

Supreme Court No. S102671

IN THE

SUPREME COURT OF CALIFORNIA

SHARON S.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

ANNETTE F.,

Real Party in Interest.

Court of Appeal No. D037871
(4th Appellate District)

Superior Court No. A46053
(San Diego County)

**AMICUS CURIAE BRIEF OF
NATIONAL ASSOCIATION OF SOCIAL WORKERS**

After a Decision of the Court of Appeal, Fourth Appellate District,
Div. One, Granting a Petition for Writ of Mandate Directed to the
Superior Court of California, County of San Diego,
Hon. Susan D. Huguenor, Judge

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I. INTRODUCTION

The National Association of Social Workers (“NASW”), formed in 1955 by the merger of seven predecessor social work organizations, is a professional organization with more than 150,000 members and chapters throughout the United States, and in Puerto Rico, the Virgin Islands, and an international chapter in Europe. In furthering its purpose of developing and disseminating high standards of practice while strengthening and unifying the social work profession as a whole, NASW promulgates professional criteria including *Standards for the Practice of Clinical Social Work*, conducts research, publishes studies of interest to the profession, provides continuing education, and enforces the NASW Code of Ethics.

NASW also develops policy statements on issues of importance to the social work profession. Among these is a Statement on Lesbian and Gay Issues which concludes that lesbian and gay people have been inappropriately denied legal rights in numerous ways including the ability to maintain legal ties to their children, and that denial of legal rights legitimizes homophobic acting-out behavior. NASW is committed by its Code of Ethics to respond to and urge amelioration of such harmful situations by encouraging fair application of the law. NASW has participated in numerous court cases involving mental health, social science, family and discrimination issues, and is committed to providing

relevant scientific information to help inform the courts on issues of importance before them.

The California Chapter of the National Association of Social Workers is the professional association of social workers in California. The California Chapter was established in _____ and has more than _____ members throughout California.

As professional social workers, members of the NASW and its California Chapter (together, "NASW") are bound by a code of ethics that, among other things, prohibits discrimination on the basis of marital status and sexual orientation. Accordingly, they believe that, in recommendations regarding adoption, which must be based upon the best interests of the child, discrimination on these bases has no place.

In light of their professional expertise, the NASW and its California Chapter (together, "NASW") believe they are well qualified to provide the Court with information that may assist in its consideration of this case. The NASW addresses in this Brief the following points: (1) California law requires courts to construe adoption statutes liberally to protect the welfare of children; (2) second-parent adoption benefits children by keeping families intact and promoting stable relationships; and (3) gays and lesbians, whom the outcome of this case affects significantly, possess parenting skills comparable to those of heterosexuals.

The Court of Appeal's decision jeopardized the stability of possibly thousands of existing family relationships created by second-parent adoptions. Though the Court of Appeal dismissed these concerns by noting that Assembly Bill 25 ("AB 25"), California's new domestic partnership law, will allow same-sex couples to adopt children together, a great many families remain who are unable to seek adoption under AB 25. For instance, families who have moved out of California since receiving an adoption decree, or who do not reside together, do not qualify under AB 25. Further, AB 25 does not cover unmarried heterosexual couples, extended-family members, or same-sex couples that have ended their relationship but continue to raise their children cooperatively.

Notwithstanding AB25, it remains the case that second-parent adoption is sometimes the only effective way to promote a child's best interest by legally securing the relationship between the child and one of her caregivers. For example, in cases where a child relies on the health insurance of her non-birth parent, second-parent adoption is an effective way to ensure that insurance continues in the case of the birth parent's death. Likewise, where a child relies on the non-birth parent for financial support, second-parent adoption can secure the child's right to inherit and to receive Social Security survivor benefits.

To promote the best interests of numerous children in this state irrespective of the sexual orientation and marital status of their

parents, the Court of Appeal's reasoning should be rejected, and the authority of California courts to grant second-parent adoptions in appropriate cases should be confirmed.

II. CALIFORNIA COURTS MUST INTERPRET ADOPTION STATUTES TO PROTECT THE WELFARE OF CHILDREN

The Supreme Court has held that California adoption statutes must be construed liberally to protect the welfare of children. (*San Diego County Dep't of Public Welfare v. Superior Court* (1972) 7 Cal. 3d 1, 15 [101 Cal. Rptr. 541, 551]; *Department of Social Welfare v. Superior Court of Contra Costa County* (1969) 1 Cal. 3d 1, 6 [81 Cal.Rptr. 345, 347]; *Adoption of Barnett* (1960) 54 Cal. 2d 370, 377 [6 Cal.Rptr. 562, 566].)

The main purpose of the adoption statutes is the promotion of the welfare of children "by the legal recognition and regulation of the consummation of the closest conceivable counterpart of the relationship of parent and child." (*Id.*) Moreover, the Supreme Court has specifically disapproved of the rule that the adoption statutes are to be strictly construed in favor of the natural parents; rather, Courts must give the statutes a liberal construction "with a view to effect its objects and to promote justice." (*San Diego County Dep't of Public Welfare*, at 15 [101 Cal. Rptr. at 551].)

In order to protect the welfare of children, the Court should continue to construe California's adoption statutes to take into account the diversity and evolving definition of the American family. The United

States Supreme Court acknowledged the changing nature of the American family in *Troxel v. Granville* (2000) 530 U.S. 57, 63-64. The Court observed, that “[t]he demographic changes of the past century make it difficult to speak for an average American family.” (*Id.* at 63.) “The composition of families varies greatly from household to household.” (*Id.* at 63.) Furthermore, the Court recognized the contributions that adults other than legal parents, such as grandparents, often make towards child rearing. (*Id.* at 64 (“in 1998, approximately 4 million children—or 5.6 percent of all children under age 18—lived in the household of their grandparents”).) There is no reason for the Court to deviate now from an approach to adoption cases that has worked well for many years.

III. SECOND-PARENT ADOPTION CAN PROVIDE CHILDREN WITH SIGNIFICANT PSYCHOLOGICAL ADVANTAGES.

Second-parent adoption can afford critical stability to children in the event their family lives are disrupted. There is also evidence that adoption confers important psychological benefits to children in families that remain intact.

A. Attachment and Continuity

Children develop strong bonds to their parents early in life, bonds psychologists refer to as attachment, which persist as children grow older. (See generally, Bowlby, *Attachment* (1969).) These bonds develop regardless of whether the parent is a biological parent of the child. (See

Singer et al., *Mother-Infant Attachment in Adoptive Families* (1985) 56 Child Dev. 1543; Seglow et al., *Growing Up Adopted: A Long-Term Study of Adopted Children and Their Families* (1972).) A child develops these strong psychological bonds to any adult “who, on a continuing, day-to-day basis, through interaction, companionship, interplay, and mutuality, fulfills the child’s psychological needs, as well as the child’s physical needs.” (See Goldstein et al., *Beyond the Best Interests of the Child* (1979 ed.) p. 27.)

The parents’ sexual orientation appears to be irrelevant. A clinical evaluation of preschool children of lesbian couples concluded that when both members care for a child, the child becomes attached to both. (See McCandlish, *Against All Odds: Lesbian Mother Family Dynamics*, in *Gay and Lesbian Parents* 23-38 (Bozett ed., 1987).) When both members of a couple have been involved with a child from birth, the child has likely formed a full attachment with both adults. Goldstein at 31-32.

Once these bonds have formed, continuity of the relationship appears to be important for the child’s healthy development. (*Id.* at 31.) When the relationship is forcibly interrupted, children “not only suffer separation distress and anxiety but also setbacks in the quality of their next attachments, which will be less trustful.” (*Id.* at 33.) Studies of children of divorced parents confirm the psychological harm that can result from separation from a parent to whom the child is attached. (See, e.g., Wallerstein & Blakeslee, *Second Chances* (1989) (children who do not

maintain contact with co-parent suffer a continuing sense of loss and sadness); Hetherington et al., *What Matters? What Does Not?* (Feb. 1998) 53 *Am. Psychologist*, pp. 167, 177 (“some degree of contact is essential”).)

Children raised in lesbian households, if they are not adopted by their second parents, risk total cessation of their relationships with their co-parents in the event their parents separate or their biological mothers die, which “can cause extreme distress.” (See Tasker & Golombok, *Growing Up in a Lesbian Family* 12 (1997) (a twenty-year longitudinal study conducted in the United Kingdom).)

Non-adoptive co-parents lack legal security regarding custody or visitation. If their biological mother dies, the children can be removed from their families and consigned to strangers, losing both parents, and possibly siblings and other relatives, at a time when the child most needs stability. Even if the co-parent is ultimately awarded custody, the process may leave the child in limbo for an extended period of time. It is generally best for children if a parent with whom they have bonded takes over responsibility and daily decision-making immediately and permanently. (See Green & Bozett, *Lesbian Mothers and Gay Fathers*, in *Homosexuality: Research Implications for Public Policy* (1991) pp. 197, 213.)

For example, a Florida child being raised by a couple, who had not been adopted by her second parent, was taken from her remaining

parent when her biological mother died, consigned to grandparents, and returned only after four years of litigation. (See *In re Pearlman*, (Mar. 31, 1989, No. 87-24926, Fla. Cir. Ct., Broward Cty).) The court-appointed psychiatrist found the child had experienced anxiety since separation from her second parent, manifested by acting out and hyperactivity; her attachment to her second parent had not lessened after several years; and she would not attach to anyone else. In contrast, after a couple in Washington, D.C. adopted each other's children, one of the mothers was killed in a car accident, and her biological child was permitted to remain with her second parent and sibling without interruption. (See *Legal Times* (May 9, 1994), p. 6.)

B. Second-Parent Adoption in Intact Families

Second-parent adoptions also are likely to provide significant psychological advantages when a family remains intact. The research comparing children in long-term foster care with adopted children is not fully analogous but is nonetheless instructive. Studies show “that those growing up adopted, even if placed when older, appear in adulthood to have a stronger sense of self and to function more adequately at the personal, social and economic level compared with those who were formerly fostered.” (Triseliotis & Hill, *Contrasting Adoption, Foster Care, and Residential Rearing*, in *The Psychology of Adoption* (1990) p. 107 (jurisdiction randomly assigned children to foster care or adoption); see

Lahti, *A Follow-Up Study of Foster Children In Permanent Placements* (1982) 56 Soc. Serv. Rev. 556-71.) Even children in long-term foster placements gain psychological benefits from being adopted by their foster family. (See Triseliotis & Hill at 114.) Outcomes appear better for those who are adopted than for those raised in foster homes even between siblings. (See Dumaret, *IQ, Scholastic Performance, and Behavior of Siblings Raised In Contrasting Environments* (1985) 26 J. Child Psychol. & Psychiat. 553-580 (French study measuring IQ and school performance).) The social work profession has long recognized the psychological value of permanency, moving public policy away from foster care and toward permanent placement. (See Bussiere (1998) *The Development of Adoption Law*, 1 Adoption Q. 3, 8-9.)

Additional relevant data is provided by an ongoing national longitudinal study of adolescents at the University of North Carolina's Carolina Population Center. Using the information in this database on children living with their biological mothers and their mother's spouses or partners, Deputy Director Kathleen Mullan Harris and her research assistant compared those who had been adopted by the second parent with those who had not. Regression analysis was used to eliminate differences in income, race, sex and age of child, and mother's education. The children adopted by second parents were 49% less likely to display negative affect, 57% less likely to have committed four or more delinquent acts, and 33% less likely

to have used three or more illicit substances. They were also 32% more likely to feel that discipline included helping them understand why their behavior was wrong. The data shows correlations between certain factors, and cannot establish causality. But they are consistent with hypotheses that the formal ties of second-parent adoption benefit children by increasing their sense of stability and the second parents' willingness to provide supervision and discipline.

The legal and practical rights conferred by adoption – inheritance, social security, for example – also provide the child with increased economic and physical security, which is associated with significantly better psychosocial outcomes. They further permit second parents to make school and medical decisions – a potentially critical advantage in an emergency.

IV. RESEARCH INDICATES THAT PARENTS' SEXUAL ORIENTATION DOES NOT ADVERSELY AFFECT THEIR CHILDREN OR THEIR PARENTING.

A significant percentage of the individuals who have adopted children as second parents are same-sex couples. Therefore, the outcome of this case will affect significantly gays and lesbians and their ability to adopt and parent children.¹ This legal burden is inconsistent with two decades of

¹ As explained by amici curiae COLAGE, et al., the availability of second-parent adoption remains critically important to lesbian and gay parents in California because not all same-sex couples who are raising children are able to register as domestic partners and seek

scientific research concluding that children raised by gay and lesbian parents demonstrate no significant differences in intellectual development, social adjustment, or psychological well-being. (See Green et al., *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children* (1986) 15 Archives of Sexual Behav. 167, 174; Tasker & Golombok; Flaks et al., *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children* (1995) 31 Dev. Psychol. 105.) Thus, empirical research provides no basis for any negative presumption against same-sex second-parent adoptions.

A. Children Raised by Lesbians or Gay Men Are Equally Well-Adjusted As Children Raised by Heterosexuals.

1. Psychological and social adjustment. Research comparing children of divorce raised by lesbian and heterosexual mothers reveals no evidence that those raised by lesbians develop abnormally or are impaired psychologically or socially. (See Golombok et al., *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal* (1983) 24 J. Child Psychol. & Psychiat. 551, 565, 570 (measuring behavioral problems, anti-social tendencies, emotional difficulties, and hyperactivity) (“Appraisal”); Huggins, *A Comparative*

adoption pursuant to AB25. [ADD MENTION OF FAMILIES IN OTHER STATES, WHOSE COURTS ARE LIKELY TO BE GUIDED BY THIS COURT’S INTERPRETATION OF A TYPE OF ADOPTION LAW COMMON IN OTHER STATES??]

Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers, in *Homosexuality and the Family* (Bozett ed. 1983) 123, 132-35 (measuring self-concepts and self-esteem); Tasker & Golombok at 135, 138, 143-44 (measuring anxiety, depression, mental health problems, and unemployment in adults who had been raised by lesbians.) Another study comparing adult daughters raised by lesbian and heterosexual mothers, and finding no higher incidence of emotional problems among the daughters raised by lesbian mothers, found instead they were more likely to feel secure in relationships and in the world while the daughters raised by heterosexual mothers exhibited greater apathy and cautiousness and had more complaints and worries. (Gottman, *Children of Gay and Lesbian Parents*, in *Homosexuality and Family Relations* (Bozett ed., 1990) 177, 189-90.)

Research on children raised from birth in lesbian households found psychological parity between these children and their peers from heterosexual households. (See Chan et al., *Psychosocial Adjustment among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers* (April 1998) 69 *Child Dev.* 443 (measuring social competence and behavior problems); Flaks at 16-20, 24 (measuring behavioral functioning, cognitive abilities, developmental progress, social skills, and school performance); Golombok et al., *Children Raised in Fatherless Families*

From Infancy (1997) 38 J. Child Psychol. & Psychiat. 783, 788-89

(“Infancy”) (measuring psychological well-being and behavior).)

Further studies found no differences between children raised by lesbians and heterosexuals with respect to self-esteem, anxiety, depression, behavioral problems, performance in sports, school and friendships, use of counseling, unsociability, hyperactivity, or emotional difficulty. (See Stacey & Biblarz, *(How) Does the Sexual Orientation of Parents Matter?* (2001) 66 Am. Soc. Rev. 159, 169, 171.)

Some research indicates that children raised by lesbians report greater symptoms of stress than those of heterosexual mothers, but also greater feelings of contentedness, comfort with themselves, and joy. (See 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* (Greene & Herek eds., 1994) 156, 168-70; see also Stacey & Biblarz at 172 (reporting finding that children of gay or lesbian parents had experienced homophobic teasing that was stressful but that they exhibited “impressive psychological strength”).)

The research shows that children raised by lesbians do not differ from children raised by heterosexuals in self-ratings of popularity and overall social adjustment or parents’ ratings of the children’s leadership qualities and popularity. (See Green at 178; *Appraisal* at 565-67.)

Research also does not support any presumption that children raised in lesbian households are deprived of male role models. (Kirkpatrick at 549.)

2. Gender and Sexual Issues. Some studies show that children raised by lesbians or gay men appeared freer from older stereotypes of “proper” male and female roles than children raised by heterosexuals. Girls were more likely to aspire to professional careers and boys were less likely to exhibit domineering and aggressive behavior and more likely to have fewer sexual partners. (See Hoeffler, *Children’s Acquisition of Sex-Role Behavior in Lesbian-Mother Families*, (1981) Am. J. Orthopsychiatry 536-44; Golombok, *Appraisal* at 551-72; Green at 167-84; Steckel, *Psychosocial Development of Children of Lesbian Mothers, in Gay and Lesbian Parents* (Bozett ed., 1987) 75.)

Research indicates that incidence of homosexuality is no higher among children of homosexuals than among children of heterosexuals. (See Bozett, *Gay Fathers: A Review of the Literature* (1989) 18 J. Homosexuality 137, reprinted in *Psychological Perspectives on Lesbian and Gay Male Experiences* (Garnets & Kimmel eds. 1993) at 442; Tasker & Golombok at 132; Goodman et al., *Developmental Psychology & Law: Divorce, Child Maltreatment, Foster Care and Adoption, in Handbook of Child Psychology* (Damon et al. eds., 1998) 775, 849; Huggins at 123-35.) Another study found the sexual orientation of sons of gay fathers was unrelated to the amount of time spent living with

the fathers. (Bailey et al., *Sexual Orientation of Adult Sons of Gay Fathers*, 31 Dev. Psychol. 124, 124-29 (Jan. 1995). The research also shows parity between children of homosexual and heterosexual parents with respect to a desire to be the opposite gender. (Green at 167-84.) The NASW does not suggest that a higher incidence of gay or lesbian children would be a negative outcome, only that the research contradicts any hypothesis postulating that outcome.

B. Parenting by Lesbians and Gay Men Is Comparable to Parenting by Heterosexuals.

The considerable body of research – which has concentrated on lesbian parents – shows they have parenting skills at least comparable to heterosexuals. (*Infancy* at 787, 789.) The few differences that researchers have noted would be considered advantageous to children. One study found the lesbian mothers as a group demonstrated greater concern with their children's long-range development than did the heterosexual mothers. (Miller et al., *The Child's Home Environment For Lesbians vs. Heterosexual Mothers: A Neglected Area of research* (1981) 7 J. Homosexuality 49-56.) Another found that lesbian and heterosexual mothers scored comparably on a standard tool for measuring the effectiveness and sensitivity with which parents respond to child care situations, but that lesbian second parents scored considerably better than fathers. (Flaks at 111, 112.)

Any presumption about the fitness of lesbians or gay men to be parents based on a belief that their sexual orientation indicates psychological dysfunction is unfounded. Professional psychiatric and psychological associations have long rejected the view that homosexuality is a mental disorder, based on extensive empirical research demonstrating that earlier assumptions cannot be justified by scientific observation.

(Gonsiorek, *The Empirical Basis of the Demise of the Illness Model of Homosexuality*, in *Homosexuality: Research Implications for Public Policy* (Gonsiorek & Weinrich eds., 1991) 115-136; see also Resolution of the American Psychiatric Association (Dec. 15, 1973), reprinted in 131 *Am. J. Psychiatry* 497 (1974); American Psychological Association, *Minutes of the Annual Meeting of the Counsel of Representatives* (1975) 30 *Am. Psychologist* 620, 633.)

V. CONCLUSION

To protect the welfare of children, California's adoption statutes must continue to be construed liberally to allow for second-parent adoption. Scientific research indicates that adoption by a second parent is generally beneficial for the child's social and psychological development and therefore consistent with the child's best interests. In order not to disrupt the stability of California families and to preserve the right to second-parent adoption, the National Association of Social Workers respectfully requests that the Court reject the reasoning of the Fourth

Appellate District and confirm that second-parent adoptions may be granted, when warranted by the facts of particular cases, under California's adoption law.

Dated: July ___, 2002

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CERTIFICATE OF WORD COUNT

Pursuant to California rule of Court 14(c), counsel for amicus curiae National Association of Social Workers hereby certifies that the number of words contained in its Amicus Curiae Brief, including footnotes but excluding the Table of Contents, Table of Authorities, this Certificate, and any attachments, is _____ as calculated using the word count of the computer program used to prepare the brief.

Dated: July __, 2002

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