IN THE SUPREME COURT OF OHIO

NO. _____

APPEAL FROM THE COURT OF APPEALS
FOR THE NINTH APPELLATE DISTRICT - CASE NO. 19017

IN RE ADOPTION OF JANE DOE

(Pseudonyms used throughout to protect privacy of child)
MEMORANDUM IN SUPPORT OF JURISDICTION
SUBMITTED IN SUPPORT OF APPELLANTS
BY AMICUS CURIAE
OHIO PSYCHOLOGICAL ASSOCIATION
NATIONAL ASSOCIATION OF SOCIAL WORKERS AND OHIO CHAPTER
AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY
OHIO HUMAN RIGHTS BAR ASSOCIATION AND
THE LESBIAN/GAY COMMUNITY SERVICE CENTER OF GREATER CLEVELAND

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I. INTRODUCTION

Amici Ohio Psychological Association, American Academy of Child and Adolescent Psychiatry, National Association of Social Workers (NASW), Ohio Chapter of NASW, Ohio Human Rights Bar Association and The Lesbian/Gay Community Service Center of Greater Cleveland submit this Memorandum in Support of Jurisdiction because In re Adoption of Jane Doe is of public or great general interest.

This case presents critical issues of first impression affecting the lives of hundreds if not thousands of children and parents in Ohio and many more throughout the United States. This case offers the opportunity for this Court to secure a leadership role in resolving issues of state and national importance, including (1) the importance to the well being of children of allowing adoptions by unmarried couples; (2) the documented ability of lesbians and gay men to raise children who are as healthy and well-adjusted as other children; and (3) the falsity of certain common myths about lesbians and gay men especially concerning their relationships with children.

As psychiatrists, psychologists, social workers, attorneys and providers of services to lesbian and gay individuals and their families, amici are intimately familiar with and deeply concerned about the effects that false assumptions have, sometimes expressly and more often insidiously, in legal decisions regarding the children of gay men and lesbians. Amici also are familiar with the benefits of adoption for these and other children who happen to be raised in non-traditional family settings. In short, a case possessing such serious matters affecting children, in our collective, professional judgment, is unequivocally of public or great general interest. We respectfully petition this Court to embrace this perspective.

II. INTERESTS OF AMICI

Amicus Ohio Psychological Association ("OPA") represents more than 1600 psychologists in the State of Ohio. OPA provides a variety of services, including professional education, to its member psychologists. In addition, OPA seeks to advance public understanding and to assist in the shaping of public policy on questions where psychological expertise is advantageous. The Ohio Psychological Association is affiliated with the American Psychological Association. Founded in 1892, American Psychological Association is the major association of psychologists in the United States with more than 120,000 members and affiliates. Beginning in 1975, the Council of Representatives of the American Psychological Association passed a series of resolutions urging that discrimination cease against gay men and lesbians in employment, housing, licensing, public accommodation, and child custody.

Amicus American Academy of Child and Adolescent Psychiatry ("AACAP") is a nonprofit professional organization representing over 6,600 child and adolescent psychiatrists. Its members are physicians with at least five years of additional training beyond medical school in general, child, and adolescent psychiatry. Its members actively research, diagnose and treat psychiatric disorders affecting children, adolescents, and their families. The AACAP is committed to protecting the well being and rights of children and their families.

Amicus 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. The largest social work association in the world, it has more than 155,000 members and chapters in every state, including 5,800 members in Ohio. Current

NASW policy affirms the association's commitment "to work toward full social and legal acceptance and recognition of lesbian and gay people."

Amicus The Lesbian/Gay Community Service Center of Greater Cleveland ("The Center") is a not-for-profit community service organization. Formed in 1975 as a research and education foundation, it has since grown into a multi-service agency providing programs, meeting space, awareness, advocacy and support for all of Northeast Ohio. The Center is a resource for obtaining information, referrals, peer support, leadership and advocacy. The Center serves nearly 1500 people every month who call, attend groups, or drop in for information. Many of the callers seek information relating to children, custody, and other family issues.

Amicus Ohio Human Rights Bar Association ("OHRBA") is a non-profit professional organization. Incorporated in 1988, OHRBA's membership consists of attorneys, legal workers, and law students. OHRBA is committed to facilitating and improving the administration of justice, promoting reforms for the purposes of eliminating discrimination on the basis of sexual orientation, and assuring fair and just treatment of individual gay men and lesbians by and under law. OHRBA has participated as amicus curiae in a number of Ohio cases and has sponsored Continuing Legal Education seminars approved by the Ohio Supreme Court including "Gay and Lesbian Issues in Probate and Family Law," "Gay and Lesbian Issues in Family Areas; Custody and Adoption," and "Legal Issues in Adoption."

III. STATEMENT OF THE CASE AND FACTS

Amici adopt appellants' recitation of the facts and procedural history of this case as set forth in their Memorandum in Support of Jurisdiction.

IV. ARGUMENTS AND PROPOSITIONS OF LAW

Amici adopt the Propositions of Law as set forth in appellants' Memorandum in Support of Jurisdiction as accurately reflecting the issues of law presented by this case. Moreover, amici are persuaded that the legal positions advanced by the appellants are compelling in light of the overriding principle of "best interest of the child" in this case and similarly situated ones.

Amici fulfill their "friend of the court" role by presenting additional background information and offering additional reasons why this case is of public or great general interest.[1] Accordingly, amici offer three propositions for the Court's consideration:

I. THE BEST INTERESTS OF CHILDREN ARE PROMOTED BY ALLOWING UNMARRIED COUPLES TO BE ABLE TO PETITION TO ADOPT CHILDREN

II. CHILDREN RAISED BY GAY AND LESBIAN PARENTS ARE AS HAPPY AND HEALTHY AS OTHER CHILDREN AND ARE NOT ADVERSELY AFFECTED BY THEIR PARENTS' SEXUAL ORIENTATION

III. SECURING A HAPPY AND STABLE HOME LIFE FOR THE CHILD, NOT FALSE ASSUMPTIONS ABOUT LESBIAN AND GAY FAMILIES, SHOULD BE THE COURT'S DETERMINING CONSIDERATION

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[1] See, e.g., Ryan v. Commodity Futures Trading Commission, 123 F.3d 1062, 1063-64 (7th Cir. 1997)(finding it inappropriate for amicus curiae briefs to merely duplicate the litigants' arguments).

V. THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST

This is a case of first impression in Ohio. The premier issue is whether a non-biological parent, or "co-parent,"[2] may adopt his or her partner's child (or children) - thereby doubling the social, financial, psychological and other types of security afforded the child by legal recognition of a child-parent relationship – without terminating the legally recognized parent's rights. If, as the lower courts held, such adoptions would concurrently terminate the existing parent's rights, this case poses a second issue: whether Ohio law sanctions termination of the parent's rights conditioned upon the immediate grant of a joint petition of adoption by the parent and the co-parent.

These and the related issues this case raises are of public and great general interest to citizens of Ohio for many reasons.

First, this case offers an unparalleled and much-needed opportunity to reinvigorate the "best interest of the child" mandate, heralded by this Court in In re Adoption of Zschach, 75 Ohio St. 3d 648, 665 N.E.2d 1070 (1996) and elsewhere, as *the* overriding principle in applying and construing the Ohio Adoption Act, R.C. Chapter 3017 (1999).

Second, a decision by this Court would preempt repetitive and perhaps conflicting efforts by lower courts in Ohio faced with the important issues presented here.

Third, many children, parents, potential parents, family members and the state will be directly and powerfully affected by the Court's resolution of these issues. This Court's decision will determine whether Jane Doe and others like Jane will have two parents

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[2] In this Memoradum, "co-parent" means a person who fully assumes a parental role in a child's life, but whose relationship with the child carries no legal significance. In contrast, "parent" means a person to whom the law accords all the rights and responsibilities of a parent.

legally obligated to care for them. Two parents greatly reduce the chance that the child will become a ward of the state, a welfare recipient, or the object of protracted legal battles regarding custody should the legally recognized parent die or otherwise become incapacitated. Again, preempting custody battles now will avoid significant consumption of judicial resources in future years.

Fourth, both courts below held that the explicit language of the Ohio Adoption Act mandated their decisions. Their rationale presents an opportunity for this Court to clarify Ohio's rules of statutory construction, especially as it pertains to the power and duty of Ohio courts to interpret statutes in light of the statutes' purpose.

Fifth, there is a nation-wide trend to re-examine and, where appropriate, realign traditional notions of family. The "best interests of the child" is the motivating force behind this trend. Insofar as the law allows, this Court should forge a leadership role in the development and evolution of family law jurisprudence that recognizes the realities of children's lives.

Finally, and of tremendous importance to the amici and the multitudes of people they serve, this case offers an opportunity to affirm and, if the Court deems appropriate, expand upon the realities it acknowledged in In re Adoption of Charles B, 50 Ohio St. 3d 88, 552 N.E.2d 884 (1990). These include: (1) the importance to children of allowing adoptions by "nontraditional" parents and couples; (2) the documented ability of lesbians and gay men to raise children who are as healthy and well-adjusted as other children; and (3) the falsity of certain common myths about lesbians and gay men especially concerning their relationships with children. These matters are discussed seriatim immediately below.

VI. ARGUMENT

A. THE BEST INTERESTS OF CHILDREN ARE PROMOTED BY ALLOWING UNMARRIED COUPLES TO BE ABLE TO PETITION TO ADOPT CHILDREN.

Jurisprudential notions of what constitutes a family have expanded in recent years. This paradigm shift from a rigid, nuclear-family definition is inspired by a deeper understanding and appreciation by courts and legislatures of the needs of children in non-nuclear families. It is also grounded in reality. With increasing frequency, children are being cared for by stepparents, grandparents, life partners of the legally recognized parent, friends, and close and distant relatives. As a result, children are forming significant parental relationships with persons who are not their biological mothers or fathers. This trend led one researcher to conclude "there is no such thing as a 'typical' family."[3]

In accordance with this enlightened view of the safety and security children enjoy in nontraditional homes, courts and legislatures have become more creative in protecting these increasingly complex family networks.[4] This Court has already demonstrated the law's flexibility to respond to modern definitions of family in cases such as In re Adoption of Charles B and Lawson v. Atwood, 42 Ohio St. 3d 69, 536 N.E.2d 1167 (1989)(holding

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[3] James R. Wetzel, American Families 75 Years of Change, 113 Monthly Lab. Rev. 4 (1990). *See also* REDEFINING FAMILIES – IMPLICATIONS FOR CHILDREN'S DEVELOPMENT (A. E. Gottfried & A. Gottfried, eds. 1994).

[4] Similarly, a number of courts have recognized that the mother-child relationship between the child and the lesbian co-parent should be legally sanctioned through adoption. In re Jacob, 86 N.Y. 2d 651, 660 N.E.2d 397 (1995); In re K.M., 274 Ill. App. 3d 189, 653 N.E.2d 888 (1995); In re H.N.R., 285 N.J. Super. 1, 666 A.2d 535 (1995); In re J.M.G., 267 N.J.Super. 622, 632 A.2d 550 (1993); In re Tammy, 416 Mass. 205, 619 N.E.2d 315 (Mass. 1993); In re B.L.V.B., 628 A.2d 1271 (Vt. 1993); In re L.S. and V.L., 17 Fam L. Rptr. (BNA) 1523 (D.C. Super. Ct., Aug. 30, 1991); In re S.M.Y., 163 Misc. 2d 272, 620 N.Y.S.2d 897 (N.Y. Fam. Ct.1994). Each of these courts has found that permitting this type of adoption provides critical legal rights and protections to children as well as promoting their safety and physical and emotional well being.

that "one who has exercised all the indicia of parenthood"..."is and has been a parent" of the decedent, and therefore entitled to pursue a remedy under Ohio's Wrongful Death Act). In keeping with this trend, animated by the best-interests-of-the-child principle, this Court should take jurisdiction and construe the Ohio Adoption Act to enable children raised in loving and nurturing non-traditional families to receive the many benefits of adoption.

Although Jane Doe has not been abandoned, the Court's ruling in this case will affect both children like her and many other children awaiting adoption. Child welfare systems across the nation are in a state of crisis. The number of children in the foster care system nationwide ballooned from 276,000 in 1986 to over 450,000 in 1992[5] to almost 500,000 in 1997.[6] At the same time that the number of children entering foster care is increasing, the number of adoptions is shrinking. Over the past two decades, the number of unrelated domestic adoptions fell from 90,000 in 1970 to less than 53,000 a year in 1994.[7]

In light of this crisis, courts can ill afford to construe statutory requirements in an unnecessarily restrictive manner to bar consideration of adoption petitions filed by loving and nurturing parents capable of providing stable homes to children. To the contrary, "[t]here seems to be almost universal agreement...that the nation's children would be

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[5] Thomas McArdle, Exploring the Adoption Option, Investor's Business Daily, Aug. 4, 1994, at 1 (citing statistics from the National Council for Adoption and the American Public Welfare Association).

[6] H.R. Rept. No. 105-89 at 7-8, reprinted in 1997 U.S. Code Cong.& Admin. News Vol. IV at 2740 .

[7] McArdle at 1.

well-suited by a policy that increases adoption rates."[8] By construing the standing requirement to allow unmarried couples to adopt, more homes will become available to Ohio children,[9] and the state's burden of placing children will be eased.

Through adoption, children find safe, stable, and loving homes. Children benefit from adoption psychologically through the security it affords their relationships with primary caregivers. Children also benefit materially through additional health care choices, child support, and death benefits.

If the decision below were allowed to stand, children's eligibility for these protections would depend upon the marital status of their caregivers, not on the best interests of the child. Because children today are being raised, and raised well, in a variety of non-traditional family arrangements, adoption laws should not be construed so narrowly that children in need of stable, safe homes will not find them.

Recognizing that co-parents may adopt without severing the parent's legal ties to the child serves the best interest of the child by protecting the child's primary attachment to an individual who otherwise has no legal standing in the event of death of, or separation from, the legal parent. The importance of a child's attachments to his or her "psychological parent"[10] is well documented. Children need to form attachments to

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[8] H.R. Rept. No. 105-89 at 8. This House Report accompanied the Adoption and Safe Family Act of 1997, P.L. 105-89. Signed into law in November 1997, the Act provides financial incentives for states that increase the number of foster children for whom permanent families are established through adoption.

[9] *See* Note, Developments in the Law — Sexual Orientation and the Law, 102 Harv. L. Rev. 1508, 1645-46 (1989) (noting the question of whether lesbians and gay men should be permitted to adopt must be answered in the context of the placement alternatives for "hard-to-place" state wards — including lesbian or gay teenagers — who may not otherwise find the permanent home which is so vital to a child's healthy development).

[10] Leading child welfare experts define the psychological parent as "one who, on a continuing, day-to-day basis, through interacting, companionship, interplay, and mutuality, fulfills the child's psychological

primary caretakers in order to grow up emotionally and behaviorally intact.[11] In cases involving unmarried parents, legal recognition of a child's primary attachments can be preserved through adoption, thereby aiding the child's emotional and psychological health.

Moreover, absent an adoption decree, the child's relationship with her co-parent is legally uncertain in the event of a death or incapacitation of the parent, or termination of the relationship between the parent and co-parent. See, e.g., Liston v. Pyles, 1997 Ohio App. Lexis 3627 (August 12, 1997) (appended to appellants' brief). Without the legal protection of adoption, the child could be subjected to the pain of further emotional loss if the parent turns against the co-parent following termination of their relationship, or if a custody battle ensues between relatives of the deceased or incapacitated parent and the surviving co-parent, an occurrence which is sadly not uncommon.[12] Allowing unmarried couples to adopt would preempt these bitter custody battles and minimize the chance of compounding the child's grief stemming from the loss of his or her remaining co-parent.

Allowing co-parents to adopt may entitle the child to significant financial, health and other benefits otherwise unavailable For example, either legal parent may choose health insurance with dependent coverage If the biological parent becomes uninsured for any period – for instance, if she loses her insurance because she resigns from outside

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needs for a parent, as well as the child's physical needs." J. Goldstein, A. Freud, & A. Solnit, BEYOND THE BEST INTERESTS OF CHILD 98 (1979)

[11] P. Hess, Parent-Child Attachment Concept Crucial for Permanency Planning, 63 Social Casework 46, 47-48 (1982).

[12] *See* Nancy Polikoff, This Child Does Have Two Mothers: Redefining Parenthood to Meet the Needs of Children in Lesbian-Mother and Other Non-Traditional Families, 78 Geo. L.J. 459, 531-32 (1990) (citing three tragic examples of such custody battles). *See also* In re Aston H., 167 Misc.2d 840, 635 N.Y.S.2d 418 (Kings Cty. Fam. Ct. 1998)(best interests of the child warranted award of guardianship of child to lesbian life partner of biological mother following death of biological mother.)

employment to stay home and care for the child - adoption enables the child to remain insured through the co-parent's plan.

Adoption also allows the child's parents to plan their estates so that the child will be assured of inheriting the co-parent's assets. A co-parent can provide for a child in a will, but wills can be invalidated, lost, or contested. Ohio's laws of intestate succession do not provide for the child to inherit from a co-parent. By bestowing the right of inheritance in the case of intestacy, adoption secures the children's inheritance from both parents. An adoption decree can also make a child eligible for family trusts passing to children.

Absent an adoption decree, the child also will be deprived of social security, death or disability benefits normally available to a child upon the death or disability of a legal parent.[13] Finally, if the child's parents separate, adoption would guarantee the child a legally enforceable right to financial support from both parents.

B. CHILDREN RAISED BY GAY AND LESBIAN PARENTS ARE AS HAPPY AND HEALTHY AS OTHER CHILDREN AND ARE NOT ADVERSELY AFFECTED BY THEIR PARENTS' SEXUAL ORIENTATION.

Millions of children have gay or lesbian parents.[14] Moreover, gay men and lesbians raise emotionally healthy, secure, and happy children in the same proportion as do heterosexuals. The Court's decision in this case will most directly affect the life of "Jane

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[13] *See* Social Security Act, Title II, 42 U.S.C. §402(d) (1998), incorporating the definition of "child" entitled to benefits from 42 U.S.C. §416(e). This definition limits eligibility to biological child, legally adopted child, or stepchild of the disabled or deceased claimant. *See also* In re Tammy, In re Jacob, and In re J.M. G at n. 4 *supra.*

[14] Estimates range from six million, see J. Schulenberg, GAY PARENTING (1985), to eight to ten million, see ABA Annual Meeting Provides Forum For Family Law Experts, 13 Fam. L. Rep. 1512, 1513 (1987), to six to fourteen million, Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 Child Dev. 1025 (1992).

Doe," but will also have a profound impact upon other children in Ohio whose relationships with their gay or lesbian co-parents would be threatened by affirmance of the court below.

Studies of lesbian and gay parents show them to be very much like their non-gay counterparts. No studies have revealed a difference in basic lifestyle or parenting style between lesbian and gay parents and heterosexual parents.[15] In a landmark work on gay and lesbian families which reviews the research in numerous studies, the editor concludes:

> The psychological health of the children in lesbian mother families compared to non-gay families has been largely established . . . Based on current research, these families are raising healthy children, and deserve increased legal protection in terms of custody rights and the legalization of adoption by the non-biological parent in lesbian and gay parent families.[16]

In all respects, lesbians and gay men have proven to be capable of being good parents as non-gay people.[17] The unrefuted consensus among researchers is that children raised by openly lesbian or gay parents grow up well adjusted. The most comprehensive survey of these studies, numbering more than fifty, was done at the University of Virginia. The researcher observed that "not a single study has found children of gay or lesbian parents to be disadvantaged in any significant respect relative to children of heterosexual

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[15] Patterson, 63 Child Dev. 1025.

[16] Frederick W. Bozett, GAY AND LESBIAN PARENTS 34 (1987) (emphasis added). *See* also Patterson, 63 Child Dev. at 1036.

[17] *See, e.g.*, Patricia J. Falk, The Gap Between Psychosocial Assumptions and Empirical Research in Lesbian Mother Child Custody Cases, in REDEFINING FAMILIES – IMPLICATIONS FOR CHILDREN'S DEVELOPMENT 131 (A. E. Gottfried & A. Gottfried, eds. 1994); Mary B. Harris & Pauline H. Turner, Gay and Lesbian Parents, 12 J. of Homosexuality 101, 103 (1986); David J. Kleber, et al., The Impact of Parental Homosexuality in Child Custody Cases: A Review of the Literature, 14 Bull. Am. Acad. Psychiatry & L. 81, 86 (1986).

parents," and concluded that "the evidence to date suggests that home environments provided by gay and lesbian parents are as likely as those provided by heterosexuals to support and enable children's psychosocial growth."[18] Other researchers have similarly concluded that, "being gay is not incompatible with effective parenting, and certainly not the major issue in parents' relationships with their children."[19]

In short, all of these scientifically sound studies turn on the fact that non-heterosexual parents raise healthy children. Indeed, there is no reputable scientific work that suggests that gay or lesbian people are less capable parents, as a group, than non-gay people. Sexual orientation is fundamentally irrelevant to a parent's qualifications or a child's well being. Ohio courts should not retreat from this view acknowledged by this Court in In re the Adoption of Charles B.

C. SECURING A HAPPY AND STABLE HOME LIFE FOR THE CHILD, NOT FALSE ASSUMPTIONS ABOUT LESBIAN AND GAY FAMILIES, SHOULD BE THE COURT'S DETERMINING CONSIDERATION

The Ohio courts' obligation to determine the best interests of the child in each case mandates a determination based on actual fact and made on a case-by-case basis without undue focus on the issue of sexual orientation.[20] Unfounded assumptions regarding lesbian and gay people can prevent an objective assessment of parents' relationships with their children. Despite the clear scientific data supporting the parental fitness of lesbian

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[18] Patterson, 63 Child Dev. At 1036.

[19] Harris & Turner, 12 J. Homosexuality at 112.

[20] See also Kleber et al., 14 Bull. Am. Acad. of Psychiatry and Law at 86 ("The greatest single trap the mental health professional can fall into is to approach a 'homosexual' custody case differently from other custody cases.") The same is true for adoption cases.

and gay parents, lingering discomfort and misunderstanding persist. In a judicial setting, this can lead to unwarranted interference with parental rights, and a failure to serve the true best interests of the child. As stated by the editors of the Harvard Law Review:

> [A] judge's view of the child's moral well being may not be the same as the child's best interest. Because of the fluidity of the concept of moral well being and the existence of radically differing viewpoints of homosexuality, it is impossible to state definitively what beliefs regarding sexual orientation are best for the child.[21]

Amici are concerned that the decision in this case, and in all cases involving a child being raised by a loving parent, be free of the residue of false stereotypes and prejudices. Accordingly, we ask this Court to accept jurisdiction and reject these stereotypes.[22]

In addition to the numerous studies confirming that gay men and lesbians are fit parents, the other common myths and concerns about lesbian and gay people have been refuted. Such myths include the misperception that gay, lesbian, or bisexual orientation is a mental illness rather than a natural and healthy aspect of human diversity;[23] that children of gay men and lesbians face inordinate and insurmountable stigmatization from being raised in a non-traditional family;[24] that children raised by lesbian and gay parents might be

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[21] Developments in the Law, 102 Harv. L. Rev. at 1639.

[22] *See* Patterson, 63 Child Dev. 1025, generally, and especially at 1028-29 & 1038 (examining various stereotypes and recommending judicial disregard for them as empirically unfounded).

[23] *See, e.g.,* Ashley Montagu, A Kinsey Report on Homosexuality, Psychology Today, August 1978, at 62, 66 ("[h]omosexuals appear on the whole, to be as psychologically well-adjusted as heterosexuals"); Andrea K. Oberstone & Harriet Sukoneck, Psychological Adjustment and Lifestyle of Single Lesbian and Single Heterosexual Women, 1 Psychology of Women Quarterly 172 (1976) (no major differences found in the overall psychological adjustment of lesbians compared to heterosexual women); Mark Freedman, HOMOSEXUALITY AND PSYCHOLOGICAL FUNCTIONING (1971).

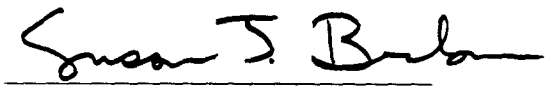
[24] *See e.g.* Blew v. Verta, 617 A.2d 31, 35 (Pa. Super 1992) ("A court cannot assume that because children will encounter prejudice in one parent's custody, their best interests will be served by giving them to another parent"); Conkel v. Conkel 31 Ohio App. 3d 169, 509 N.E.2d 983 (1987) (recognizing that the potential of anti-gay prejudice against a gay father may cause some anguish on the part of his child is not

inappropriately persuaded to become lesbian or gay; [25] and that there is a connection between sexual orientation and child sexual abuse. [26] Amici will fully refute these myths and concerns in their brief if this court takes jurisdiction. In short, amici urge this Court to refuse to allow anti-gay attitudes to interfere with expanding the pool of eligible adoptive families.

VII. CONCLUSION

Because this case is of public and great general interest in Ohio and throughout the nation, amicus curiae urge that the Court allow this appeal and decide this case on the merits.

Respectfully Submitted,



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a reason to deny visitation); Inscoe v. Inscoe, 121 Ohio App. 3d 396, 700 N.E. 2d 70 (1997) ("Courts may not consider adverse impacts on a child that flow from the unpopularity of gays and lesbians in our society."). *See also* Jane B. Hotvedt & Mary E. Mandel, Children of Lesbian Mothers, in HOMOSEXUALITY (Paul, et al. eds., 1982); Note, Joint Adoption: A Queer Option?, 15 Vt. L. Rev. 197, 206, 208 at n. 17 (1990).

[25] See Susan Golombok & Fiona Tasker, Do Parents Influence the Sexual Orientation of Their Children? Findings From a Longitudinal Study of Lesbian Families, 32(1) Developmental Psychology 3 (1996); J. Michael Bailey, et al., Sexual Orientation of Adult Sons of Gay Fathers, 31(1) Developmental Psychology 124 (1995); Richard Green, Sexual Identity of 37 Children Raised By Homosexual or Transsexual Parents, 135 Am. J. Psychiatry 692, 696 (1978).

[26] See Carole Jenny, et al., Are Children at Risk for Sexual Abuse by Homosexuals?, Pediatrics, July 1994, at 41-44; Child Molesters Rarely Homosexual, USA Today, July 12, 1994, at D1, (a child is 100 times more likely to be sexually abused by the heterosexual partner of a relative then by a gay adult; only 3% of child abuse is committed by gay adults, a figure which is either equal to or smaller than the percentage of adults who have a gay sexual orientation).

IN THE COURT OF APPEALS FOR SUMMIT COUNTY, OHIO

NINTH : APPELLATE DISTRICT

IN RE: ADOPTION OF JANE DOE :

: JUDGMENT ENTRY

: CASE NO. 19017

For the reasons stated in the Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Summit County, Ohio is affirmed.

JUDGES

Attachment A

COURT OF APPEALS
SUMMIT COUNTY, OHIO
NINTH APPELLATE DISTRICT

IN RE: ADOPTION OF JANE DOE	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. W. Don Reader, J.
	:	Hon. John W. Wise, J.
	:	
	:	Case No. 19017
	:	
	:	OPINION

CHARACTER OF PROCEEDING: Appeal in the Court of Common Pleas, Probate Division, Case No. A96-10-004

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY:

APPEARANCES:

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Farmer, J.

Jane Doe was born on July 28, 1990. Jane Doe's biological mother and appellant, biological mother's lesbian partner, have been together since 1981.

On October 16, 1996, appellant filed a complaint for declaratory judgment seeking to adopt Jane Doe while continuing the parental rights of biological mother. After extensive briefing, the trial court found appellant to be a suitable person to adopt under R.C. 3107.03, but denied the requested relief because biological mother could not retain her parental rights if appellant or appellant and biological mother together were to adopt Jane Doe. See, Opinion and Order filed March 4, 1998.

Appellant filed a notice of appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

THE TRIAL COURT ERRED IN RULING THAT IT HAD NO AUTHORITY TO GRANT AN ADOPTION OF A CHILD BY HER LIFELONG SECOND PARENT WITHOUT TERMINATING THE BIOLOGICAL MOTHER'S PARENTAL RIGHTS UNDER R.C. 3107.15(A)(1), AND IN DENYING DECLARATORY RELIEF AND DISMISSING THE ADOPTION PETITION.

II

THE TRIAL COURT ERRED BY NOT DECLARING THAT IT HAD AUTHORITY TO ALLOW A LEGAL PARENT TO RELINQUISH HER PARENTAL RIGHTS AND IMMEDIATELY ADOPT HER BIOLOGICAL CHILD JOINTLY WITH THE CHILD'S SECOND PARENT, AND IN DENYING DECLARATORY RELIEF AND DISMISSING THE ADOPTION PETITION.

I

Appellant claims the trial court erred in denying the petition for declaratory relief. Specifically, appellant claims the trial court erred in finding R.C. 3107.15(A)(1) would terminate the biological mother's parental rights upon adoption of Jane Doe by appellant, a non-stepparent. We disagree.

The complaint for declaratory judgment requested a judgment granting biological mother continued parental rights of Jane Doe, a judgment allowing the filing of the adoption petition by appellant and a judgment approving the adoption of Jane Doe by appellant.

As noted by the trial court, there is no impediment for the proposed adoption because appellant fulfills the requirements of R.C. 3107.03(B) to adopt as appellant is "[a]n unmarried adult." The gravamen of this appeal is what is the effect of an adoption by appellant, "an unmarried adult," on the parental rights of the biological mother.

By opinion and order filed March 4, 1998, the trial court strictly construed R.C. 3107.15(A)(1) and found an adoption by appellant would terminate the parental rights of the biological parent. The trial court reached this conclusion by finding the unambiguous language and meaning of the statute required strict construction. We concur with this reasoning based upon the following analysis.

R.C. 3107.15(A)(1) states in pertinent part:

> A final decree of adoption*** shall have the following effects as to all matters within the jurisdiction or before a court of this state***:
> (1) Except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the biological or other legal parents of the adopted person of all parental rights and responsibilities, and to terminate all legal relationships

> between the adopted person and the adopted person's relatives, including the adopted person's biological or other legal parents, so that the adopted person thereafter is a stranger to the adopted person's former relatives for all purposes***.

"Adoption" in Ohio is a creature of statute. Therefore, the general rule that issues not available at common law but subject to statutory creation must be strictly construed must be applied.

In *State ex rel. Kaylor v. Bruening* (1997), 80 OhioSt.3d 142, 145, the Supreme Court of Ohio recognized the nature of the language in R.C. 3107.15(A) and its effect on a biological parent:

> R.C. 3107.15(A) provides that a final decree of adoption issued by an Ohio court has the effect of terminating all parental rights of biological parents and creating parental rights in adoptive parents. *State ex rel. Smith v. Smith* (1996), 75 Ohio St.3d 418, 419, 662 N.E.2d 366, 368; *In re Adoption of Greer* (1994), 70 Ohio St.3d 293, 298, 638 N.E.2d 999, 1003.

Appellant and amicus argue the precedent set forth in other Ohio cases indicates the Supreme Court of Ohio understands the granting of an adoption relies on a case-by-case analysis:

> Pursuant to R.C. 3107.14, adoption matters must be decided on a case-by-case basis through the able exercise of discretion by the trial court giving due consideration to all known factors in determining what is in the best interest of the person to be adopted. (R.C. 3107.14[C], construed and applied.)
>
> *In re Adoption of Charles B* (1990), 50 OhioSt.3d 88, paragraph three of the syllabus. See also, *State ex rel. Portage Cty. Welfare Dept. v. Summers* (1974), 38 Ohio St.2d 144 (necessity of agency assent to an adoption), and *In re*

Haun (1972), 31 Ohio App.2d 63 (agency refused to give consent because of age of petitioners).

We find the cases cited by appellant to be distinguishable from the case *sub judice.* In the cited cases, the Supreme Court of Ohio emphasized the trial court's discretion in determining eligibility to adopt. The case *sub judice* does not involve eligibility to adopt but the effects of adoption.

We find this "tremendous trifle" to be the linchpin of this case. By strictly construing the statute which involves the termination of parental rights in favor of adoption, we are adhering to the maxim "adoption statutes are in derogation of common law and therefore must be strictly construed***." *In re Adoption of Zschach* (1996), 75 Ohio St.3d 648, 655.

Although we are mindful of the dilemma facing the parties and are sympathetic to their plight, it is not within the constitutional scope of judicial power to change the face and effect of the plain meaning of R.C. 3107.15. This case is not about alternative lifestyles but statutory construction. When we balance the spirit and motivation of the adoption laws (as appellant argues) against the plain meaning of the statutory language created by the state legislature, we are not empowered to find the "spirit" includes the issue presented *sub judice.*

Appellant argues we should use the best interest of the child test in interpreting the statute. We find to do so would place the "cart before the horse." Best interest pertains to the adoption process, not to the legal effects of the adoption. Based upon the clear meaning of R.C. 3107.15(A), we find the trial court did not err in finding the biological

mother's parental rights would terminate upon adoption of the child by appellant, a non-stepparent.

Assigment of Error I is denied.

II

Based upon our decison in Assignment of Error I, we find this assignment of error to be moot.

The judgment of the Court of Common Pleas of Summit County, Ohio, Probate Division is hereby affirmed.

By Farmer, P.J.

Reader, J. and

Wise, J. concur.

JUDGES

SGF/jp 1116

WISE, J., CONCURRING

I concur in the majority opinion and write separately on Assignment of Error I only to emphasize my belief that this is a legislative issue for the General Assembly. Inherent but unspoken in this case is the legal reality that two individuals of the same sex cannot marry under existing Ohio law and therefore, both cannot be spouses. Until such time as the General Assembly of Ohio changes the law pertaining to same-sex marriages or rewrites the adoption statutes to specifically allow the requested legal relationship, I can not interpret into the existing adoption statute a spousal relationship between two individuals of the same sex such as to create a step-parent relationship in a legal context.

JUDGE JOHN W. WISE

PROOF OF SERVICE

A copy of the foregoing Amicus Curiae Memorandum in Support of Jurisdiction, prepared using pseudonyms for the parties, was served on the following counsel of record in this case via ordinary U.S. Mail this 29th day of January, 1999:

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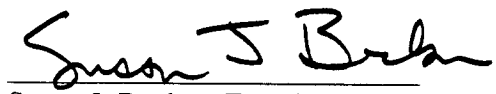

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