

**IN THE COURT OF APPEALS OF MEIGS COUNTY, OHIO
FOURTH APPELLATE DISTRICT**

HERBERT E. INSCOE,

Appellant,

vs.

BONNIE L. INSCOE,

Appellee,

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* Case No. 95-CA-012

**MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE
OHIO HUMAN RIGHTS BAR ASSOCIATION;
AMERICAN ACADEMY OF CHILD AND ADOLESCENT
PSYCHIATRY;
THE OHIO PSYCHOLOGICAL ASSOCIATION;
AND THE NATIONAL ASSOCIATION OF SOCIAL WORKERS**

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Pursuant to Ohio Rule of Appellate Procedure 17, the Ohio Human Rights Bar Association, the American Academy of Child and Adolescent Psychiatry, the Ohio Psychological Association, and the National Association of Social Workers move that this Court grant leave to file a brief of *amici curiae* in support of the Appellant in the within case, Herbert E. Inscoc.

Amici are familiar with the questions involved in this case and believe there is a necessity for this additional brief on the issue of the well-being of children of gay and lesbian parents, and gay men and lesbians' parenting ability. As lawyers, psychiatrists, and psychologists, *amici* are deeply familiar with and concerned about the effects that false assumptions have in custody decisions regarding the children of gay men and lesbians. *Amici* submit this brief to bring to this Court's attention the principal body of professional research pertinent to the questions posed in this case.¹ The parenting abilities of gay men and lesbians have been denigrated and denied based upon prejudice, myths, and stereotypes. *Amici* believe that this Court's consideration of this case will be aided by presentation of the literature and studies demonstrating the baselessness of such discrimination.

Statements of interest of *amici* follow:

Amicus the Ohio Human Rights Bar Association ("OHRBA") is a non-profit professional organization. OHRBA is committed to facilitating and improving the

¹ This brief reviews empirical research from the social and behavioral sciences pertaining to the parenting abilities of gay men and lesbians and to sexual orientation, generally. *Amici* describe data from studies conducted using the scientific method, which requires that data be collected through procedures that minimize the likelihood that a particular researcher's personal biases and values will influence the observation he or she makes. Thus, for example, in a valid study, research subjects should be unaware of the study's hypotheses because such knowledge might influence their responses or behavior. In addition, scientific studies typically are subject to critical review by outside experts, usually during peer review process preceding publication in a scholarly journal.

administration of justice and promoting legislative and administrative 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 is committed to gaining legal recognition for lesbian and gay couples and families, and eradicating the injustices that result from the lack of such recognition. Incorporated in 1988, OHRBA's membership consists of attorneys, legal workers, and law students. OHRBA has appeared as *amicus curiae* in a number of cases which involve the interests of lesbian, gay, and bisexual Ohioans, including the Equality Foundation of Greater Cincinnati, Inc. v. Cincinnati (challenging the Cincinnati ordinance imposing special political disabilities on gay people). OHRBA has been the sponsoring organization of Continuing Legal Education seminars recognized by the Ohio Supreme Court on the topics of "Gay and Lesbian Issues in Probate and Family Law," "Gay and Lesbian Issues in Family Areas; Custody and Adoption," and "Legal Issues in Adoption." The Inscoc case, involving as it does the child of a gay father, raises issues of particular concern to and within the particular purview of the organization. OHRBA submits this brief in an effort to advance the court's understanding of the children of gay men and lesbians residing in Ohio. For these reasons, OHRBA is well-qualified to appear as an *amicus curiae* before this court.

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It advocates for the best interests of the child or adolescent.

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world, with more than 160,000 members. NASW has formally opposed discrimination against gay men and lesbians. In 1977, the NASW adopted its first policy statement on gay issues, which was subsequently revised and expanded in 1987 and again in 1993. As noted in the 1993 statement, the NASW Code of Ethics prohibits social workers from discriminating on the basis of sexual orientation in their professional roles. The current NASW policy also affirms the association's commitment "to work toward full social and legal acceptance and recognition of lesbian and gay people."

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Rita Fuchsmann", is written above a horizontal line.

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Leave to File Brief of Amicus Curiae Ohio Human Rights Bar Association, the American Academy of Child and Adolescent Psychiatry, the Ohio Psychological Association, and the National Association of Social Workers was served upon Patricia M. Logue, Attorney for Appellant, Lambda Legal Defense and Education Fund, Inc., 17 Monroe, Suite 212, Chicago, IL, 60603 and Carson Crow, Attorney for Appellee, P.O. Box 668, Pomeroy, Ohio, by first-class mail, postage prepaid, this 23 day of May, 1996.



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Case No. 95 CA 012

BRIEF AMICUS CURIAE OF OHIO HUMAN RIGHTS BAR ASSOCIATION;
AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY;
THE OHIO PSYCHOLOGICAL ASSOCIATION;
AND THE NATIONAL ASSOCIATION OF SOCIAL WORKERS,
IN SUPPORT OF APPELLANT

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INTRODUCTION

Amici Ohio Human Rights Bar Association ("OHRBA"), The American Academy of Child and Adolescent Psychiatry ("AACAP"), the Ohio Psychological Association and the National Association of Social Workers submit this brief in support of appellant on the issue of gay men and lesbians' ability to raise children who are just as healthy and well-adjusted as other children.

Amici present below a summary of journals, studies, and press reports documenting that gay men and lesbians are as capable as nongay people of creating and fostering healthy, happy parent-child relationships.

INTEREST OF AMICI

Amicus the Ohio Human Rights Bar Association ("OHRBA") is a non-profit professional organization. OHRBA is committed to facilitating and improving the administration of justice and promoting legislative and administrative 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 is committed to gaining legal recognition for lesbian and gay couples and families, and eradicating the injustices that result from the lack of such recognition. Incorporated in 1988, OHRBA's membership consists of attorneys, legal workers, and law students. OHRBA has appeared as *amicus curiae* in a number of cases which involve the interests of lesbian, gay, and bisexual Ohioans, including the Equality Foundation of Greater Cincinnati, Inc. v. Cincinnati (challenging the Cincinnati ordinance imposing special political disabilities on gay people).

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ARGUMENT

I. 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.³ Moreover, gay men and lesbians raise emotionally healthy, secure, and happy children in the same proportion as do heterosexuals.⁴ While the Court's decision in this case will most directly affect the life of Herbert Incoe, Jr., it also may have a profound impact upon other children in Ohio whose relationships with their gay or lesbian parents would be threatened by affirmance of the trial court's ruling.

Studies of lesbian and gay parents show them to be very much like their non-gay counterparts.⁵ No studies have revealed a difference in basic lifestyle or parenting style between lesbian and gay parents and heterosexual parents.⁶ 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

³ 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 Development 1025 (1992).

⁴ Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, *id.* at 1036 (1992). (comprehensive overview of relevant research overwhelmingly affirms that there is no negative developmental effect in children of gay and lesbian parents.)

⁵ See *infra* notes 8-17.

⁶ See *supra* note 4.

legal protection in terms of custody rights and the legalization of adoption by the non-biological parent in lesbian and gay parent families.⁷

In all respects, lesbians and gay men are just as capable of being good parents as non-gay people.⁸ 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. It concluded:

[d]espite long-standing legal presumptions against gay and lesbian parents in many states, despite dire predictions about their children based on well-known theories of psychosocial development, and despite the accumulation of a substantial body of research investigating these issues, not 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 heterosexuals to support and enable children's psychosocial growth.⁹

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."¹⁰

Comparative studies of gay and heterosexual fathers and their children yield the same results. The parenting attitudes and behaviors of 60 gay and heterosexual fathers, for

⁷ Frederick W. Bozett, Gay and Lesbian Parents 34 (1987) (emphasis added). See also Patterson, Children of Lesbian and Gay Parents, at 1036.

⁸ See, e.g., Patricia J. Falk, Lesbian Mothers: Psychosocial Assumptions in Family Law, 44 *Am. Psychologist* 941, 943 (1989); 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).

⁹ Supra note 4.

¹⁰ Mary B. Harris & Pauline H. Turner, Gay and Lesbian Parents, 12 *J. Homosexuality* 101, 112 (1986).

example, revealed no differences between the two groups in the areas of paternal problem solving, providing recreation for children, and encouraging autonomy.¹¹ Gay fathers placed greater emphasis on paternal nurturing, were less traditional in overall parenting attitudes, and assessed themselves as significantly more positive in the paternal role.¹²

Likewise, a 1993 study of 53 fathers (24 gay and 29 non-gay) found no discernible difference based on sexual orientation in parenting styles or attitudes toward parenting.¹³ Another 1989 study (analyzing 33 gay and 33 non-gay fathers) similarly found no differences in overall parenting abilities and skills between the two groups. The researchers noted that gay fathers more frequently explained rules to their children and responded more to their children's perceived needs.¹⁴ Moreover, they found that gay fathers were more likely to facilitate activities with their children, less likely to demonstrate affection with their partners in front of their children, more egalitarian and more likely to counsel their children than were non-gay fathers.¹⁵ Similarly, extensive research shows that the children of lesbian

¹¹ Raymond M. Scallen, An Investigation of Paternal Attitudes and Behaviors in Homosexual and Heterosexual Fathers, 42 Dissertation Abstracts Int'l Sci. & Engineering 3809B (1982).

¹² Id.

¹³ Jerry J. Bigner & R. Brooke Jacobsen, Adult Responses to Child Behavior and Attitudes Toward Fathering: Gay and Nongay Fathers, 23(3) J. Homosexuality 99 (1992).

¹⁴ Jerry J. Bigner & R. Brooke Jacobsen, Parenting Behaviors of Homosexual and Heterosexual Fathers, 18 J. Homosexuality 173, 180-1 (1989).

¹⁵ Id. at 181.

parents are not adversely affected by their mothers' sexual orientation.¹⁶ Since the focal issue in all of these studies also is the comparative significance of sexual orientation, they further support the conclusion that sexual orientation is irrelevant to parenting. In short, all of the studies turn on the fact that parents need not be heterosexual in order to 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.

A. Children of gay men and lesbians are able to overcome stigmatization or harassment just as children of other minority groups do.

To the extent the trial court based its decision on the testimony that Herbie Inscoe had experienced some discomfort because of peoples' reactions to his father's sexual orientation, that should not control the decision regarding custody. The examination should be on the child-parent relationship or bond - whether it is healthy, caring, and appropriate, not on whether third parties are critical of it. Moreover, although negative comments may initially

¹⁶ See Patterson, supra, at note 4. For example, a recent study of 37 families headed by single lesbians and lesbian couples, the researcher found that their children were very similar to children of heterosexual mothers, in terms of social competence and behavior problems, self-concepts and sexual identity. Charlotte J. Patterson, Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex Role Identity in Lesbian and Gay Psychology: Theory, Research and Clinical Applications 156-172 (Beverly Greene & Gregory M. Herek eds., 1994). In fact, this study found that the children of lesbian parents experienced a greater sense of well-being ("feeling joyful, content, and comfortable with themselves") as compared to another study of the children of non-lesbian parents. Id. at 169.

sting, there is no scientific evidence that children of gay or lesbian parents are harmed by attitudes toward the sexual orientation of their parents.¹⁷

Children may be teased or harassed for any way in which they or their parents depart from some perceived norm relating to physical appearance, race, religion, economic status, or any number of other factors. As sociologists and mental health professionals have acknowledged, anti-gay sentiment is akin to the prejudices which other minorities regularly confront. It presents lesbian and gay families with many of the same challenges which other minority families have faced and overcome.¹⁸ The important issue for a child's development is not whether teasing occurs, but how the teasing is handled, and whether the child has the support of a loving parent in learning to deal with it. Removing a child from his gay father will not change his father's sexual orientation or lessen the child's need to face and accept the way in which his family is different. Just as African-American 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.

¹⁷ See 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); see also Developments in the Law: Sexual Orientation and the Law, 102 Harv. L. Rev. 1508, 1638 (1989); Donna J. Hitchens & Martha Kirkpatrick, Lesbian Mothers/Gay Fathers, in Emerging Issues in Child Psychiatry and the Law 108, 112-16 (Elissa Benedek & Diane Schetky eds., 1985).

¹⁸ See, e.g. Knud S. Larsen et al., Anti-Black Attitudes: Religious Orthodoxy, Permissiveness, and Sexual Information: A Study of the Attitudes of Heterosexuals Toward Homosexuality, 19 J. of Sex Research 105 (1983).

Further, deference to prejudice and ignorance regarding lesbians and gay men is as inappropriate as relying upon prejudices against unmarried mothers, interracial couples, or unfamiliar religious practices.¹⁹ It is also unconstitutional. The United States Supreme Court has held that an effort to shield children from private prejudice is an impermissible basis for determining custody. Palmore v. Sidoti, 466 U.S. 429 (1984). In Palmore, the Court held that a private prejudice toward a parent's interracial remarriage could not serve as a ground for denying that parent custody of her child. Id. at 433. In so holding, the Court held it unconstitutional for the government to make custody decisions that give effect to social prejudices and perceived stigma:

[The issue is] whether . . . private biases and the possible injury they might inflict are permissible considerations for removal of an infant child from the custody of its natural mother. We have little difficulty concluding that they are not. The Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.

Palmore at 433 (emphasis added). It is clear that neither private prejudice nor fear of such prejudice is a proper basis for determining custody.

This Court likewise held in Conkel v. Conkel, 31 Ohio App. 3d 169, 509 N.E.2d 983 (1987), that fear that a child will suffer because of anti-gay prejudice and discrimination is not a permissible basis on which to decide parental rights. The Court held that a gay father could not be denied overnight visitation with his minor sons. In answering the mother's concern that her children would be subjected to "the slings and arrows of a disapproving

¹⁹ See Donna J. Hitchens, et al., An Alternative View to Child Custody: When One Parent is Homosexual, 17 Conciliation Courts Rev. 27 (1979); Bozett, Gay and Lesbian Parents 213-214 (1987).

society," the court stated that it "fail[ed] to see why the extension of visitation would exacerbate this issue. The children will have to come to terms with the fact that their father is homosexual." Id. at 987. The court also refused to "take into consideration the unpopularity of homosexuals in society when its duty is to facilitate and guard a fundamental parent-child relationship." Id. See also In re Adoption of Charles B., 50 Ohio St. 3d 88, 552 N.E. 2d 884 (1990) (approving adoption by gay parent).

Similarly, in M.P. v. S.P., 404 A.2d 1256 (N.J. Super. 1979), the court reversed a ruling granting custody of two minor children to their father on the basis that their mother's lesbianism might cause her children embarrassment in the eyes of their peers. The New Jersey court held that custody should remain with the mother, stating that:

[T]he children's exposure to embarrassment is not dependent upon the identity of the parent with whom they happen to reside. Their discomfiture, if any, comes about not because of living with defendant, but because she is their mother, because she is a lesbian, and because the community will not accept her. Neither the prejudices of the small community in which they live nor the curiosity of their peers about defendant's sexual nature will be abated by a change of custody. Hard facts must be faced. These are matters which courts cannot control, and there is little to gain by creating an artificial world where the children may dream that life is different than it is.

Id. at 1262.

In a recent Pennsylvania case, the trial court curtailed a lesbian mother's overnight visits and prohibited her from visiting her son in the presence of her female partner. Blew v. Verta, 617 A.2d 31 (Pa. Super. 1992). On appeal, the court reversed and analogized this case to one involving an interracial home:

A court may not assume that because children will encounter prejudice in one parent's custody, their best interests will be served by giving them to the other parent. If the children are taunted and hurt because they live with a black man, with love and help they may surmount their hurt and grow up strong and

decent--the sort of children any parent would be proud of . . . [A] court must never yield to prejudice because it cannot prevent prejudice. Let the court know that prejudice will condemn its award, [still] it must not trim its sails.

Id. at 35 (quoting In re Custody of Temos, 450 A.2d 111 (Pa. Super. 1982), which involved an interracial home). The Blew court held this rationale was equally applicable to a child of a lesbian parent. It held that the child's interests would be best served by acknowledging the reality of his family rather than by "perpetuat[ing] the fiction of family homogeneity at the expense of the children whose reality does not fit this form." Id. at 36.

As these decisions demonstrate, restrictions on parent-child relationships will not alleviate social prejudice based on race, sexual orientation, or other factors, and those biases may not serve as bases for restricting parental rights. As in Conkel, this Court should refuse to allow bias and prejudice to interfere with the Inscoes' father-son relationship.

II. THE INSCOE'S HEALTHY AND HAPPY FATHER-SON RELATIONSHIP, NOT FALSE ASSUMPTIONS ABOUT A GAY FATHER, SHOULD BE THE COURT'S DETERMINING CONSIDERATION.

Herb and Herbie Inscoe have a healthy father-son relationship. Herb and Charles Hatfield also have a positive relationship. The Ohio courts' obligation to determine the best interests of the child in each case mandates that the determination be based on actual fact and made on a case by case basis without undue focus on the issue of sexual orientation.²⁰ But unfounded assumptions regarding gay people can prevent an objective assessment of gay

²⁰ "The greatest single trap the mental health professional can fall into is to approach a 'homosexual' custody case differently from other custody cases." David J. Kleber et al., The Impact of Parental Homosexuality in Child Custody Cases: A Review of the Literature, 14 Bull. Am. Acad. of Psychiatry and Law 81, 86 (1986).

parents' relationships with their children. Unfortunately, despite the clear scientific data supporting the parental fitness of lesbian 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.

[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. In a pluralistic society, judges should avoid legislating their own sense of morality through custody decisions.²¹

The trial court's unexplained conclusion that Herb's significant other has adversely affected Herbie may reflect the residue of false stereotypes and prejudices toward gays. Amici ask this court to reject these stereotypes.²²

In addition to the studies reviewed above confirming that gays and lesbians are fit parents, the other common myths about gay people have been refuted in the scientific literature. Amici will review some of those myths here.

- A. Contrary to myth, gay, lesbian, or bisexual orientation is a healthy aspect of human diversity.

The myth that homosexuality reflects mental illness has been rejected. Sexual orientation - - whether one is heterosexual, gay/lesbian or bisexual -- is an integral part of

²¹ Developments in the Law, *supra*, at 1639.

²² See Patterson, Children of Lesbian and Gay Parents, *supra* note 4, generally, and especially at 1028-29 & 1038 (examining various stereotypes and recommending judicial disregard for them as empirically unfounded).

human identity.²³ Although often misunderstood, it is well established that gay/lesbian sexual orientation is a healthy and common-place aspect of identity that is set in place at an early age, earlier than allows for conscious choice.²⁴ In 1973, the American Psychiatric Association removed homosexuality from its list of mental disorders because no evidence supported its inclusion.²⁵ The APA acted after a comprehensive review of the research on homosexuality. The reviewers reported that there was "not one objective study, by any researcher in any country, that substantiates the theory of homosexual pathology."²⁶ The reviewers concluded that the most recent and inclusive studies "indicate that homosexuality falls within the normal range of psychological functioning." *Id.* at 157.²⁷

²³ See, e.g., Ashley Montagu, A Kinsey Report on Homosexualities, *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 Life style 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 (Brooks/Cole Publishing Co. 1971). See generally George Weinberg, Society and the Healthy Homosexual (1972); Sylvia Law, Homosexuality and the Social Meaning of Gender, 1988 *Wis. L. Rev.* 187, 214 and n.131; Developments in the Law, *supra*.

²⁴ See, e.g. J. Gonsiorek, et al., Definition and Measurement of Sexual Orientation, 25 *J. of Suicide and Life-Threatening Behavior and Supplement* 41 (1995).

²⁵ American Psychiatric Association, D.S.M. III: Diagnostic and Statistical Manual of Mental Disorders 281-82, 380 (3d ed. 1980).

²⁶ See Charles Silverstein, Even Psychiatry Can Profit From Its Past Mistakes, 2 *J. of Homosexuality* 153, 157 (1976-1977) (emphasis added).

²⁷ Thus, for more than 20 years, psychiatry has rejected the earlier view that people with same-sex orientation were mentally deviant. Until the mid-1950s, virtually all research on same-sex orientation used subjects who were mental hospital patients or convicted prisoners, and this 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. See Siegelman, Parental Backgrounds of Homosexual and Heterosexual Women: A

Other scientific bodies also have adopted resolutions which rebut misconceptions regarding the mental and emotional health of gay people and their capacity to parent.²⁸ In 1976, the American Psychological Association declared: "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."²⁹ The National Association of Social Workers has consistently supported the position that gay men and lesbians are capable parents.³⁰

Cross-National Replication, 10 Archives Sexual Behavior 371 (1981). Since researchers began to work with more representative samples, an impressive body of authority has developed which demonstrates that lesbian or gay people are no more prone to suffer from psychopathology than those who are predominantly or exclusively heterosexual.

²⁸ For instance, the National Association for Mental Health and the United States Surgeon General both have recognized that a same-sex sexual orientation does not reflect mental or emotional illness. California Commission on 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. John J. Conger, Proceedings of the American Psychological Association for the Year 1979, 35 Am. Psychologist 532 (1980).

²⁹ American Psychological Association, Minutes of Annual Meeting, 32 Am. Psychologist 432 (1977), supra.

³⁰ When Massachusetts instituted a policy that effectively prohibited the state from licensing lesbians and gay men as foster parents, NASW joined a lawsuit challenging the policy. See Babets v. Secretary of the Executive Office of Human Serv., 526 N.E.2d 1261, (Mass. 1988). The NASW policy statement on lesbian and gay issues notes that lesbians and gay men have been wrongly denied custody of children and the right to provide foster and adoptive care. Nat'l Ass'n Of Social Workers, Lesbian and Gay Issues, in Social Work Speaks: NASW Policy Statements 93 (1988). The policy states that the NASW shall work for the adoption of policies and legislation to end all forms of discrimination on the basis of sexual orientation. Id. at 162. The code of Ethics adopted by the NASW Delegate Assembly further states that "the social worker should not practice, condone, facilitate or collaborate with any form of discrimination on the basis of ...sexual orientation." Id. at 161.

This court should treat sexual orientation neutrally, recognizing that a same-sex sexual orientation is a benign, natural and healthy part of human diversity.³¹

- B. Americans are generally reluctant to discuss sexual issues; a child's hesitancy in discussing sexual orientation is probably indicative of American conventions and not harm.

Discussing sexuality is difficult for most Americans.³² Courts must not attach undue significance to a child's difficulty in discussing sexual orientation, when this is a common reflection of cultural convention and age-specific behavior. A child's reluctance to discuss sex or sexual orientation does not by itself suggest harm.

The most significant features of exchange of information about sex and sexuality, between Americans, regardless of the medium, are "secrecy; [an] aura of shame and anxiety; [a] preoccupation with health, morality, and normality; [and] taboos about discussing sexuality...."³³ Given this reality, a conclusion that anyone has been damaged simply because he chooses not to discuss a family member's sexuality probably does not reflect American's general discomfort with sexual issues. Additionally, adult children are reluctant to even think of their parents' or siblings' sexuality. Similarly, the fact that a child is reluctant to discuss sexuality is not unusual. Herb Insoe, it appears, has sought to address this issue with Herbie, in an age-appropriate manner. In these areas many people, both children and adults, desire a high degree of privacy. Negative inferences about the effect of

³¹ See supra note 22.

³² Benjamin M. Spock, M.D., A Better World for Our Children 115 (1994); Robert T. Michael, et al., Sex in America: A Definitive Survey 8-9 (1994).

³³ Arlene S. Skolnick, The Intimate Environment: Exploring Marriage and Family 193 (1983).

a parent's same sex relationship should not be drawn merely from a child's hesitancy to discuss it.

C. Children raised by gay men and lesbians are no more likely to become lesbian or gay than children raised by heterosexuals.

An additional misconception regarding sexual orientation is that children will develop a same-sex orientation as a result of substantial contact with a gay or lesbian parent.³⁴ This myth, which is unfounded, starts from the errant premise that something can or should be done to influence sexual orientation. But sexual orientation is a natural and healthy aspect of human diversity that is not affected by the sexual orientation of a custodial parent or other adults.³⁵ All reputable research has found that there is no increased likelihood that children of gay or lesbian parents will be lesbian or gay because of parental influence. Although the exact roots of sexual orientation are still under study, there is a clear consensus that, whatever its origins, sexual orientation is set in place by a very early age, long before adolescence, and cannot be changed.³⁶ This court has noted a "substantial consensus among experts that being raised by a homosexual parent does not increase the likelihood that a child will become homosexual." Conkel v. Conkel 31 Ohio App.3d 169, 509 N.E.2d 983 (1987).

³⁴ See Patterson, Children of Lesbian and Gay Parents, at 1031-32 (no empirical evidence of difference in numbers between children of homosexual and heterosexual parents who identify themselves as gay or lesbian).

³⁵ See supra notes 22-26. See also 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).

³⁶ Bozett at 211-13; see also Gonsiorek., supra, generally.

For example, in one frequently-cited study of twenty-one children raised by lesbian or gay parents, researchers concluded that "based on the best indicators of emerging sexual identity, psychosexual development appears to be typical in at least twenty of the twenty-one children described in this paper."³⁷ Sexual orientation is not within social or parental control, and no respected theory of causation has identified the emulation of a parent's sexuality as determinative.³⁸

Again, children's sexual orientation is developed independently from their parents.³⁹ The strongest proof for this simple proposition is that most lesbians and gay men were raised by 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 activities of their parents."⁴⁰

³⁷ Richard Green, Sexual Identity of 37 Children Raised By Homosexual or Transsexual Parents, 135 Am. J. Psychiatry 692, 696 (1978). Other research on gay or lesbian parenting confirms these findings and shows no significant differences between children raised by gay parents and those raised by non-gay parents. See, e.g., Susan Golombok, et al., Children in Lesbian and Single Parent Households: Psychosexual and Psychiatric Appraisal, 24 J. of Child Psychology and Psychiatry 551, 568 (1982); Bonnie M. Mucklow & Gladys K. Phelan, Lesbian and Traditional Mothers: Responses to Adult Response to Child Behavior and Self-Concept, 44 Psychological Reports 880-81 (1979).

³⁸ Carol Warren, Homosexuality and Stigma, in Homosexual Behavior: A Modern Reappraisal 123, 137-38 (Judd Marmor ed., 1980).

³⁹ See Lawrence J. Cohen, Children of Homosexuals Seen Headed Straight, Psychology Today, Nov. 1978, at 44-45; Beverly Hoeffler, Children's Acquisition of Sex-Role Behavior in Lesbian-Mother Families, 51 Am. J. of Orthopsychiatry 536, 542 (1981) (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).

⁴⁰ 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); see also Calif. Comm'n on Personal Privacy, Report of the

D. There is no connection between sexual orientation and child sexual abuse.

Finally, one particularly odious myth about gay men is that they are intrinsically inclined to sexually abuse children.⁴¹ The accusation is patently false; gay men are not any more likely to abuse children than are heterosexual men.⁴²

A comprehensive study by researchers at The Children's Hospital in Denver recently confirmed this fact. It found that of the 269 reported incidents of child abuse where an adult was the suspected abuser, only two cases (.7%) were identified as homosexual perpetrators.⁴³ Research on the sexual abuse of children shows that offenders are, in

Comm'n on Personal Privacy 364 (1983) (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.)

⁴¹ 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 than 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). Accusations of child molestation have historically been made against disfavored minorities vulnerable to such "propaganda," be they gay people, Jews, or others. John Boswell, Christianity, Social Tolerance and Homosexuality 16 (1980); Voller, Gay Fathers, 27 Fam. Coordinator 149, 154 (1978) (discussing the popular misconceptions about child molestation by gay men); Burton Leiser, Liberty, Justice, and Morals: Contemporary Value Conflicts 3637 (1973) (concerning the common but erroneous confusion of homosexuality with pedophilia).

⁴² See, e.g., Evelyn Hooker, Homosexuality - Summary of Studies, in Sex Ways in Fact and Faith 172 (Duval & Duval eds., 1961); Bozett at 210-11.

⁴³ Carole Jenny, et al., Are Children at Risk for Sexual Abuse by Homosexuals, Pediatrics, July 1994, at 41.

disproportionate numbers, heterosexual men.⁴⁴ See Baker v. Wade, 553 F. Supp. 1121, 1130 (1982), rev'd. on other grounds, 769 F.2d 289 (1985). Similarly, incest statistics show that the vast majority of cases of parent-child incest involve heterosexual fathers and their daughters. See Human Development Service, National Study of the Incidence and Severity of Child Abuse and Neglect 27-29 (1982). In sum, the "fear that gay or lesbian parents will molest children is unfounded." Developments in The Law, supra at 1639.

CONCLUSION

Amici urge this court to evaluate Herbie Inscoc's best interests based upon Herb and Bonnie Inscoc's respective abilities to parent and not based upon false assumptions concerning gay and lesbian people. To do this, the court must recognize that gay men and lesbians are able to raise children as well as heterosexuals and children of gay men and lesbians are not adversely affected by their parents' sexual orientation. Additionally, the court should note that regardless of its decision here Herbie will have a gay parent. We ask this court to base its decision upon Herbie's reality. His father has always been his primary caretaker and they have a healthy, parent-child relationship. We urge this court to understand that gay men and lesbians can and do effectively parent and to understand that the children of gay men and lesbians love and depend on their parents. To do otherwise could impact the lives of other children with gay and lesbian parents. As demonstrated infra,

⁴⁴ 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.").

sexual orientation has no significant effect upon one's ability to parent and therefore should not be a consideration in the award of custody in this case.

Respectfully Submitted,

May 24, 1996

A handwritten signature in black ink, appearing to read "Rita Fuchsmann", with a long, sweeping flourish extending to the right.

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CERTIFICATE OF SERVICE

A copy of the foregoing Brief of Amicus Curiae Ohio Human Rights Bar Association, the American Academy of Child and Adolescent Psychiatry, the Ohio Psychological Association, and the National Association of Social Workers was served upon Patricia M. Logue, Attorney for Appellant, Lambda Legal Defense and Education Fund, Inc., 17 Monroe, Suite 212, Chicago, IL, 60603 and Carson Crow, Attorney for Appellee, P.O. Box 668, Pomeroy, Ohio, by first-class mail, postage prepaid, this 23rd day of May, 1996.



RITA S. FUCHSMAN

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