

IN THE SUPREME COURT OF THE STATE OF FLORIDA

James W. Cox,) CASE NO.: 82,967
)
Petitioner,)
)
v.)
)
Delores Dry, District Administrator,)
District 8, Florida Department of Health and)
Rehabilitative Services,)
)
Respondent.)
)

**BRIEF OF AMICI CURIAE
FLORIDA PSYCHOLOGICAL ASSOCIATION,
NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC., AND
FOURTEEN CONCERNED ACADEMICS**

On Review from the District Court of Appeal,
Second District
State of Florida

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TABLE OF CONTENTS

	<u>Page(s)</u>
INTRODUCTION	1
INTEREST OF AMICI CURIAE	2
ARGUMENT	7
I. ADOPTION MUST BE GUIDED BY AN INDIVIDUALIZED DETERMINATION OF THE BEST INTERESTS OF THE CHILD	7
II. THE SOCIAL SCIENCE RESEARCH HAS FOUND THAT GAY MEN AND LESBIANS RAISE EMOTIONALLY HEALTHY, SECURE AND HAPPY CHILDREN IN THE SAME PROPORTION AS HETEROSEXUAL COUPLES	9
A. Lesbian Mothers and Gay Fathers Have Parenting Skills and Attitudes Comparable to Those of Heterosexual Parents	11
B. The Overall Psychological Health of Children Raised By Lesbian Mothers and Gay Fathers Does Not Differ From that of Children Raised By Heterosexual Parents	13
1. Sexual Identity	16
2. Relationships With Peers and Adults	19
3. Nature of Research Presented	21
C. Common Myths About Gay and Lesbian Parents Have No Basis in Fact ..	22
1. Homosexuality Is Not a Mental Disorder	22
2. Gay and Lesbian Couples Form Stable, Long Lasting Relationships	24
3. Children Raised by Gay Men and Lesbians Are No More Likely To Become Lesbian or Gay Than Children Raised by Heterosexuals	25

4.	Children Of Gay People Are No More Likely Than Children Of Other Minority Groups To Suffer Stigmatization Or Harassment . . .	26
5.	There Is No Connection Between Sexual Orientation and Child Sexual Abuse	27
	CONCLUSION	28

TABLE OF AUTHORITIES

Page(s)

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INTRODUCTION

This case addresses §63.042(3), Fla. Stat. (1990) which prohibits lesbians and gay men from adopting children, without allowing any consideration of the best interests of the child.

Amici submit this brief to bring to this Court's attention the principal body of scientific knowledge pertinent to the questions posed in this case. All of the research has concluded that adoption should be guided by an individualized determination of the best interests of the child. See Section I, infra. This brief documents the results of over a decade of social science research investigating and comparing children raised by lesbian and gay parents with children reared by heterosexuals. That research establishes that gay men and lesbians are fully capable of raising healthy, secure and happy children. See Section II, infra. This brief will also address the specific concerns raised by the District Court of Appeal regarding adoption by gay men and lesbians, namely the lack of heterosexual role-models during the adolescent years. See Section II.B.2., infra. As demonstrated by the social science data, there is no valid basis for assuming that a heterosexual child raised by a homosexual parent will in any way suffer from that experience, either during adolescence or at any other time during the child's psychosexual development.

Finally, this brief will present the social science research showing that no evidence supports the common myths that homosexuality is a mental disorder; that gay men and lesbians are incapable of sustaining stable, long-term relationships; that gay people raise gay children; or that gay people are likely to sexually abuse children. See Section II.C, infra.

INTEREST OF AMICI CURIAE

The Florida Psychological Association (FPA) is a nonprofit professional association representing 1,200 Florida psychologists. The members of FPA are doctoral level trained professionals who are either licensed in Florida or deemed eligible for licensure in Florida. The members of FPA are actively involved in researching, diagnosing, and treating mental and emotional disorders affecting children, adolescents, and their families. FPA is committed to ensuring high standards of mental health treatment and care and advocates for the best interests of children and adolescents.

The National Association of Social Workers, Inc. (NASW) is the largest association of professional social workers in the world with over 147,000 members in 55 chapters throughout the United States and abroad. The *Florida Chapter of the NASW* has over 5,500 members. Founded in 1955 from a merger of seven predecessor social work organizations, NASW is devoted to promoting the quality and effectiveness of the social work profession and improving the quality of life through utilization of social work knowledge and skills.

Elizabeth Bartholet is a Professor of Law at Harvard Law School, where she teaches Family Law, Adoption and Reproduction, and Employment Discrimination. She is author of Family Bonds: Adoption and the Politics of Parenting (1993), and numerous articles dealing with adoption, reproductive technology; and discrimination law issues. She serves as a member of the U.S. State Department Advisory Group on Inter-country Adoption, serves on Assisted Reproductive Technology Ethics Committees for various Boston-area hospitals, and is an Honorary Member of the American Academy of Adoption Attorneys. She has received

two "Friends of Adoption" awards, one from Open Door Society and one from the New York Adoptive Parents Committee for her writing in the adoption area.

David L. Chambers is the Wade H. McCree Professor of Law at the University of Michigan Law School. He teaches and writes about family law and is the author of studies on the enforcement of child support, on child custody disputes between divorcing parents, and on the legal and social position of stepparents. He is a past President of the Society of American Law Teachers, a former member of the National Academy of Science's National Research Council Committee on Child Development Research and Public Policy, and an advisor to the American Law Institute Project on the Principles of Family Dissolution.

Matthew Coles is an Adjunct Professor at the University of California, Boalt Hall, Hastings College of the Law and Stanford University. He teaches Sexual Orientation and the Law and Constitutional Law. He is a staff attorney for the American Civil Liberties Union.

Dr. Richard Green is Professor of Psychiatry at the University of California, Los Angeles and has been a faculty member of UCLA Law School. He is both a psychiatrist and an attorney. His psychiatric specialization is human sexuality and within that specialty has studied sexual identity. His research has included studies of homosexual children of heterosexual parents and heterosexual children of homosexual parents. He has authored 140 professional papers and chapters, in addition to seven books. His most recent text is Sexual Science And The Law, published by Harvard University Press.

Dr. Ann Hartman, D.S.W., is Dean and Elizabeth Marting Treuhaft Professor at the Smith College School for Social Work. She has worked in family and children's services and in mental health for 44 years. She was director of the National Child Welfare Training

Center from 1979-1985 and has done extensive writing, lecturing, and research in the field of family and child welfare, particularly in the area of adoption.

Joan Heifetz Hollinger is a Visiting Professor of Law at the University of California, Berkeley, and has been a Professor of Law at the University of Detroit since 1986. She is the Reporter for the proposed Uniform Adoption Act of the Commission on Uniform State Laws and is the Editor and principal author of Adoption Law and Practice 2 vols. (Matthew Bender Co., 1988, Supps. 1989-94). She serves on the U.S. State Department's Advisory Group on Intercountry Adoption and is an Honorary Member of the American Academy of Adoption Attorneys. In addition to writing about the social and legal history of adoption, she teaches family law and seminars on the construction and reconstruction of the parent-child relationship.

Joan Laird, M.S., LICSW is a Professor of Social Work at the Smith College School for Social Work in Northampton, MA, where she teaches family theory, family therapy, and social theory. She is the author and co-author or editor/co-editor of four books and has published some 30 journal articles and chapters in the family field. Her co-authored text on Family-Centered Social Work Practice is used all over the world and is a required text in most schools of social work. Her co-edited book A Handbook of Child Welfare is widely respected and widely used as a resource by child welfare educators and personnel. She has written about, taught about, and worked with foster care and adoptive families as well as with lesbian and gay couples. She has over 20 years of practice experience in the child welfare and family fields, as practitioner, trainer, and consultant.

Sylvia A. Law is a Professor of Law at NYU Law School and Co-Director of the Arthur Garfield Hays Civil Liberties Program. For twenty-five years she has been a leading scholar, teacher and litigator in the areas of family, constitutional, and health care law. She is the author of numerous books and law review articles, including "Homosexuality and the Social Meaning of Gender," 1988 Wisc. L. Rev. 187 and served as Guardian ad litem in The Matter of the Adoption of a Child Whose First Name is Evan, 583 N.Y.S.2d 997 (Surrogate's Court, N.Y. Co. 1992) (approving adoption by a lesbian couple).

Martha Minow is Professor of Law at Harvard Law School where her courses include Family Law and Civil Procedure. Her scholarship has addressed the rights and needs of children and persons with disabilities and the history of family law. She serves on the boards of the W.T. Grant Foundation, which funds research and programs aimed to help children's health and well-being, and the Judge David L. Bazelon Center for Mental Health Law, which advocates for children and persons with disabilities. She has also served on the boards of the Family Center, a community-based mental health center, the American Bar Foundation, the research arm of the American Bar Association, and the Judge Baker Children's Center, a clinic and school for children who have been abused or who have emotional or mental disabilities.

Dr. Charlotte J. Patterson is an Associate Professor of Psychology at the University of Virginia. She has published widely in the areas of social and personal development among children and adolescents, and has served on the editorial boards of Child Development, Developmental Psychology, Merrill-Palmer Quarterly of Human Development, and the Journal of Social and Personal Relationships. Her Bay Area Families Study focuses on

psychosocial development among children who were born to or adopted by lesbian mothers. In addition to her research on lesbian childrearing, Dr. Patterson has co-edited with Anthony R. D'Augelli a volume entitled Lesbian, Gay and Bisexual Identities Across the Lifespan, to be published by Oxford University Press. She is also serving as guest editor for a special issue of Developmental Psychology to focus on Sexual Orientation and Human Development.

Nancy D. Polikoff is a Professor of Law at The American University Washington College of Law, in Washington, D.C. She has taught Family Law for more than ten years and includes material on lesbian and gay parenting in her classes. She also writes extensively on lesbian and gay family law issues. She is on the Advisory Board of the national Center for Lesbian Rights and is the past chair of the Section on Gay and Lesbian Legal Issues of the Association of American Law Schools. Professor Polikoff is the mother of an 11-year-old adopted daughter.

Ann C. Scales is a Weihoffen Professor at the University of New Mexico Law School. As well as being a teacher of constitutional law and a lesbian rights activist, she is a consultant on gay and lesbian family law matters nationwide, and a former domestic relations practitioner in California.

Sheryl Scheible Wolf is a Professor of Law at the University of New Mexico, where she teaches courses in Family Law, as well as Wills and Trusts, Property, and Bankruptcy. She is a past chair of the Association of American Law Schools' Section on Family and Juvenile Law. She is a member of the consultative group for the Marital Dissolution project of the American Law Institute and participates on several committees of the Family Law Section of the ABA. She has published numerous articles and book chapters on family law

and family property issues and recently co-authored a family law treatise, Understanding Family Law, with John DeWitt Gregory and Peter Swisher.

Barbara Bennett Woodhouse is Professor of Law at the University of Pennsylvania Law School. Her scholarship and teaching have focused on the needs and rights of children in custody, foster care and adoption. She is a founding Board Member of St. Mary's Family Respite Center, providing services and support to children affected by HIV, and she also serves as the Rector's Warden of St. Mary's Church, Hamilton Village, Philadelphia. She is a Board Member of the Support Center for Child Advocates, providing pro bono representation for children in foster care and adoption. She serves on the Policy and Advocacy Committee of the Maternity Care Coalition of Philadelphia and on the Advisory Board of the Philadelphia Children's Network. She is 1995 Program Chair for the Family Law Section of the Association of American Law Schools.

ARGUMENT

I. ADOPTION MUST BE GUIDED BY AN INDIVIDUALIZED DETERMINATION OF THE BEST INTERESTS OF THE CHILD

In Florida, all child custody determinations, including policy decisions regarding foster care and adoption, must be guided by the best interests of the child standard. See Seebol v. Farie, attached as App. A to State Dept. of Health v. Cox, 627 So.2d 1210, 1221 ("In adoption, as in all matters involving the care and custody of children, Florida courts are continually reminded of their obligation to protect the best interests of children," citing Sulman v. Sulman, 510 So.2d 908, 909 (Fla. 4th DCA 1987)). The Florida legislature explicitly set forth the legislative intent of the adoption statute as follows: "to protect and

promote the well-being of persons being adopted and their natural and adoptive parents and to provide to all children who can benefit by it a permanent family life." § 63.022, Fla. Stat. (1990).

In order to act in the best interests of the child, decisions about whether and with whom a child will be placed for adoption should be made on a case-by-case basis, taking into account the particular needs of the child as well as the unique attributes of the potential adoptive parent.^{1/} A per se rule such as that created by Fla. Stat. § 63.042(3) which establishes an irrebuttable presumption against certain potential adoptive parents on the basis of their sexual orientation, is by its nature inimical to the best interests of the child standard. Fla. Stat. § 63.042(3) precludes consideration of the myriad factors that might make a gay man or lesbian the best possible adoptive parent for a child awaiting placement. Proven or potential parenting skills, parenting experience, capacity to nurture, personal affinity, willingness to assume care of a special needs child, even a pre-existing relationship with the child needing adoption are all deemed irrelevant under the statute.

^{1/} As stated by Professor Hollinger, one of the leading experts in the area of adoption:

- [M]any courts, legislatures and child welfare agencies now acknowledge the unfairness of excluding people from consideration . . . solely on the basis of "unconventional" characteristics pertaining to their marital or financial status, age, race, ethnicity, sexual orientation, or ability to bear children.

Joan H. Hollinger, Adoption Law, 3 *The Future of Children*, 43, 48 (Spring, 1993) (emphasis added). Currently pending before the United States Congress is the Multi-Ethnic Placement Act, a bill sponsored by Senator Howard Metzenbaum, which endeavors to eliminate non-particularized placement decisions by doing away with per se rules based on the race or ethnicity of the potential adoptive parent. See Congressional Record - Senate, March 25, 1994, 103rd Congress 2d Session, 140. Cong. Rec. § 4037 Amendment No. 1606.

Without question, "adoption has come to be accepted as the most desirable solution for children who cannot be reunited with parents and thus need permanent homes." Irving Schulman and Richard Behrman, Adoption: Overview and Major Recommendations, 3 The Future of our Children, 3-4 (Spring, 1993) [hereinafter Schulman]. Under current Florida law, however, in many instances, a factor that not one study has shown even to be relevant to successful parenting becomes the only consideration. Because of § 63.042(3), thousands of children will remain in institutions and foster homes rather than joining a loving and capable adoptive parent.^{2/}

II. THE SOCIAL SCIENCE RESEARCH HAS FOUND THAT GAY MEN AND LESBIANS RAISE EMOTIONALLY HEALTHY, SECURE AND HAPPY CHILDREN IN THE SAME PROPORTION AS HETEROSEXUAL COUPLES.

There are millions of children of gay and lesbian parents in the United States alone.^{3/}

In addition, "what has been true for many years is that hundreds of lesbians and gay men have, in fact, adopted children and been licensed as foster parents across the country."

^{2/} See Elizabeth Bartholet, Family Bonds: Adoption and the Politics of Parenting, 82 (1993) (more than 400,000 children were in foster care at the end of 1990 and "there are many more children in need of adoptive homes than there are homes available for them").

^{3/} Frederick W. Bozett, Gay and Lesbian Parents, "Children of Gay Fathers," 39 (1987) (citing Schulenberg, Gay Parenting (1985)). See also Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 Child Development Journal, 1025 (1992) (hereinafter "Children of Lesbian and Gay Parents") (citing studies).

"There are at least one to three million gay men who are natural fathers," Bozett, supra, at 39, and somewhere between 1.5 and 5 million lesbian mothers. Patricia J. Falk, Lesbian Mothers: Psychological Assumptions in Family Law, 44(6) American Psychologist, 941 (June 1987). See also Sue Presley and Nancy Andrews, For Gay Couples, the Nursery Becomes the New Frontier, Washington Post, Dec. 20, 1992, §A at 1. (Citing estimate that 8 - 10 million children are being raised by 4 million gay men and lesbians); Nan Hunter and Nancy Polikoff, Custody Rights of Lesbian Mothers: Legal Theories and Litigation Strategy, 25 Buffalo L. Rev., 691 (1976).

Wendell Ricketts and Roberta Achtenberg, Adoption and Foster Parenting for Lesbians and Gay Men, Homosexuality and Family Relations, 83, 87 (1990); see also Developments -- Sexual Orientation and the Law, 102 Harv. L. Rev. 1508, 1643 (1989) (hereinafter: "102 Harv. L. Rev. at ___") ("adoptions and foster care by gay men and lesbians are not uncommon"). Especially in the last five years, the number of openly lesbian and gay families has been growing steadily.^{4/}

Studies of lesbian and gay parents show them to be very much like their heterosexual counterparts. No studies have revealed a difference in behavior or parenting style between lesbian and gay parents and heterosexual parents. Indeed, the research has shown lesbians and gay men to be just as capable of being good parents as non-gay people. See, e.g., Patterson, Children of Lesbian and Gay Parents (studies comparing the psycho-social development of children of gay and lesbians parents to heterosexual parents find no differences); Mary Harris and Pauline Turner, Gay and Lesbian Parents, 12 J. of Homosexuality, 101, 103 (1985-86); Kleber, et al., The Impact of Parental Homosexuality in

^{4/} See, e.g., Gina Kolata, Lesbian Partners Find the Means to Be Parents, N.Y. Times, Jan. 30, 1989, §A at 13, col. 1 (hereinafter: "Kolata"). The sharp increase among lesbians in particular has recently been characterized as a "baby boom." Id.; see also Jonathan Mandell, The Lesbian Baby Boom, Newsday, Jul. 13, 1989 (Part 2), at 8, col. 1 (hereinafter: "Mandell"). Unlike previously, a significant percentage of these gay men and lesbians are becoming parents in the context of open same-sex relationships -- primarily by means of alternative insemination and adoption. See, e.g., Kolata at A13; Falk at 941; Myra Sencer, Adoption in the Non-Traditional Family: A Look at Some Alternatives, 16 Hofstra L. Rev., 191 (1987).

Child Custody Cases: A Review of the Literature, 14 Bull. Am. Acad. Psychiatry & L. 81, 86 (1986).^{5/}

In short, the social science literature does not indicate that lesbians and gay men are inherently unfit parents.^{6/} Indeed, the research suggests that any presumption of unfitness rests solely on prejudice and false stereotypes and that lesbians and gay men in fact are no less skilled or capable than heterosexual men and women when it comes to parenting.

A. Lesbian Mothers and Gay Fathers Have Parenting Skills and Attitudes Comparable to Those of Heterosexual Parents.

The social science literature indicates that lesbians and gay men are as likely as heterosexuals to have traits that would enhance their effectiveness as parents. In general,

^{5/} The research results have been consistent regardless of the geographic region within the United States where the children were raised. See, Richard Green et al., Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children, 15 Archives of Sexual Behavior, 167 (1986) [hereinafter Green et al. (1986)] (parents and children studied were concentrated in rural and urban areas in Connecticut, Florida, Illinois, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin); David K. Flaks et al., Lesbians Choosing Motherhood: A Comparative Study of Couples and Their Children, Developmental Psychology (forthcoming, 1994) (manuscript at 15, 20) (parents and children studied were from the Pennsylvania area); Sharon L. Huggins, A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers, 18 Homosexuality and the Family, 123 (1989) (parents and children studied were from southern California); Judith A. Miller et al., The Child's Home Environment For Lesbian vs. heterosexual Mothers: A Neglected Area of Research, 75 Homosexuality, 49-56 (1981) (parents and children studied were from a "large western mountain city").

^{6/} See In re: Adoption of Evan, 583 N.Y.S.2d 997, 1001 n.1 (Sur. 1992) (relying on social science research and finding that the available literature provides persuasive evidence that children raised by a lesbian or gay parent are not disadvantaged relative to children raised in a heterosexual household).

lesbians and gay men are as highly diverse a group as are heterosexuals.^{7/} Lesbians and gay men are employed productively in all occupations and professions^{8/} and have an overall potential to contribute to society similar to that of heterosexuals.

Indeed, the research suggests that lesbian and gay parents have parenting skills that are equivalent to or better than those of heterosexual parents.^{9/} This research demonstrates a "remarkable absence of distinguishing features between the life-styles, child-rearing practices, and general demographic data of" lesbian mothers and heterosexual mothers.^{10/} One study found lesbian and heterosexual mothers to be similar in maternal interest and child rearing practices. Another concluded that the majority of the lesbian mothers studied saw themselves as intimately involved in parenting and that the lesbian mothers as a group appeared more concerned for their children's long-range development than the heterosexual mothers as a group.^{11/} Similarly, a study comparing gay and non-gay fathers detected no discernible

^{7/} Alan P. Bell and Martin S. Weinberg, Homosexualities: A Study of Diversity Among Men & Women, 229-231 (1978).

^{8/} Id.

^{9/} Flaks et al. have found that lesbian mothers score significantly higher than heterosexual fathers on the Parent Awareness skills Survey ("PASS"), which measures the sensitivity and effectiveness with which a parent responds to typical childcare situations. Flaks et al., supra, note 5, at 15, 20.

^{10/} Beverly Hoeffler, Children's Acquisition of Sex-Role Behavior in Lesbian-Mother Families, 51 Am. J. Orthopsychiatry, 536, 537 (1981); Martha Kirkpatrick et al., Lesbian Mothers and Their Children: A Comparative Study, 51 Am. J. Orthopsychiatry, 545 (1981).

^{11/} Miller et al., supra, note 5.

differences in parenting style and found that the two groups of men shared a similar developmental orientation toward their role as fathers.^{12/}

B. The Overall Psychological Health of Children Raised By Lesbian Mothers and Gay Fathers Does Not Differ From that of Children Raised By Heterosexual Parents.

Scientific studies investigating the psychological effects on children of being raised by a lesbian or gay parent have concluded unanimously that there are no significant differences in the psychological health of these children compared with children raised by a heterosexual parent.

Studies comparing the level of psychological disturbance of children raised by a divorced lesbian mother and children raised by a divorced heterosexual mother indicate that there is no significant difference between the two groups.^{13/} There appear to be no statistically significant differences between the two groups for the presence of such behavioral and emotional problems as hyperactivity, unsociability, emotional difficulty and conduct problems.^{14/} A study that traced such behavioral issues through to adulthood found no differences between individuals raised by a lesbian mother and those raised by a heterosexual mother.^{15/}

^{12/} Jerry J. Bigner and R. Brooke Jacobsen, Adult Responses to Child Behavior and Attitudes Toward Fathering: Gay and Nongay Fathers, 23 J. Homosexuality, 99-112 (1992).

^{13/} See, Kirkpatrick et al., supra, note 10, at 545-51; Susan Golombok et al., Children in Lesbian and Single Parent Households: Psychosexual and psychiatric Appraisal, 24 J. Child Psychol. & Psych., 551 (1983).

^{14/} Golombok et al., supra note 13, at 565, 570.

^{15/} Julie S. Gottman, Children of Gay and Lesbian Parents, Homosexuality and Family
(continued...)

Two of the more recent studies in this area have focused on children who have been raised since birth by a lesbian mother and who have never lived in a heterosexual household.^{16/} In one study, the children of the lesbian mothers did not differ with respect to social competence or behavioral problems compared with children from the general population.^{17/} Another study found no differences in overall cognitive and behavioral functioning, social competence, school performance, or developmental progress between children raised by a lesbian mother and her same-sex partner and children raised by married heterosexual-parent families.^{18/}

Several studies have examined the self-esteem and self-concepts of children raised by a lesbian mother and those raised by a heterosexual mother. A study of adolescents found no differences in self-esteem or self-concept between children of divorced mothers living with a same-sex partner and divorced mothers living with an opposite sex partner. The self-esteem

^{15/}(...continued)

Relations, 177 (1990). Indeed, for the characteristic of "wellbeing," which-measures the individual's sense of feeling secure in the world and in relationships, adult daughters of lesbians tended to have fewer worries and complaints and were freer of doubts and disillusionment; the adult daughters raised by heterosexual mothers exhibited more awkwardness, cautiousness and apathy. *Id.* at 189-90.

^{16/} Earlier studies focused primarily on children who were the product of a heterosexual relationship but were later being raised by a gay or lesbian parent. The data from those earlier studies is indistinguishable from the results of more recent research centering on children who have never lived in heterosexual households. Furthermore, the diversity of experience among the subjects of these studies parallels the experience of adoptive children, some of whom would join the adoptive parent later in life, others of whom might be placed with the adoptive parent while in infancy.

^{17/} Charlotte J. Patterson, Children of the Lesbian Baby Boom: Behavioral Adjustment Self-Concepts, and Sex-Role Identity, *Lesbian and Gay Psychology: Theory, Research and Clinical Applications*, 156 (1994), (hereinafter Baby Boom).

^{18/} Flaks et al., supra note 5, at 16-20, 24.

and self-concept of both groups were within the normal range.^{19/} Moreover, a study of children raised from birth by a lesbian mother in a lesbian household found no difference between those children and children raised by a heterosexual mother on self-concept scales that measure aggression, sociability, or desire to be the center of attention.^{20/} This same study found that children raised by a lesbian mother, some of whom were adopted, reported greater feelings of joy, contentedness and comfort with themselves than children raised by a heterosexual mother.^{21/} Certainly, there is no evidence that children of lesbian mothers experience difficulties related to self-concept.

Finally, the available evidence suggests that there is no difference in the overall level of intellectual development of children raised by a lesbian mother as compared with children raised by a heterosexual mother.^{22/}

In one of the seminal works on gay parenting, reviewing the research in numerous studies, the author concludes as follows:

There is no evidence to suggest that psychosocial development among children of gay men or lesbians is compromised in any respect relative to that among offspring of heterosexual parents. . . . [N]ot a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual parents. Indeed, the evidence to date suggests that home environments provided by gay and lesbian parents are as likely as those provided by heterosexual parents to support and enable children's psychosocial growth.

^{19/} Huggins, supra note 5, at 132-35.

^{20/} Baby Boom, supra note 17, at 167.

^{21/} Id. at 168, 170.

^{22/} Green et al., (1986), supra note 5, at 167-84.

Children of Lesbian and Gay Parents at 1036. See also Bozett at 34; Fiona L. Tasker and Susan Golombok, Children Raised By Lesbian Mothers, Family Law 184 (May, 1991) (reviewing studies and reaching same conclusion).

1. Sexual Identity.

Social science research has revealed no correlation between a parent's sexual orientation and that of his or her children. Moreover, the parent's sexual orientation does not affect any other aspect of the child's sexual identity.

Sexual identity is a broad term that encompasses an individual's gender identity, gender role behavior and sexual orientation. Gender identity concerns an individual's psychological sense of being principally male or female; gender role behavior relates to an individual's adherence to cultural norms for feminine and masculine attitudes and behavior; and sexual orientation relates to an enduring erotic, affectional, or romantic attraction to individuals of a particular gender.^{23/} Sexual orientation usually is characterized as either homosexual (a primary or exclusive attraction to individuals of one's own gender), heterosexual (a primary or exclusive attraction to individuals of the other gender), or bisexual (significant attractions to members of both genders).

Research comparing the gender identity of children raised by a lesbian mother with the gender identity of children raised by a heterosexual mother has found that the two groups do not differ.^{24/} These studies typically attempt to determine whether the child identifies

^{23/} Gregory M. Herek, Sexual Orientation, 1 Women's Studies Encyclopedia, 344-346 (1989).

^{24/} Golombok et al., supra note 13, at 568; Gottman, supra note 15, at 189; Kirkpatrick et al., supra note 10, at 551; Richard Green, The Best Interests of the Child with a
(continued...)

psychologically as a male or female and whether the child is happy with the biological sex to which he or she belongs.^{25/} The children of a lesbian mother are as likely as the children of a heterosexual mother to identify psychologically as a member of their biological sex and to be content with that status.^{26/}

Research has also found that a parent's sexual orientation does not significantly influence a child's gender role behavior. Most boys raised by a lesbian mother show gender role behavior ordinarily regarded as characteristically masculine, and most girls raised by a lesbian mother show gender role behavior ordinarily regarded as feminine.^{27/} Further, children raised by a lesbian mother show no significant differences in gender role behavior when compared with children raised by a heterosexual mother.^{28/}

^{24/} (...continued)

Lesbian Mother, 10 Vol. 1 Bulletin of the AAPL, 7, 14 (1982) [hereinafter Green (1982)].

^{25/} Green et al., (1986), supra note 5, at 176.

^{26/} See, e.g., id. at 176 (comparing the children of lesbian mothers and children of heterosexual mothers from rural and urban areas in ten states.)

^{27/} See, e.g., Golombok et al., supra note 13, at 562; Gottman, supra note 15, at 181; Hoeffler, supra note 10, at 542; Baby Boom, supra note 17, at 168.

^{28/} Baby Boom, supra note 17, at 169; Golombok et al., supra note 13, at 568; Gottman, supra note 15, at 189; Kirkpatrick et al., supra note 10, at 551; Hoeffler, supra note 10 at 542; Green (1982), supra note 24, at 14; Green et al., (1986), supra note 5, at 176, 179-183 (finding that the daughters of lesbians were more likely to prefer less sex-typed activities and to express an interest in becoming a lawyer, doctor, engineer, or astronaut than daughters of heterosexual mothers, but concluding that sex role behavior of the daughters of lesbians fell within normal limits).

Scientists have replicated the finding of no difference in numerous studies, using a variety of measures to assess gender role behavior. The measures used include sex-typed play activities, toy preferences, choice of television programs, peer relationship
(continued...)

Finally, the belief that a child raised in a household with a lesbian or gay parent is more likely to become lesbian or gay is without any basis in fact.^{29/} There is no evidence that children develop their sexual orientation by emulating their parents. Numerous studies have found that children who are raised by a lesbian or gay parent do not differ in any significant way with respect to their sexual orientation when compared with children who are raised by a heterosexual parent.^{30/} Although the exact "cause" of same-sex sexual orientation is unknown,^{31/} the consensus is that sexual orientation is not within social or parental control, and is formed at a very early age, long before adolescence.^{32/} No respected theory of

^{28/}(...continued)

choices, garment preferences, and child, parent, and teacher interviews. Gottman, supra note 15, at 180 (summarizing the research).

^{29/} Some courts have denied a gay or lesbian parent custody of his or her child based in part on a fear that a child in that parent's custody would be more likely to become gay or lesbian. See J.L.P.(H.) v. D.J.P., 643 S.W.2d 865, 872 (Mo. App. 1982); Jacobson v. Jacobson, 314 N.W.2d 78, 81-82 (N.D. 1981); Dailey v. Dailey, 635 S.W.2d 391, 394-396 (Tenn. App. 1981). Such a rationale is not only factually flawed, as shown in the text; it rests on the erroneous assumption that lesbians and gay men are less happy or less valuable to society than are heterosexuals.

^{30/} Golombok et al., supra note 13, at 564; Gottman, supra note 15, at 189; Green (1982), supra note 24, at 13-14. For example, in a study of the sexual orientation of the adult daughters of lesbian mothers, the research showed that these daughters did not differ significantly in sexual orientation from the daughters of heterosexual mothers. Gottman, supra note 15, at 189. The two groups also did not differ significantly in gender identity.

^{31/} See, Steve Susoeff, Assessing The Child's Best Interests When a Parent is Gay or Lesbian: Toward a Rational Custody Standard, 32 U.C.L.A. L. Rev., 852, 882-83 and n.194 (1985). See generally Judd Marmor, Overview: The Multiple Roots of Homosexual Behavior, Homosexual Behavior: A Modern Reappraisal, 3, 5. (1980); Noretta Koertge, Nature and Causes of Homosexuality: A Philosophic and Scientific Inquiry 6 J. of Homosexuality (1981) (reviewing extant theories of causation).

^{32/} Bozett at 211-13, supra, note 3; see also Marmor, supra note 32 at 3-72.

causation has identified the emulation of a parent's sexuality as a significant contributing factor, however.^{33/}

2. Relationships With Peers and Adults.

Research to date suggests that children raised by a lesbian mother have peer relationships that are substantially equivalent to those of children raised by a heterosexual mother. Studies have shown no significant differences between these two groups of children in terms of self-ratings of popularity, mothers' ratings of their children's popularity and leadership qualities, blind assessments of the children's popularity and overall social adjustment.^{34/} Similarly, in the area of choice of friends, social science researchers have found little difference between children raised by a lesbian mother and children raised by a heterosexual mother. Before puberty, most children in both groups have same-sex best friends.^{35/}

Children of lesbian mothers have also been found to have healthy and positive relationships with adults. One study found that, as a group, lesbian mothers were more concerned than divorced heterosexual mothers that their children have positive relationships with men. Accordingly, children of lesbians, especially children of lesbians who were sharing a household with their partner, were reported to be more likely to include male relatives in their activities on a regular basis and to have more men in their lives as family friends.^{36/}

^{33/} Warren, Homosexuality and Stigma, Homosexual Behavior, 137-38.

^{34/} Gottman, supra note 15, at 178; Golombok et al., supra note 13, at 565-567.

^{35/} Green et al., (1986), supra note 5, at 178; Golombok et al., supra note 13, at 564.

^{36/} Kirkpatrick et al., supra note 10, at 549.

Overall, there are no findings in the research literature to date that would provide any cause for concern about the social relationships of children raised by lesbian or gay parents with adults.

In this case, the District Court of Appeals hypothesized that a rational basis for Fla. Stat. 63.042(3) might be the fear that adoptive children, whom the court surmised would be predominantly heterosexual, needed parents who could serve as heterosexual role models and "assist the child in the difficult transition to heterosexual adulthood." Cox, 627 So.2d at 1220 (Fla.App.2 Dist. 1993). The court's opinion ignores the large numbers of heterosexual role models available at every turn in the culture at large, while also ignoring similar needs of any homosexual adoptive children.^{37/} Moreover, the lower court's rationale bears no relation to the available body of evidence regarding the sexual identity of children raised by lesbian and gay parents.

The lower court also assumed that gay and lesbian parents would be unable to educate their heterosexual children about relationships with the opposite sex by "telling stories about their own adolescence and explaining their own experience with the opposite sex." Cox, 627 So.2d at 1220. Relevant research regarding the experiences of gay men and lesbians reveals that they were not lacking in heterosexual experiences during their childhood and adolescent years.^{38/} Moreover, no data suggests that homosexual dating and courtship are so dissimilar from heterosexual mating rituals that experience with the former cannot inform the latter. In

^{37/} See Joseph Evall, Sexual Orientation and Adoptive Matching, XXV Family Law Quarterly, 347 (Fall 1991).

^{38/} Alan P. Bell et al., Sexual Preferences: Its Development in Men and Women, 183 (1981).

fact, the research analyzing the actual experiences of children of gay and lesbian parents shows no role-modeling problems.

3. Nature of Research Presented.

As social science professionals, Amici have faith in the established methods employed by their fellow researchers and in the peer review process by which research results are evaluated and appraised by the social science community. No matter what the inherent limitations of social science research may be, the results of such data collection provide far better bases for legislation and policy enactment than do popular prejudices and stereotypes.

While the District Court of Appeals noted that none of the articles introduced below "focus[ed] on children adopted by homosexuals," Cox, 627 So.2d at 1212 (Fla.App. 2 Dist. 1993), that fact is irrelevant.

It is both reasonable and appropriate to draw conclusions about the parenting skills of gay men and lesbians in the adoption context on the basis of available evidence concerning parenting skills in the context of parents raising their biological children. Common fears about allowing gay men and lesbians to adopt focus on gay people's alleged inability to be good parents, not on their inability to be good adoptive parents. Thus, the concern is not about how gay and lesbian parents will deal with issues such as how to tell the child about the adoption, whether to allow contact with the natural parents, or how to cope with a child's incomplete or missing medical history, all of which are issues specific to adoption.^{39/} The concerns are much more basic: Can a gay man or lesbian nurture a child, promote healthy development and serve as a useful role-model -- i.e., the very issues addressed by the

^{39/} See generally, Burton Z. Sokoloff, Antecedents of American Adoption 3 The Future of Children, 17 (Spring, 1993).

parenting studies described above. Although caring for an adopted child presents some additional challenges to any parent, the studies described above show that gay men and lesbians are no less suited to meeting parenting challenges than are heterosexual adoptive parents.

Finally, there is no reason to conclude that adoptions by gay or lesbian individuals or couples will be any less successful than other types of adoptions. As the editors of one of the seminal publications relating to adoption recently concluded:

what seems remarkable is the degree of consistency in favorable outcome in such widely differing types of adoption as special needs, international, transracial, transethnic, and inracial. Once again, these outcomes add strong support for adoption as the preferred solution for parentless children. In addition, they may also reflect the extraordinary strength of the adoptive bond.

Schulman, supra, at 15.

C. Common Myths About Gay and Lesbian Parents Have No Basis in Fact.

Despite the available body of evidence, negative attitudes towards gay men and lesbians, especially with respect to parenting, persist. As demonstrated above, such attitudes have no basis in fact. This section addresses some of the more common stereotypes and shows them to be without merit.

1. Homosexuality Is Not a Mental Disorder.

For centuries, the medical and social scientific establishments both reflected and fueled the general societal view that people with same-sex sexual orientation were mentally deviant. Until the mid-1950's, virtually all research on same-sex sexual orientation used subjects who were mental hospital patients or convicted prisoners, and resulted in skewed and unreliable data. Many scientific "findings" and resulting social beliefs about lesbians and gay men were

based on these highly distorted samples.^{40/} Since researchers began to work with samples more representative of the general homosexual population, an impressive body of authority has developed showing that people who are predominantly lesbian or gay in their behavior and feelings are no more prone to suffer from psychopathology than those who are predominantly or exclusively heterosexual.^{41/}

In 1973, the American Psychiatric Association removed homosexuality from its list of mental disorders.^{42/} Following the APA's lead, other scientific bodies have adopted resolutions designed to rebut the persistent mythology regarding the mental and emotional status of gay people.^{43/}

^{40/} See Marvin Siegelman, Parental Backgrounds of Homosexual and Heterosexual Women: A Cross-National Replication, 10 *Archives Sexual Behavior*, 371 (1981).

^{41/} See, e.g., Ashley Montagu, A Kinsey Report on Homosexualities, 12 *Psychology Today* 62, 66 (August 1978) ("[h]omosexuals appear on the whole, to be as psychologically well-adjusted as heterosexuals"); Oberstone and Sukoneck, Psychological Adjustment and Life style of Single Lesbian and Single Heterosexual Women, 1 *Psychology of Women Quarterly* (1976) (no major differences found in the overall psychological adjustment of lesbians compared to heterosexual women); Freedman, Homosexuality and Psychological Functioning (1971). See generally, Weinberg, Society and the Healthy Homosexual (1972); Sylvia Law, Homosexuality and the Social Meaning of Gender, *Wisc. L. Rev.*, 187, 214 (1988); 102 *Harv. L. Rev.*, 1508.

^{42/} American Psychiatric Association, D.S.M. III: Diagnostic and Statistical Manual of Mental Disorders, 281-82, 380 (3d ed. 1980). This action was taken after the APA's Nomenclature Committee reviewed the most recent research on homosexuality and reported that there was "not one objective study, by any researcher in any country, that substantiates the theory of homosexual pathology." See Charles Silverstein, Even Psychiatry Can Profit From Its Past Mistakes, 2 *J. of Homosexuality*, 153, 157 (1976-1977) (emphasis added).

^{43/} For Instance, the National Association for Mental Health and the United States Surgeon General have both recognized that a same-sex sexual orientation in and of itself constitutes no form of mental or emotional illness. California Commission on (continued...)

In the context of parenting and, specifically, adoption, the American Psychological Association has long decreed that a parent's sexual orientation should not be a bar. The APA adopted a resolution in 1976 which states: "The 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." 32 Am. Psychologist 432 (1977) (emphasis added). Thus, any suggestion that lesbians and gay men are unfit to adopt and raise children because they necessarily suffer from a mental disorder is entirely unfounded.

2. Gay and Lesbian Couples Form Stable, Long Lasting Relationships.

Many lesbian and gay people in this country live in actual family units consisting of couples, with or without children, that are functionally indistinguishable from heterosexual families. Members of lesbian and gay families share the economic, social and emotional necessities of life, and regard one another as family.^{44/} Although such official sources as the U.S. Census Bureau do not collect data on the subject, social scientists have concluded that millions of gay couples live in the United States.^{45/} Clearly, there is no one "gay lifestyle" any more than it can be said that all non-gay people live the same lives. Sexual orientation,

^{43/}(...continued)

Personal Privacy, Report of the Commission on Personal Privacy, 361-63 (1983). The American Psychological Association has encouraged mental health professionals to take the lead in removing the stigma of mental illness which historically has been associated with homosexuality. 35 Am. Psychologist 532 (1980).

^{44/} See, e.g., Braschi v. Stahl Associates, 74 N.Y.2d 201 (1989) (highest court of New York state recognizing that the reality of family life today includes same-sex couples living together and reflecting the basic family values of financial and emotional interdependence, commitment, and caring).

^{45/} For example, one landmark study of the relationships of 156 gay male couples estimates that in the American population of 225 million there are 2.5 million male couples. David McWhirter and Andrew Mattison, The Male Couple, 145 (1984).

gay or otherwise, is in and of itself not a useful indicator of a person's values, parental fitness, or way of life.

3. Children Raised by Gay Men and Lesbians Are No More Likely To Become Lesbian or Gay Than Children Raised by Heterosexuals.

Some critics of gay adoption argue that children raised by a lesbian or gay male parent are more likely to become lesbian or gay than they would if raised by a heterosexual parent. This position takes as its unstated premise that it is harmful for children to grow up gay or lesbian, a premise not endorsed by the amici. But whether or not there might be harms, there is no evidence to support the view that children will become gay or lesbian by observing, or identifying with, the orientation of their parents. See Section II.B.1, supra.

The incidence of same-sex orientation among the children of gay men or lesbians apparently occurs as randomly and in the same proportion as it does among children in the general population. As they grow up, children develop sexual orientation independently from their parents.^{46/} The strongest proof for this simple proposition is that most lesbians and gay men have had parents who are exclusively or primarily heterosexual. "As this fact suggests, homosexual men and women do not learn their sexual preference by watching the sexual

^{46/} See Richard Green, Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents, 135 Am. J. Psychiatry, 692, 695-96 (1978) [hereinafter Green (1978)] (reporting normal behavior and typical aspirations among the subject children); Green, (1982) supra note 24, at 14 (finding no significant gender identity differences for the boys or the girls in either the heterosexual or lesbian set of families); Debra R. Cohen, Children of Homosexuals Seen Headed Straight, Psychology Today, 44 (Nov. 1978); Hoefter, supra note 10, at 542 (noting no significant difference in the acquisition of sex-role traits between the children of lesbian and heterosexual mothers and hypothesizing that children's peers have the greatest influence on their sex-role development); Ruth Weeks, Two Cases of Children of Homosexuals, 6 Child Psychiatry & Hum. Dev., 26-32 (1975) (finding it impossible to distinguish specific aspects of the children's development that are directly related to their parents' sexuality).

activities of their parents." Note, The Avowed Lesbian Mother and Her Right to Child Custody: A Constitutional Challenge That Can No Longer Be Denied, 12 San Diego L. Rev. 799, 861 (1975) (quoting psychiatrist George Weinberg).^{47/}

4. Children Of Gay People Are No More Likely Than Children Of Other Minority Groups To Suffer Stigmatization Or Harassment.

It is sometimes feared that children of gay or lesbian parents will be harmed by social stigma associated with the sexual orientation of the parent. The social science research does not substantiate that fear. One study showed that only about five percent of the children studied who had lived with an openly lesbian or gay parent experienced harassment by other children.^{48/} Another study suggested that children of a lesbian mother recognize that they may face social stigma and will exercise discretion in revealing the sexual orientation of their parents,^{49/} presumably resulting in fewer instances of harassment.

Where children do experience harassment, the incidents generally are infrequent and consist of relatively minor verbal teasing, such as name-calling.^{50/} Such experience has not

^{47/} See also Report of the Comm'n on Personal Privacy, 364 (it is as likely that the left-handed minority will "convert" members of the right-handed majority as it is that gay people can "convert" heterosexuals).

^{48/} Brian Miller, Gay Fathers and Their Children, 28 Fam. Coordinator 544, 548 (1979). See also Green (1978) supra note 47, at 695-96 (limited data showed that in six lesbian mother families in which issue of teasing was discussed, three children reported being teased and 18 children did not experience teasing; in all three cases, the teasing was minor and transitory).

^{49/} Karen G. Lewis, Children of Lesbians: Their Point of View, 25 Soc. Work, 198, 199 (1980).

^{50/} See Frederick W. Bozett, Gay Fathers: A Review of the Literature, Homosexuality and the Family, 137, 143, 144, 148 (1989); Miller et al., supra note 5, at 548.

been shown to have had any significant impact on the children involved.^{51/} Indeed, given the data showing no differences in psychological adjustment between children of gay and lesbian parents and children of heterosexual parents, any such teasing clearly has no significant long-term effects on the children.

Of course, many children are teased because of some way in which they or their families are different from the norm. Teasing may be based on a child's physical appearance, race, religion, economic status, or any number of other factors. Just as black or Jewish parents help their children to cope with the bigotry inflicted on them because of race or religion, so can gay parents guide their children and assist them in adjusting to the world's imperfections and unfairness.^{52/}

5. There Is No Connection Between Sexual Orientation and Child Sexual Abuse.

There is no evidence from social science research that even suggests that lesbian or gay parents are more likely to sexually abuse their children, or to allow them to be molested

^{51/} See, Green (1978), supra note 47 at 695 (children's reactions to name calling directed at mothers were rather matter-of-fact and ranged from defensiveness to obliviousness); Donna J. Hitchens and Martha J. Kirkpatrick, Lesbian Mothers/Gay Fathers, Emerging Issues in Child Psychiatry and the Law, 9 (1985); Susoeff, supra, note 31, at 877-80.

^{52/} In fact, as one court recognized:

It is just as reasonable to expect that they [children of gay parents] will emerge better equipped to search out their own standards of right and wrong, better able to perceive that the majority is not always correct in its moral judgments, and better able to understand the importance of conforming their beliefs to the requirements of reason and tested knowledge, not the constraints of currently popular sentiment or prejudice.

M.P. v. S.P., 169 N.J. Super. 425, 438, 404 A.2d 1256, 1262 (1979).

by others.^{53/} In fact, research on the sexual abuse of children shows that offenders are, in disproportionate numbers, heterosexual men.^{54/} Similarly, incest statistics show that the vast majority of cases of parent-child incest involve heterosexual fathers and their daughters.^{55/} By contrast, the "fear that gay or lesbian parents will molest children is unfounded." 102 Harv. L. Rev. at 1639. There is no more justification to deny adoption to gay parents on the basis of their sexual orientation than there would be to deny adoption to non-gay parents because of theirs.

CONCLUSION

Adoption decisions require an individualized determination of the best interests of the child. Florida Stat. § 63.042(3) precludes such individualized determinations when lesbians or gay men seek to adopt, never allowing the best interests of the child to be considered. Not only does social science fail to provide any basis for this rule, but in fact all of the social

^{53/} A. Nicholas Groth, Patterns of sexual Assault Against Children and Adolescents, Sexual Assault of Children and Adolescents, 4-5 (1978) ("[T]he belief that homosexuals are particularly attracted to children is completely unsupported by our data."); see also, Gregory M. Herek, Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research, 1 Law & Sexuality, 133, 156 (Summer 1991) (reviewing the literature relating to adult sexual orientation and molestation of children and concluding that gay men are not more likely than heterosexual men to molest children). See also John Boswell, Christianity, Social Tolerance and Homosexuality, 16 (1980) (accusations of child molestation have historically been made against disfavored minorities vulnerable to such "propaganda," be they gay people, Jews, or others).

^{54/} See Sam Houston State Univ., Criminal Justice Center, Responding to Child Sexual Abuse: A Report to the 67th Session of the Texas Legislature (1980) ("The vast majority of sex crimes committed by adults upon children are heterosexual, not homosexual.").

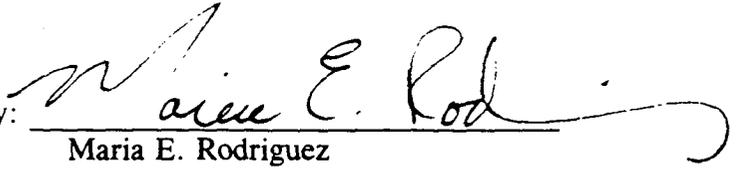
^{55/} See Human Development Service, National Study of the Incidence and Severity of Child Abuse and Neglect, 27-29 (1982)

science research demonstrates that children brought up by gay or lesbian parents are as well adjusted as those reared by heterosexual parents.

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Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned, declare that I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to the within action. My business address is:

235 Montgomery Street
San Francisco, California 94104

On this date I served the document described below * on the parties in this action by placing true copies thereof in sealed envelopes, addressed as shown on the attached list.

 X (BY MAIL) I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States post office mailbox at San Francisco, California.

 (BY PERSONAL SERVICE) I caused each such envelope to be delivered by hand to the addressee.

 (BY FEDERAL EXPRESS) I caused each such envelope to be delivered by overnight courier to the addressee.

 (BY FACSIMILE) I caused each document to be delivered by facsimile.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, on May 13 , 1994.

 Jeanie Brumet
(Typed or Printed Name)

 Jeanie Brumet
(Signature)

***DOCUMENT TITLES(S):**

BRIEF OF AMICI CURIAE

APPENDICES TO BRIEF OF AMICI CURIAE

MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE

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