

SUPREME COURT OF NORTH CAROLINA

CAROL J. PULLIAM)	
)	
Plaintiff-Appellant)	
)	<u>From Henderson County</u>
v.)	94 CVD 1249
)	
FREDERICK J. SMITH,)	
)	
Defendant-Appellee)	

BRIEF FOR
THE NATIONAL ASSOCIATION OF SOCIAL WORKERS
AND
THE NORTH CAROLINA CHAPTER
OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS
AS AMICI CURIAE IN SUPPORT OF APPELLEE

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INTRODUCTION

Amici National Association of Social Workers and the North Carolina Chapter of the National Association of Social Workers (hereafter NASW or Amici), submit this brief in support of appellee on the issue of gay and lesbian parents' ability to raise children who are healthy and well-adjusted.

Amici present below a summary of journals, studies, and press reports documenting that gay and lesbian parents are as capable as non-gay parents of creating and fostering healthy parent-child relationships.

INTEREST OF AMICI¹

Established in 1955, NASW is the world's largest professional association for social workers, with more than 155,000 members in the United States, Puerto Rico, the Virgin Islands, and abroad. NASW's North Carolina Chapter has more than 3,200 social workers as members. NASW has formally opposed discrimination against gay men and lesbians. In 1977, NASW adopted its first policy statement on gay issues, which was subsequently revised and expanded in 1987, 1993 and 1996. The NASW Code of Ethics prohibits social workers from discriminating on the basis of sexual orientation in their professional roles.² The current NASW policy statement affirms the Association's commitment to support judicial review necessary to "establish and protect equal rights of all people without regard to sexual orientation."³ Moreover, NASW policy recognizes that "the most striking feature of the research on lesbian mothers, gay fathers, and their children is the absence of pathological findings."⁴

¹ See Appendix A: Statement of Interest of North Carolina Psychiatric Association (Feb. 1997); See Appendix B: Statement of Interest of the North Carolina Council of Child and Adolescent Psychiatrists (Feb. 1997)

² Nat'l Ass'n of Social Workers, NASW Code of Ethics (1996).

³ Nat'l Ass'n of Social Workers, Lesbian, Gay and Bisexual Issues, in Social Work Speaks: NASW Policy Statements 202 (1996).

⁴Id. at 199.

Amici are familiar with the questions involved in this case and believe there is a necessity for additional argument on the issue of the well-being of children of gay and lesbian parents, and gay men and lesbians' parenting ability. As social workers, 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 body of professional research pertinent to the questions posed in this case.⁵ The United States Supreme Court has recognized the value of considering such research in addition to legal precedent.⁶ 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 scientific literature and studies demonstrating the baselessness of such discrimination.

⁵ 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.

⁶ See Brown v. Board of Education, 347 US 483 (1954).

ARGUMENTS

I. THE COURT OF APPEALS CORRECTLY HELD THERE WAS NO EVIDENCE TO SUPPORT A FINDING OF A SUBSTANTIAL CHANGE OF CIRCUMSTANCES DETRIMENTAL TO THE CHILDREN.

The Court of Appeals held that there was no support for the trial court's finding that there had been a substantial change of circumstances because the findings were either speculative or not supported by evidence on the record. Amici urge this Court to support the position of the Court of Appeals as it is the correct application of legal precedents which requires direct evidence of a substantial change of circumstances that is detrimental to the child before instituting a change to a court-approved child custody award. To do otherwise would be contrary to the child's overall well-being.⁷ Amici further strengthen the support for this argument with the following.

II. THE PARENT-CHILD RELATIONSHIP, NOT UNSUBSTANTIATED ASSUMPTIONS ABOUT A GAY OR LESBIAN PARENT, SHOULD BE THE COURT'S DETERMINING CONSIDERATION.

The children in this case, Joey and Kenny, have lived with their father since birth and developed a healthy relationship with him. The North Carolina courts' obligation to the children mandates that a determination to modify a custody order be based on actual fact and made on a case by case basis without undue focus on the issue of the parents' sexual orientation.⁸ Unfounded assumptions and generalizations about gay people can prevent an objective judicial assessment of a gay parent's relationship with his children. The Court must recognize that there is no such thing as the homosexual,⁹ and consequently must rely on only substantiated findings of fact in order to objectively assess the well-being of the children.

Despite the clear scientific data supporting the parental fitness of gay and lesbian parents, lingering discomfort and misunderstanding persist. In a judicial setting this can lead to

⁷ See Developments in the Law: Sexual Orientation and the Law, 102 Harv. Law Rev. 1636-37 (1989).

⁸ 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).("The greatest single trap the mental health professional can fall into is to approach a 'homosexual' custody case differently from other custody cases.").

⁹ Ashley Montague. A Kinsey Report on Homosexualities, Psychology Today, August 1978, at 62.

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 human sexuality, 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.¹⁰

Amici are concerned that the trial court's conclusion that Mr. Tipton's presence has adversely affected the children in this case may reflect the residue of false stereotypes and prejudices. Amici ask this Court to reject these stereotypes.¹¹

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

A. Contrary to myth, gay, lesbian or bisexual orientation is an integral aspect of human diversity.

The myth that homosexuality reflects mental illness has been rejected.¹² In fact, gay men, lesbians and bisexuals appear to be as psychologically well-adjusted as heterosexuals.¹³ Sexual orientation – whether one is heterosexual, gay, lesbian or bisexual – is an integral part of human identity. Although often misunderstood, it is well-established that gay or lesbian sexual orientation is a common-place aspect of identity that is set in place at an early age, earlier than allows for

¹⁰ Developments in the Law: Sexual Orientation and the Law, *supra* at 1639.

¹¹ See Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 Child Development 1025, 1028-29, 1038 (1992) (examining various stereotypes and recommending judicial disregard for them as empirically unfounded).

¹² 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, 183 (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 in Gender, 1988 Wis. L. Rev. 187, 214 and n.131; Developments in the Law, *supra*.

¹³ Montagu, *supra* at 66.

conscious choice.¹⁴ In 1973, the American Psychiatric Association removed homosexuality from its list of mental disorders because no evidence supported its inclusion.¹⁵ The APA stated that “homosexuality per se implies no impairment in judgment, stability, reliability, or general social or vocational capabilities.”¹⁶ The APA acted after a comprehensive review of the research on homosexuality. The reviewers concluded that there was “not one objective study, by any researcher in any country, that substantiates the theory of homosexual pathology.”¹⁷ The reviewers concluded that the most recent and inclusive studies indicate that “homosexuality falls within the normal range of psychological functioning.”¹⁸

Other scientific bodies also have adopted resolutions which rebut misconceptions regarding the mental and emotional health of gay men and lesbians and their capacity to parent.¹⁹ In 1976,

¹⁴ 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).

¹⁵ American Psychiatric Association, D.S.M. III: Diagnostic and Statistical Manual of Mental Disorders 281-82, 380 (3d ed. 1980).

¹⁶ Sylvia Law, Homosexuality and the Social Meaning in Gender, *supra* at n. 131 (citing Resolution of the American Psychiatric Association, December 15, 1973. American Psychiatric Association, Diagnostic and Statistical Manual 261-83 (3d ed. 1980).

¹⁷ See Charles Silverstein, Even Psychiatry Can Profit From Its Past Mistakes, 2 J. of Homosexuality 153, 157 (1976-1977) (emphasis added)

¹⁸ *Id.* at 157 (“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 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.”)

¹⁹ 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). Sylvia Law, Homosexuality and the Social Meaning in Gender, *supra* at n. 131 (“See Resolution of the Council of Representatives of the American Psychological Association (1975); Resolution No. 7514 of American Public Health Association (1975)”). See, e.g. American Psychological Association, Minutes of the Annual Meeting of the Council of Representatives, 30 Am. Psychologist 620 (1975). Nat’l Ass’n of Social Workers, Lesbian, Gay and Bisexual Issues, in Social Work Speaks: NASW Policy Statements 202 (1996).

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."²⁰ The National Association of Social Workers has consistently supported the position that gay men and lesbians are capable parents.²¹

This Court should treat sexual orientation neutrally, recognizing that a same-sex sexual orientation has no correlation to parenting ability.

- B. Americans are generally reluctant to discuss sexual issues; therefore, a child's hesitancy in discussing sexual orientation is probably indicative of American conventions and not of 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...."²² Given this reality, the conclusion that anyone reluctant to discuss a family member's sexuality is therefore damaged simply does not reflect American's general discomfort with sexual issues. Discussing sexuality is difficult for most Americans.²³ 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. In these areas many people, both children and adults, desire a high degree of privacy. 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. The fact that Joey Smith said he cried

²⁰ American Psychological Association, Minutes of the Annual Meeting of the Council of Representatives, 32 Am. Psychologist 432 (1977)

²¹ 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, Gay and Bisexual Issues, in Social Work Speaks: NASW Policy Statements 202 (1996).

²² Arlene S. Skolnick, The Intimate Environment: Exploring Marriage and Family 139 (1983).

²³ 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).

when his father, at the insistence of Ms. Pulliam, told him he was gay (T. R. p. 7) is likely indicative of such a normal reluctance to discuss adult sexuality. A child's reluctance to discuss sex or sexual orientation does not by itself suggest harm.

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

An additional misconception regarding sexual orientation is that children will develop a same-sex orientation as a result of living with, or otherwise maintaining substantial contact with, a gay or lesbian parent.²⁴ This myth, which is unfounded, starts from the errant premise that something can or should be done to influence sexual orientation. 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 at a very early age, long before adolescence, and cannot be changed.²⁵ Moreover, sexual orientation is not affected by the sexual orientation of a custodial parent or other adults.²⁶ All reputable research has found that there is no increased likelihood that children of gay or lesbian parents will become gay or lesbian because of parental influence.²⁷ Similarly, children of gay or lesbian parents develop a healthy psychosexual orientation. For example, in one frequently cited study of twenty one children raised by gay or lesbian parents, researchers concluded that "based on the best indicators of emerging sexual identity, psychosexual development appears to be

²⁴ 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).

²⁵ Frederick W. Bozett, Gay and Lesbian Parents at 211-13 (1987); see also Gonsiorek, supra, generally.

²⁶ See supra notes 11-16. 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).

²⁷ Bailey, supra at 128 ("The available evidence, including this study, fails to provide empirical grounds for denying child custody to gay or lesbian parents because of concern about their sexual orientation. The fact that sons' sexual orientation was unrelated to the time lived with fathers is especially relevant, because that analysis represented a relatively direct test of the assumption that custody decisions affect children's sexual orientation...Our study suggests that allowing gay men to retain custody of their sons does not substantially increase the likelihood that the sons will become gay adults.").

typical in at least twenty of the twenty-one children described in this paper.”²⁸

Again, children’s sexual orientation is developed independently from their parents.²⁹

The strongest proof for this simple proposition is that most gay men or lesbians 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.”³⁰

D. Contrary to myth, 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.³¹ The accusation is patently false; gay men are not any more likely to abuse children than are heterosexual men.³²

²⁸ 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).

²⁹ See Lawrence J. Cohen, Children of Homosexuals Seen Headed Straight, Psychology Today, Nov 1978, at 44-46; Beverly Hoefler, 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).

³⁰ 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 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).

³¹ 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); Burton Leiser, Liberty, Justice, and Morals: Contemporary Value Conflicts 36-37 (1973) (concerning the common but erroneous confusion on homosexuality with pedophilia).

³² 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.

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%) involved homosexual perpetrators.³³ This means "a child's risk of being molested by his or her relative's heterosexual partner is 100 times greater than by someone who might be identifiable as being homosexual, lesbian, or bisexual."³⁴ Research on the sexual abuse of children shows that offenders are, in disproportionate numbers, heterosexual men.³⁵ 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.³⁶ In sum, the "fear that gay or lesbian parents will molest children is unfounded."³⁷

III. CHILDREN RAISED BY GAY OR LESBIAN PARENTS ARE AS WELL-ADJUSTED AS OTHER CHILDREN.

Millions of children have gay or lesbian parents.³⁸ Moreover, gay and lesbian parents raise emotionally healthy, secure, and happy children in the same proportion as do heterosexuals.³⁹

³³ Carole Jenny, et al., Are Children at Risk for Sexual Abuse by Homosexuals, *Pediatrics*, July 1994, at 41.

³⁴ Id. at 44.

³⁵ 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.").

³⁶ See Human Development Service, National Study of the Incidence and Severity of Child Abuse and Neglect 27-29 (1982); see also Donna J. Hitchens & Martha Kirkpatrick, Lesbian Mothers/Gay Fathers, in Emerging Issues in Child Psychiatry and the Law 121 (Elissa Benedik & Diane Schetky eds., 1985) ["Child molestation involves primarily heterosexual males and female children"].

³⁷ Developments in The Law, supra at 1639.

³⁸ 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.* (BNA) 1512, 1513 (Aug. 25, 1987), to six to fourteen million, Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 *Child Development* 1025 (1992).

³⁹ See Charlotte J. Patterson, Children of Lesbian and Gay Parents, 63 *Child Development* 1025, 1036 (comprehensive overview of relevant research overwhelmingly affirms that there is no negative developmental effect in children of gay and lesbian parents.) and 1034 (children of lesbian and gay parents have normal

While the Court's decision in this case will most directly affect the parties involved, it will also have a profound impact upon other children in North Carolina whose relationships with their gay or lesbian parents (or parents of other minority groups) would be threatened by affirmance of the trial court's ruling.

Studies of gay and lesbian parents show them to be very much like heterosexuals⁴⁰ No studies have revealed a difference in basic lifestyle or parenting style between gay and lesbian parents and heterosexual parents.⁴¹ 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.⁴²

In all respects, gay men and lesbians are just as capable of being good parents as non-gay people.⁴³ The unrefuted consensus among researchers is that children raised by openly gay or lesbian parents grow up as well-adjusted as children raised by non-gay parents. 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

relationships with peers and their relationships with adults of both sexes are satisfactory).

⁴⁰ See *infra* notes 48-53.

⁴¹ See *supra* note 39.

⁴² Bozett, *supra* at 34 (emphasis added). See also Patterson, *supra* at 1036.

⁴³ See, e.g., Mary B. Harris and Pauline H. Turner, *Gay and Lesbian Parents*, 12 J. of Homosexuality 101, 103 (1986); Kleber, *supra*, 81, 86; Patricia J. Falk, *Lesbian Mothers: Psychosocial Assumptions in Family Law*, 44 Am. Psychologists 941, 943 (1989); See Note, *Joint Adoption: A Queer Option* 15 Vt. L. Rev. 197, n. 63 (1990) ["The overwhelming weight of professional research evidences no difference between children raised by lesbians or gay men and those raised by heterosexuals" citing Opinion of the Justices, 129 N.H. 290, 301, 530 A.2d 21, 28 (1987) (Opinion of Batchelder, J.)].

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.⁴⁴

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. However, significant legal decisions concerning custody continue to reflect a misunderstanding of this phenomenon."⁴⁵

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 example, revealed no differences between the two groups in the areas of paternal problem solving, providing recreation for children, and encouraging autonomy.⁴⁶ Gay fathers placed greater emphasis on paternal nurturing and assessed themselves as significantly more positive in the paternal role.⁴⁷

Likewise, a 1992 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.⁴⁸ 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.⁴⁹ They also 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

⁴⁴ Supra note 39.

⁴⁵ Harris & Turner, supra, at 100, 112.

⁴⁶ Raymond M. Scallen, An Investigation of Paternal Attitudes and Behaviors in Homosexual and Heterosexual Fathers, 42 Dissertation Abstracts Int'l Sci & Engineering 3809B (1982).

⁴⁷ Id.

⁴⁸ 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).

⁴⁹ Jerry J. Bigner & R. Brooke Jacobsen, Parenting Behaviors of Homosexual and Heterosexual Fathers, 18 J. Homosexuality 173, 180-1 (1989).

and more likely to counsel their children than were non-gay fathers.⁵⁰ “[I]t may be concluded that gay fathers are similar to nongay fathers in their overall parenting abilities and skills.”⁵¹ Similarly, extensive research shows that the children of lesbian parents are not adversely affected by their mothers' sexual orientation.⁵² Since the focal issue in all of these studies 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, well-adjusted children. Indeed, there is no reputable scientific work that suggests that gay men or lesbians 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 or 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 there is a possibility of exposing the children to embarrassment and humiliation in public, the decision should not stand. “Courts should not assume that harassment will occur without supporting evidence. Moreover, they should recognize that community disapproval will not necessarily adversely effect the children.”⁵³ Although negative comments may initially sting, there is no scientific evidence that children of gay or lesbian parents are harmed by attitudes toward the sexual orientation of their parents.⁵⁴

⁵⁰ Id. at 181.

⁵¹ Id. at 181.

⁵² See Patterson, supra, at note 39. 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; See also, 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 Green & Gregory M. Herek eds., 1994). In fact, this study found that the children of lesbian parents reported that they 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.

⁵³ Developments in the Law, supra at 1638.

⁵⁴ See Jane B. Hotvedt & Mary Mandel, Children of Lesbian Mothers, in Homosexuality (Paul, et al. eds., 1982); Note, Joint Adoption: A Queer Option?, 15 Vt. L. Rev. 197, 208 at n. 17 (1990); see also Developments

Children may be teased or harassed if they or their parents depart from some perceived norm relating to physical appearance, race, religion, economic status, or any number of other factors.⁵⁵ As sociologists and mental health professionals have acknowledged, anti-gay sentiment is akin to the prejudices which other minorities regularly confront. It presents gay and lesbian families with many of the same challenges which other minority families have faced and overcome.⁵⁶ “The fact that a child’s parents are different from the majority of white middle-class unimpaired parents is not usually considered an appropriate reason for removing a child from a home.”⁵⁷ 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 the two children in this case from their gay father will not change their father's sexual orientation or lessen their need to face and accept the way in which their 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.

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.⁵⁸ 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

in the Law, supra, at 1508, 1638; Donna J. Hitchens & Martha Kirkpatrick, Lesbian Mothers/Gay Fathers, in Emerging Issues in Child Psychiatry and the Law 115, 121-124 (Elissa Benedek & Diuane Schetky eds., 1985).

⁵⁵ See Falk, supra at 946 (noting that not only may children of gay parents have to cope with prejudice, but also so may children of black parents, poor Appalachian parents, divorced parents, and parents with physical impairments such as blindness, deafness, or paraplegia.)

⁵⁶ 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).

⁵⁷ Falk, supra at 946.

⁵⁸ 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).

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). Other courts have held similarly. See In re Marriage of R.S., S.S. (Ill. App. 3rd Dist., Dec 16, 1996). That court held “that the potential for social condemnation, standing alone, cannot justify a change in custody.” It is clear that neither private prejudice, nor fear of such prejudice is a proper basis for determining custody.

Similarly, in M.P. v. S.P., 404 A.2d 1256 (N.J. Super. 1979), the court reversed a ruling of a lower court which granted 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. The Court should refuse to allow bias and prejudice to interfere with Mr. Smith's relationship with his sons.

CONCLUSION

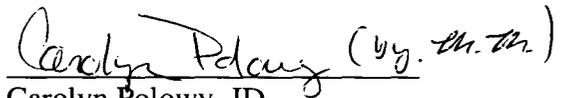
Amici urge this Court to evaluate the two children's well-being based upon their parent's respective abilities to parent, not based upon unfounded assumptions concerning gay and lesbian people. To do this, the Court must recognize that gay and lesbian parents are able to raise children as well as heterosexuals and that 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, both children involved will have a gay parent. We ask this Court to base its decision upon reality. Mr. Smith has been the primary caretaker of these two boys for many years, and during that time they exhibited a healthy relationship with their father. We urge this Court to understand that gay men and lesbians can and do effectively parent, and to recognize that the children of gay men and lesbians love and depend on their parents. To do otherwise may destabilize the lives of

other children in North Carolina with gay and lesbian parents. As demonstrated infra, sexual orientation has no affect upon one's ability to parent and all respected scientific research supports amici's position.

Respectfully Submitted,
February 14th, 1997



Myrna Ann Miller, JD, MSW
PO Box 27582
Raleigh NC 27611
(919) 828-9650
N.C. Bar No. 23349
National Association of Social Workers
North Carolina Chapter



Carolyn Polowy, JD
750 First St NE
Washington DC 20002
1-800-638-8799 x 217
General Counsel
National Association of Social Workers

APPENDIX A

Pulliam v. F. Smith

Statement approved at a meeting of the North Carolina Psychiatric Association
Executive Council
at its meeting
February 9, 1997

The North Carolina Psychiatric Association (NCPA) is an organization of 865 psychiatrists whose purpose, among others, is to foster the cooperation of all who are concerned with the medical, psychological, social, and legal aspects of mental health and illness. NCPA is a District Branch of the American Psychiatric Association, a body of 40,000 psychiatrists. The practice of psychiatry is based on strong programs of basic and applied research.

The NCPA Executive Council knows of no scientifically valid evidence supporting that children become sexually oriented towards the same gender by living with homosexual adults. Further, existing research has failed to demonstrate any difference in general outcomes among children raised by gay or lesbian vs. heterosexual adults.

Child custody cases should be judged on the individual merits of the case; not solely on the sexual orientation of parenting adults.

APPENDIX B

Pulliam v. F. Smith

Statement of Interest of

the North Carolina Council of Child and Adolescent Psychiatrists

The North Carolina Council of Child and Adolescent Psychiatrists (NCCCAP) is a 170 member district branch of the American Academy of Child and Adolescent Psychiatry. Child psychiatrists are physicians trained in child development and psychopathology, and are especially sensitized to the impact of parenting on psychological development.

The principal issue in this case is whether a homosexual couple should be disqualified from custody of minor children based solely on sexual orientation. There is no scientific evidence that the sexual orientation of a parent is categorically detrimental to the development of psychologically healthy children. The fundamental issues in child development are whether a parent can provide nurturance, support and guidance; and whether that parent can foster healthy social and emotional relationships. Good parenting is neither limited by nor guaranteed by sexual orientation.

NCCCAP believes that each case must be individually considered based on the merits of the parenting history and evidence of stable emotional attachments. Custody should be based on parental abilities and not sexual orientation.

CERTIFICATE OF SERVICE

A copy of Brief of Amici Curiae was this day placed in the United States Mail, Postage Prepaid, and addressed to:

John H. Boddie
806 Green Valley Rd., Ste 300
Greensboro, NC 27408
Attorney for Appellee (NC GALA)

Beatrice Dohm
120 Wall Street, Ste 1500
New York, NY 10005
Attorney for Appellee (Lambda)

Ellen W. Gerber
4202 Cilgerran Court
High Point, NC 27265
Attorney for Appellee (NC GALA)

Frank B. Jackson
PO Box 1666
Henderson, NC 28793
Attorney for Appellant

Phillip T. Jackson
PO Box 1666
Hendersonville, NC 28792
Attorney for Appellant

Paul Stam, Jr.
106 Holleman St
PO Box 1600
Apex, NC 27502
Family Policy Council, Amicus Curiae

Sharon Thompson
PO Box 2164
Durham, NC 27702
Attorney for Appellee (NC GALA)

This the 14th day of February, 1997.



Myrna Ann Miller, JD, MSW

PO Box 27582

Raleigh NC 27611

(919) 828-9650

N.C. Bar No. 23349

National Association of Social Workers, North Carolina Chapter

SUPREME COURT OF NORTH CAROLINA

CAROL J. PULLIAM,)	
)	
Plaintiff-Appellant)	
)	<u>From Henderson County</u>
v.)	94 CVD 1249
)	
FREDERICK J. SMITH,)	
)	
Defendant-Appellee)	

**AMENDED MOTION OF THE NATIONAL ASSOCIATION OF SOCIAL
 WORKERS AND THE NORTH CAROLINA CHAPTER OF THE NATIONAL
 ASSOCIATION OF SOCIAL WORKERS FOR LEAVE TO FILE BRIEF AS
AMICI CURIAE
 AND
 THE NORTH CAROLINA PSYCHIATRIC ASSOCIATION AND THE
 NORTH CAROLINA COUNCIL OF CHILD AND ADOLESCENT PSYCHIATRISTS
 FOR LEAVE TO ATTACH APPENDIX TO NASW BRIEF**

The National Association of Social Workers and the North Carolina Chapter of National Association of Social Workers (hereafter referred to as NASW or Amici), through their undersigned counsel, move this Court pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure for leave to file an amici curiae brief in support of the Defendant-Appellee, Frederick J. Smith. The North Carolina Psychiatric Association (NCPA) and the North Carolina Council of Child and Adolescent Psychiatrists (NCCCAP) move this Court for leave to attach their statements of interest as appendices to NASW brief. Due to time constraints, NCPA and NCCCAP did not have time to complete a review of the final NASW brief with their Boards before the filing deadline. Therefore, although they agree with the general positions of the NASW brief, they are only submitting their own statements of interest to the Court.

In support of this Motion, the North Carolina Chapter of the National Association of Social Workers and the National Association of Social Workers show unto the Court the following:

INTEREST OF AMICI IN THIS CASE

Established in 1955, NASW is the world's largest professional association for social workers, with more than 155,000 members in the United States, Puerto Rico, the Virgin Islands and abroad. NASW's North Carolina Chapter has more than 3,200 social workers as members.

NASW's primary functions are development of the social work profession, maintenance of professional standards for social work practice and advocacy of sound social policies and programs. NASW promotes social justice and social change with and on behalf of clients -- individuals, families, groups, organizations and communities. NASW formally opposes discrimination against gay men and lesbians.

REASONS WHY AN AMICI BRIEF IS DESIRABLE

While this case has particular significance for the rights of gay and lesbian parents and children of gay and lesbian parents, it will impact all citizens of North Carolina. Families have a right to expect the Court to order child custody agreements only if they are in the best interests of the children involved and to modify those agreements only if the circumstances of the custody arrangement change in such a way that is detrimental to the child.

When making a legal determination of whether a change of circumstances is detrimental to the well-being of a child, knowledge of the law alone is not sufficient. Much social science and medical research has been conducted to determine how the sexual orientation of the parent affects the parent-child relationship. Amici offer this information to the Court for consideration in its determination of whether the living circumstances provided by Mr. Smith were detrimental to the well-being of his children.

QUESTIONS TO BE ADDRESSED IN THE AMICUS CURIAE BRIEF

The amici curiae brief of NASW and its North Carolina Chapter addresses the following issues:

Whether the Court of Appeals correctly held that there was no evidence to support a finding of a substantial change of circumstances detrimental to the children.

Whether the parent-child relationship, as opposed to unsubstantiated assumptions about a gay or lesbian parent, should be the Court's determining consideration.

Whether children raised by gay and lesbian parents are as well-adjusted as other children.

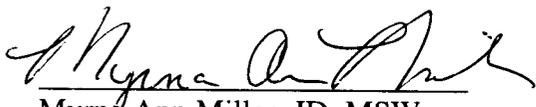
MOVANTS' POSITION WITH RESPECT TO THE ABOVE QUESTIONS

Amici submit that the North Carolina Court of Appeals correctly held that there was no evidence to support a finding of substantial change of circumstances detrimental to the children. In support of this position, amici submit that the parent-child relationship, not unsubstantiated assumptions about gay or lesbian parents, should be the Court's determining consideration and that children raised by gay and lesbian parents are as well-adjusted as children raised by heterosexual parents.

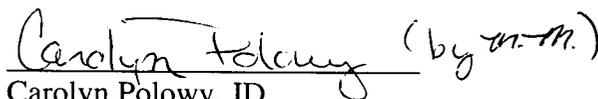
CONCLUSION

For the above reasons, NASW and its North Carolina respectfully request that the Court grant leave to file the attached amici curiae brief.

This the 14th day of February, 1997.



Myrna Ann Miller, JD, MSW
PO Box 27582
Raleigh NC 27611
(919) 828-9650
N.C. Bar No. 23349
National Association of Social Workers
North Carolina Chapter



Carolyn Polowy, JD
750 First St NE
Washington DC 20002
1-800-638-8799 x 217
General Counsel
National Association of Social Workers

CERTIFICATE OF SERVICE

A copy of the Foregoing Motion for Leave to File Brief Amici Curiae was this day placed in the United States Mail, Postage Prepaid, and addressed to:

John H. Boddie
806 Green Valley Rd., Ste 300
Greensboro, NC 27408
Attorney for Appellee (NC GALA)

Beatrice Dohm
120 Wall Street, Ste 1500
New York, NY 10005
Attorney for Appellee (Lambda)

Ellen W. Gerber
4202 Cilgerran Court
High Point, NC 27265
Attorney for Appellee (NC GALA)

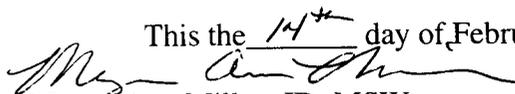
Frank B. Jackson
PO Box 1666
Henderson, NC 28793
Attorney for Appellant

Phillip T. Jackson
PO Box 1666
Hendersonville, NC 28792
Attorney for Appellant

Paul Stam, Jr.
106 Holleman St
PO Box 1600
Apex, NC 27502
Family Policy Council, Amicus Curiae

Sharon Thompson
PO Box 2164
Durham, NC 27702
Attorney for Appellee (NC GALA)

This the 14th day of February, 1997.



Myrna Ann Miller, JD, MSW

PO Box 27582
(919) 828-9030

N.C. Bar No. 23349

National Association of Social Workers, North Carolina Chapter