD PSYCHOLOGY 1-65 (Thomas H. Ollendick & Ronald J. Prinz, eds., 1995)).

⁶ See Brodzinsky, *supra* note 3, at 13-14.

Children develop strong bonds with their parents very early in life.⁷ These intense attachments form regardless of whether the persons who undertake the parental roles are the biological parents of the children.⁸ The child considers as his or her parent “one who, on a continuing, day-to-day basis, through interacting, companionship, interplay, and mutuality, fulfills the child’s psychological needs for a parent, as well as the child’s physical needs.”⁹ The importance of a child’s attachments to his or her “psychological parent” is well documented. Separation of a child from his or her recognized family for any period of time can be damaging to the child’s development.¹⁰ This is because children need to form secure attachments to primary caretakers to grow up emotionally and behaviorally intact.¹¹

A core problem is that foster care often deprives children of the most basic need of permanent attachment to an adult caregiver by frequent changes of placement. In 1995, the nationwide mean number of placement settings a child experienced per placement episode was 2.4.¹² Each new placement can mean a new home, school, neighbors and family. Multiple placements prevent children from developing the

⁷ See generally John Bowlby, ATTACHMENT (1969).

⁸ See, e.g., Leslie M. Singer et al., *Mother-Infant Attachment in Adoptive Families*, 56 CHILD DEV. 1543 (1985).

⁹ Joseph Goldstein et al., BEYOND THE BEST INTERESTS OF THE CHILD 98 (1979).

¹⁰ See, e.g. Christoph M. Heineke & Isle J. Westheimer, BRIEF SEPARATIONS (1965).

¹¹ Peg Hess, *Parent-Child Attachment Concept: Crucial for Permanency Planning*, 63 SOCIAL CASEWORK 46, 47-48 (1982).

¹² See Rose E. Firestein, *Working Without a Net: Children, Welfare Reform & the Child Welfare System*, 1999 CHILDREN’S RIGHTS, INC. at 19, available at <[http://www.childrensrights.org/publications/ withoutanet/index.htm](http://www.childrensrights.org/publications/withoutanet/index.htm)> (Sept. 1999).

attachment to a nurturing, caring adult that is crucial to a child's development. As explained by the American Academy of Pediatrics, multiple placements inhibit a child's "relationship with an adult who is nurturing, protective, and fosters trust and security," thus harming the child's ability "[t]o develop into a psychologically healthy human being"¹³

A.W.'s move to the Fontaine home was already his sixth move, involving four different foster homes. Since then, A.W.'s home life has stabilized and he has formed positive bonds with his foster mother and her family with whom he lives day in and day out. According to the circuit court, he identifies with his foster parent Rosemary Fontaine. He refers to her as "Mama Ro-Ro," her partner Tammy Johnson as "Mama Nee-Nee" and to Fontaine's other foster son as his "brother." Ruling at 4. In the Fontaine home A.W. has found affection, daily care, safety, nurturing and an ongoing sense of family identity. It is imperative that a best interest analysis highly value these relationships in any discussion of A.W.'s need for permanence in his parent figures and family setting.¹⁴

¹³ AM. ACAD. OF PEDIATRICS, COMM. ON EARLY CHILDHOOD, ADOPTION, AND DEPENDENT CARE, *Policy Statement: Developmental Issues for Young Children in Foster Care*, 106 PEDIATRICS 1145, 1146 (2000) (citing Joseph Goldstein *et al.*, BEYOND THE BEST INTERESTS OF THE CHILD 53-54 (1979) ("to be forced to dismantle existing emotional ties and fashion new ones with hitherto unknown people, is no easy task for any human being. Children are especially unequipped for such losses.")).

¹⁴ *Amici* do not suggest that in all cases a foster parent's bond with a child should be valued above biological family bonds. Although the Wards are known to A.W., because of their history of abuse toward him, A.W. has seen the Wards on only limited visitations since leaving their home at age nine months. The Wards are understood by A.W. to be his grandparents. Ruling at 4. The court indicates concern that A.W. is confused about why he does not live with his grandparents and sisters, but the obvious explanation – the grave abuse and injuries he suffered as an infant in the Wards' home – is not something a child of three years can be expected to understand. It is up to the courts and his caregivers to protect him whether he fully understands or not.

Amici believe the circuit court's methods and analysis in this case greatly undervalue the minor child's established parental bonds with Rosemary Fontaine, his ties with her family members and the critical role that securing such bonds plays in a child's healthy development. Indeed, there is relatively scant discussion of the Fontaine home. *E.g.* Ruling, §§ 1, 3, 4, 5, 7, 8 and 10. The choice here -- between keeping the child in the pre-adoptive home identified in his permanency plan where he has thrived or sending him to be parented by adjudicated abusers in whose care he suffered substantial injuries -- should be heavily influenced by the benefits that stem from providing a child continuity in his home life and securing positive parental relationships.

Instead, the circuit court went to extraordinary lengths to "rehabilitate" the Wards, restore their custodial status and circumvent the permanency plan that was pointing to adoption by Fontaine. The circuit court appeared to employ a rigid presumption that returning a child to non-parent biological family members is in a child's best interests and remains a primary goal -- even after a different permanency plan is adopted, abuse is indicated and parental rights have been terminated. *E.g.*, Ruling at 4 ("The Wards are part of Austin's biological family, and allowing him to be with them and other members of the extended biological family would be in Austin's best interests."), 6 (DCFS' alleged impairment of this goal). The child's ties to relatives are a factor in best interests analyses under the Juvenile Court Act, 705 ILCS 1-3(4.05), and the Adoption Act, 750 ILCS 50/15, but Illinois does not have an unbending preference for placing minors with biological grandparents. Illinois does endeavor to reunify children with their legal parents whenever possible and safe to do so, but when that is not an option and their rights are terminated, relatives of the former legal parent are not accorded the same

preferential status accorded the parent. *In re Adoption of C.D.*, 313 Ill. App. 3d 301, 729 N.E.2d 553 (2000); 705 ILCS 405/2-28(2) . To the contrary, under Section 2-28, once a permanency goal is entered, which necessarily factors in biological family ties, DCFS “shall provide services consistent with the goal selected.”

There is no question that children benefit from maintaining positive ties to their siblings. 705 ILCS 405/2-28(3) (sibling ties factored into permanency plan). Fontaine has encouraged and sought to reinforce A.W.’s sibling ties and intends to continue to maintain A.W.’s relationships with his sisters. R. 238, 256, 261-62, 278, 295¹⁵ She has tried to foster positive connections between A.W. and the Wards. R. 238, 279, 293, 295. However, in determining who should parent him and where he should live, A.W.’s physical safety and psychological well-being must come first. The fact that other children are alleged to now be safe in the Wards’ home or that the Wards were not visibly aggressive in the presence of a social worker simply does not mean the home will be safe for A.W.¹⁶ It is not uncommon for child abusers to vent their abuse on one or only some children in a household and to leave other children alone. The abuser may have issues with children of a certain gender or age range, or be inflamed by certain innocent behaviors or other factors that cause him or her to single a child out. And many abusers are able to conceal their abusive behaviors to third parties.

¹⁵ If, on the other hand, A.W. is removed from the Fontaine home, there is nothing to prevent the Wards from severing all ties between A.W. and his psychological parent and foster brother whom he considers his “other brother.” The Wards did not testify but evidence indicates their resistance, for example, to visits taking place at the Fontaine home, or on weekends. R. 256, 257.

¹⁶ Under Illinois law, abuse against one child is *prima facie* evidence that other children may be at risk. 705 ILCS 405/2-18(3); *In re K.G.*, 288 Ill. App. 3d 728, 736, 682 N.E.2d 95 (1997). There is no converse presumption that a home safe for one child is safe for all.

II. THE RECORD IN THIS CASE CONFIRMS THAT SEXUAL ORIENTATION SHOULD PLAY NO ADVERSE ROLE IN DECISIONS REGARDING FOSTER PARENTING OR ADOPTION.

Amici also emphasize that the decision about where A.W. should live and by whom he should be adopted should be made by courts and child welfare professionals without bias and on a sexual orientation neutral basis. *In re C.M.A.*, 306 Ill. App. 3d 1061, 1067, 715 N.E.2d 674 (1999) (sexual orientation not relevant to adoption); *Petition of K.M.*, 274 Ill. App. 3d 189, 194, 653 N.E.2d 888 (1995) (same) (based on research submitted by petitioners); *In re Marriage of R.S. and S.S.*, 286 Ill. App. 3d 1046, 1055, 677 N.E.2d 1297 (1996) (custody); *In re Marriage of Pleasant*, 256 Ill. App. 3d 742, 752, 755, 628 N.E.2d 633 (1993) (visitation). While it is always appropriate to consider evidence of the stability of the relationship of any adults living in a child's household, regardless of sexual orientation, as in *In re Marriage of R.S.*, 286 Ill. App. 3d at 1055, nothing in the record of this case suggests Rosemary Fontaine's sexual orientation or her relationship with Tammy Johnson has adversely affected A.W. in any way. To the contrary, all the evidence suggests that A.W. has thrived under the loving care and nurturance provided by Fontaine.

Amici are concerned by evidence that bias influenced the decision of A.W.'s caseworker from Central Baptist on whom the circuit court relied. Rule 23 Order at 6; R. 297-99 (DCFS officials had serious concerns about objectivity of Central Baptist which "appears to be biased and not acting in [A.W.]'s best interests."). The law has long recognized that "[p]rivate biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect." *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984)

(custody decision cannot turn on negative attitudes toward interracial relationships); *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (zoning decision cannot turn on negative attitudes toward mentally disabled, though not a suspect class, citing *Palmore*). It is appropriate for child welfare officials and courts to be concerned about any form of private bias skewing recommendations as to a child's best interests. *See also* Supreme Court Rule 63(A)(8) and (9); *Village of Arlington Heights v. Metrop. Housing Devel. Corp.*, 429 U.S. 252, 267 (1977) ("Departures from the normal procedural sequence also might afford evidence that improper purposes are playing a role. Substantive departures too may be relevant, particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.").

The groundlessness of any bias against gay and lesbian caregivers, or in favor of heterosexual caregivers, that may have animated A.W.'s caseworker has been repeatedly demonstrated by research. No child welfare basis exists for discriminating against lesbians and gay men in foster parenting or adoption. Over the last twenty years, a considerable body of social science research has established that lesbian and gay parents have parenting skills that are at least equivalent to those of heterosexual parents.¹⁷ Studies show an absence of meaningful, distinguishing features between, among other things, child-rearing practices, self-esteem and psychological adjustment of lesbian

¹⁷ *See, e.g.,* David K. Flaks, *et al.*, *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children*, 31 DEV. PSYCHOL. 105, 111 (1994); David K. Flaks, *Research Issues*, in CHILD WELFARE LEAGUE OF AMERICA, ISSUES IN GAY AND LESBIAN ADOPTION 27 (Anne Sullivan ed. 1995); Charlotte J. Patterson, *Adoption of Minor Children by Lesbian and Gay Adults: A Social Science Perspective*, 2 DUKE J. GENDER L. & POL'Y 191, 198 (1995).

mothers and heterosexual mothers,¹⁸ and that the sexual orientation of parent figures is irrelevant to the bonding process.¹⁹

Social science research also confirms that children are not adversely affected by having been raised by lesbian or gay parents.²⁰ The scientific studies establish that children raised by lesbians or gay men demonstrate no deficits in intellectual development, social adjustment or psychological well-being in comparison to children raised by heterosexual parents.²¹ Lesbian and gay parents are able to raise children who

¹⁸ See Ellen C. Perrin, *Technical Report: Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 PEDIATRICS 341, 342 (2002) (citing Fiona L. Tasker & Susan Golombok, GROWING UP IN A LESBIAN FAMILY: EFFECTS ON CHILD DEVELOPMENT (1997); Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, in 19 ADVANCES IN CLINICAL CHILD PSYCHOLOGY (Thomas H. Ollendick & Ronald J. Prinz eds., 1995)); Martha Kirkpatrick, *et al.*, *Lesbian Mothers and Their Children: A Comparative Survey*, 51 AM. J. ORTHOPSYCHIATRY 545, 550 (1981)). Similarly, studies have also shown no discernible differences between the parenting skills of gay fathers and heterosexual fathers. See, e.g. Frederick W. Bozett, *Gay Fathers: A Review of the Literature*, in HOMOSEXUALITY AND THE FAMILY 137 (Frederick W. Bozett ed., 1989).

¹⁹ Barbara M. McCandlish, *Against All Odds: Lesbian Mother Family Dynamics* in GAY AND LESBIAN PARENTS 23-38 (Frederick W. Bozett ed. 1987).

²⁰ See Judith Stacey & Timothy J. Bilbarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 AM. SOCIOLOGICAL REV. 159, 164 (2001) (surveying studies and reporting no deficits in children raised by lesbians concerning self-esteem, anxiety, depression, behavioral problems, performance in sports, school and friendships, use of counseling, sociability, hyperactivity or emotional difficulty); Tasker & Golombok, *supra* note 18; Flaks, *Research Issues*, *supra* note 17 at 33-34 (citing Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 CHILD DEVELOPMENT 1025, 1026-42 (1992)); Fiona L. Tasker & Susan Golombok, *Children Raised by Lesbian Mothers: The Empirical Evidence*, 21 FAM. L. 184, 186 (1991); Patricia J. Falk, *Lesbian Mothers: Psychological Assumptions in Family Law*, 44 AM. PSYCHOLOGIST 941, 943-947 (1989); Elizabeth D. Gibbs, *Psychosocial Development of Children Raised by Lesbian Mothers*, 8 WOMEN & THERAPY 65, 66-74 (1988)).

²¹ See Perrin, *supra* note 18, at 342-43 (citations omitted); Tasker & Golombok, *supra* note 18; Flaks, *Research Issues*, *supra* note 17 at 29.

are as well adjusted as those of heterosexual parents because the factors associated with a child's positive adjustment have no relation to the parent's sexual orientation.²²

The American Academy of Pediatrics ("AAP"), which represents over 50,000 pediatricians and offers guidance to parents on child-rearing issues, has announced its support for adoptions by lesbians and gay individuals, couples and partners adopting their partner's children.²³ The AAP stated "that children with parents who are homosexual can have the same advantages for health, adjustment and development as can children whose parents are heterosexual."²⁴ After reviewing two decades of studies, the AAP "found that children of gay or lesbian parents were as well adjusted socially and psychologically as the children of heterosexual parents."²⁵

Illinois and every state except Florida, *see* Fl. Stat. §63.042(3)(2003), permits lesbians and gay men to adopt children. It is estimated that millions of children are being raised by lesbian or gay parents in our country.²⁶ The uniform view of child welfare and mental health professional organizations is that there is no child welfare basis for excluding lesbians and gay men from adopting children. Indeed, all the major children's welfare organizations and mental health professionals affirmatively support placing children for adoption with lesbians and gay men as consistent with the goals of adoption:

²² *See* Michael E. Lamb, *et al.*, *Parent-Child Relationships: Development in the Context of the Family*, in *DEVELOPMENTAL PSYCHOLOGY: AN ADVANCED TEXTBOOK* 32-42 (4th ed. 1999).

²³ *See* Erica Goode, *Group Backs Gays Who Seek to Adopt a Partner's Child*, N.Y. TIMES, February 4, 2002, at A17; *see also* Perrin, *supra* note 18.

²⁴ *See* Goode, *supra* note 23.

²⁵ *See id.*

²⁶ *See* Perrin, *supra* note 18 at 341 & n.1.

The Child Welfare League of America, which sets the national standards for the care of children, has issued a Standards of Excellence for Adoption Services that states that “[a]pplicants should be assessed on the basis of their abilities to successfully parent a child needing family membership and not on their . . . sexual orientation.”²⁷

The North American Council on Adoptable Children states that “[c]hildren should not be denied a permanent family because of the sexual orientation of potential parents. Everyone with the potential to successfully parent a child in foster care or adoption is entitled to fair and equal consideration.”²⁸

The American Psychological Association has long affirmed that “[t]he sex, gender identity, or sexual orientation of natural or prospective adoptive or foster parents should not be the sole or primary variable considered in custody or placement cases.”²⁹

The National Association of Social Workers (“NASW”) has long affirmed that “same-gender sexual orientation should be afforded the same respect and rights as other-gender orientation.” Accordingly, the “NASW encourages adoption of laws that recognize . . . child custody . . . and other rights in lesbian, gay and bisexual relationships.”³⁰

The American Academy of Pediatrics recently recommended that pediatricians should, among other things, “[a]dvocate for initiatives that establish permanency through coparent or second-parent adoption for children of same-sex parents through the judicial system, legislation and community education.”³¹

²⁷ See CHILD WELFARE LEAGUE OF AMERICA, CWLA STANDARDS OF EXCELLENCE FOR ADOPTION SERVICES 56 (2000), available at <http://www.cwla.org/programs/culture/glbqtstandards.htm>.

²⁸ NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, *Policy Statements: Gay and Lesbian Adoptions and Foster Care* (Mar. 14, 1998) (amended April 14, 2002), available at http://www.nacac.org/pub_statements.html#gay (last visited April 28, 2004).

²⁹ John J. Conger, *Proceedings of the American Psychological Association, Incorporated, for the Year 1976*, 32 AM. PSYCHOL. 408, 432 (1977).

³⁰ NATIONAL ASSOCIATION OF SOCIAL WORKERS, *Lesbian, Gay, and Bisexual Issues*, SOCIAL WORK SPEAKS, 193, 197, 199 (2000).

³¹ COMM. ON PSYCHOLOGICAL ASPECTS OF CHILD AND FAMILY HEALTH, *Coparent or Second-Parent Adoption by Same-Sex Parents*, 109 PEDIATRICS 339, 339-40.

CONCLUSION

For all the reasons stated above, *amici* respectfully ask the Court to reverse the decision below.

Respectfully submitted,



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STATEMENTS OF INTEREST OF *AMICI CURIAE*

The *amici* organizations have a common and vital interest in the welfare of children, including the minor child A.W.

The National Association of Social Workers ("NASW") was established in 1955 as a nonprofit professional association dedicated to the practice and interests of the social work profession. It is the largest social work association in the world, with more than 155,000 members. The NASW Illinois Chapter has approximately 8,000 members. NASW policy on foster care and adoption supports the right of every child "to a permanent, continuous, and nurturing relationship with a parenting person or people who convey to the child an enduring sense of love and care." NASW policy also supports the removal of barriers that prevent children from permanent placements. Barriers to permanency, such as resistance to "nontraditional family patterns, including lesbian and gay parents, as potential foster care and adoption resources, must be removed." NASW formally opposes discrimination against gay men and lesbians including in decisions about who will have custody of a child. In 1977, NASW adopted its first policy statement on gay issues, which was subsequently revised and expanded in 1987 and again in 1993. As noted in the 1993 statement, the NASW Code of Ethics prohibits social workers from discriminating on the basis of sexual orientation in their professional roles. The current NASW policy also affirms the association's commitment "to work toward full social and legal acceptance and recognition of lesbian and gay people."

Lambda Legal Defense and Education Fund, Inc. ("Lambda Legal") is a national organization committed to achieving full recognition of the civil rights and relationships of lesbian, gay, bisexual and transgendered persons and their families. With offices in Chicago, Los Angeles, New York, Dallas and Atlanta, Lambda Legal works to ensure that children raised by lesbian and gay adults benefit from the same respect and protection for their primary relationships as do other children. In these capacities, Lambda Legal has represented the interests of adults who seek to preserve close ties to children for the children's benefit, of

children who depend on such ties and are injured by their arbitrary loss, and of legal parents who seek protection against unwarranted invasion of their family sphere by people who question their ability to raise children properly. Lambda Legal has been counsel in several relevant Illinois cases including *Petition of K.M.*, 274 Ill. App. 3d 189 (1995); *In re C.M.A.*, 306 Ill. App. 3d 1061 (1999); and *In re Marriage of R.S. and S.S.*, 286 Ill. App. 3d 1046 (1996). Lambda Legal also has particular expertise in foster care and child welfare issues stemming from its multi-year collaboration with the Child Welfare League of America to enhance policies and services for lesbian, gay, bisexual and transgendered youth in foster care nationally.

The Children and Family Justice Center of the Northwestern University School of Law's Bluhm Legal Clinic ("CFJC") is a comprehensive children's law center where law students, under the supervision of attorneys and clinical professors, represent young people in delinquency and criminal proceedings, school expulsion and suspension matters, and immigration and political asylum cases. For a number of years, the CFJC also provided legal representation and advocacy for indigent parents, foster parents and children in neglect, abuse, termination of parental rights, adoption, and domestic violence cases in the Cook County Courts. Although the CFJC no longer concentrates in these areas of representation, the CFJC continues to maintain an interest in child welfare issues and to contribute to the development of policy in the child welfare area. In this regard, CFJC attorneys have often taken the policy position that "best interests" decisions in child custody and visitation matters should be "sexual orientation" neutral. See e.g. *Pleasant v. Pleasant*, 628 N.E.2d 633 (1st Dist. 1993).

The American Civil Union of Illinois, a statewide organization with approximately 18,000 members, is dedicated to the preserving of the Bill of Rights and enforcing laws to protect civil rights and civil liberties. The ACLU of Illinois and its parent organization, the American Civil Liberties Union, have had a long history of defending the rights of children and families, including lesbian and gay families, against mistreatment by local, state and federal governments. For example, *In re K.M.*, 274 Ill. App. 3d 189, 653 N.E.2d 888 (1995) is a case in which the ACLU of Illinois represented as co-counsel the rights of lesbian couples to jointly

petition for adoption. In *B.H. v. Johnson*, 715 F. Supp. 1387 (N.D. Ill. 1989), ACLU staff and cooperating attorneys represent the approximately 20,000 children in the custody of the Illinois Department of Children and Family Services who often are denied proper medical care and social work services, many of whom are forced to live in inappropriate and even dangerous conditions. *See also A.N. v. Kiley*, No. 86 C 9486 (N.D. Ill, consent decree entered July 24, 1994) (class action on behalf of children in state psychiatric hospital). Because this case involves important issues regarding the exercise of State authority over a child and a lesbian family, the ACLU of Illinois believes its view will be of service to this Court.