

IN THE SUPREME COURT OF PENNSYLVANIA

No. 92 WAP 2000

T.B.,
Appellee,

v.

L.R.M.,
Appellant.

Appeal from the Judgment of the Superior Court of Pennsylvania dated June 5, 2000 at Docket No. 1996 Pittsburgh 1997, affirming the decision of the Court of Common Pleas of Cambria County, Docket No. 1996-3626, regarding standing but vacating the Order for partial custody/visitation, and remanding the case for further proceedings.

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INTEREST OF *AMICI CURIAE*

Amici curiae are fifty-five children's advocacy, religious, social service, labor, women's, and community-based organizations committed to the protection of children. *Amici* provide a wide array of direct services to children and their families, often after children have been deprived by illness, death, or divorce of the daily loving presence of one of their parents. These include psychological counseling for children who have lost a parent or parental figure; adoption services; legal, social, and protective services for dependent children; spiritual counseling for families undergoing separation or divorce; and support groups for non-traditional families. In addition to these direct services, *Amici* also serve as advocates for domestic relations policies that promote children's well-being and respond to the unique needs of this vulnerable population.

Like American families generally, the families served by *Amici* are diverse in structure and composition, and they include families formed by lesbian and gay couples. In *Amici's* collective experience, the children of lesbian and gay parents do not differ in any significant way from the children of heterosexual parents. Neither do lesbian and gay parents differ from heterosexual parents in the competence and devotion with which they nurture, love, and protect their children.

Amici submit this brief to assist the Court in assessing the benefits that the *in loco parentis* doctrine has bestowed on children who, when involved in custody disputes, are threatened with the abrupt and total loss of a trusted parental figure. *Amici* also seek to inform the Court of the profound importance to children's healthy development of continued contact in most cases with both parents, regardless of the parents' legal status or sexual orientation.

Individual statements of interest of the *Amici* are contained in the Appendix to this brief.

SUMMARY OF ARGUMENT

Deeply rooted in our common law, Pennsylvania's *in loco parentis* doctrine is the reasonable application of fundamental principles of standing to the custody and visitation context. The doctrine appropriately recognizes that a person who has performed the duties and acquired the status of a parent has a substantial, direct, and immediate interest in the custody of the child he or she has parented. This doctrine enables courts to protect the interests of children, whose welfare typically depends on continued contact with both parents following the parents' separation. There is no reason in law or policy to overrule the substantial and weighty body of precedent recognizing that parental figures such as T.B. who have demonstrated *in loco parentis* status have standing to litigate questions concerning the custody of the children they have raised.

Nor is there any reason to create special rules carving out the children of lesbian and gay parents from the protection of the *in loco parentis* standing doctrine. The overwhelming weight of authority has established beyond reasoned dispute that lesbian and gay parents are as capable of creating a healthy, loving, and wholesome home environment for children as any other parents. Their children are no different from the children of heterosexual couples. Like other children, they typically need continued contact with both of their parents after the parents separate in order to thrive. Creating a new standing rule that discriminates against lesbian and gay families therefore lacks even a rational basis and would raise profound equal protection concerns. For these reasons, as well as those set forth in the Brief for Appellee, *Amici* respectfully request the Court to affirm the judgment below.

ARGUMENT

I. THE *IN LOCO PARENTIS* STANDING DOCTRINE IS PART OF THE FABRIC OF PENNSYLVANIA'S FAMILY LAW AND IS AN IMPORTANT PROTECTION FOR THE WELFARE OF CHILDREN.

A. The *In Loco Parentis* Standing Doctrine Evolved To Protect the Best Interests of Children.

This case involves the straightforward application of Pennsylvania's long-settled doctrine that third parties who have achieved *in loco parentis* status have standing to litigate a claim for custody. In an *en banc* opinion from which there was no dissent, the court below correctly applied this principle in ruling that Appellee T.B. had standing to petition for partial custody for purposes of limited visitation with the child whom she had jointly raised with Appellant L.R.M. for the first three years of the child's life. See *T.B. v. L.R.M.*, 753 A.2d 873 (Pa. Super. 2000) (*en banc*). That ruling is faithful to this Court's custody jurisprudence and is fully consistent with standing principles of general application.

Fundamental principles of standing require that, in order to participate as a party to litigation, a person "must (a) have a substantial interest in the subject-matter of the litigation; (b) the interest must be direct; and (c) the interest must be immediate and not a remote consequence." *South Whitehall Twp. Police Serv. v. South Whitehall Twp.*, 555 A.2d 793, 795 (Pa. 1989) (internal quotations omitted). Pennsylvania courts have consistently recognized the substantial, direct, and immediate interest that a person standing *in loco parentis* has in the child he or she has parented:

[A] person [may put] himself in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of a legal adoption. The status of "in loco parentis" embodies two ideas: first, the assumption of a parental status, and second, the discharge of parental duties.

Commonwealth ex rel. Morgan v. Smith, 241 A.2d 531, 533 (Pa. 1968). This Court has repeatedly reaffirmed the vitality of this venerable principle of family law in the context of custody disputes. See, e.g., *Charles v. Stehlik*, 744 A.2d 1255 (Pa. 2000); *B.A. v. E.E.*, 741 A.2d 1227 (Pa. 1999); *Commonwealth v. Gerstner*, 656 A.2d 108 (Pa. 1995); *Albright v. Commonwealth ex rel. Fetters*, 421 A.2d 157 (Pa. 1980); *Ellerbe v. Hooks*, 416 A.2d 512 (Pa. 1980).

In addition to safeguarding the interests of adults whose actions and relationship to the child have given them the status of parents, the *in loco parentis* standing doctrine protects children by giving the parental figure “the opportunity to litigate fully the issue of whether that relationship should be maintained even over a natural parent’s objections.” *J.A.L. v. E.P.H.*, 682 A.2d 1314, 1320 (Pa. Super. 1996). The doctrine acknowledges the close familial bond between children and the adults who have stepped into the shoes of a parent and assumed the responsibility of raising them:

We may expect that a bond will develop between stepparent and stepchild; we, therefore, should protect that relationship by conferring rights of visitation. The departure of a stepfather from the home would no more destroy the love and affection between stepparent and child than it would in the case of a natural child.

Spells v. Spells, 378 A.2d 879, 882 (Pa. Super. 1977).

In other contexts as well, Pennsylvania courts have protected the attachments that children have developed with a legally unrelated parent. For example, in *Gulla v. Fitzpatrick*, 596 A.2d 851 (Pa. Super. 1991), the Superior Court rejected a biological mother’s efforts to deny the paternity of a man who had established a parental relationship with her child, born out of wedlock. In holding that the mother was equitably estopped from denying paternity, the

Superior Court found that

[t]he advisability of applying equitable estoppel in such a case will often be bolstered by the fact that to do so will serve the best interests of the child, who has developed a parent-child relationship with the man who has assumed the responsibilities of fatherhood. . . . “In this era of artificial insemination, surrogate parenting and in vitro fertilization, legal rights of a non-biological parent may become fixed by virtue of the parties’ actions and the developmental relationship of the child with the parent.”

Id. at 856-57 (quoting *Commonwealth ex rel. Coburn v. Coburn*, 558 A.2d 548, 552-53 (Pa. Super. 1989)).

The protection that Pennsylvania courts have thus extended to the relationship between the *in loco parentis* parent and his or her child arose out of the recognition that severing these relationships inflicts severe distress and lasting harm on children. The Superior Court has noted the “emotionally devastating effects which could result from a forced separation” of even a very young child from a *de facto* parent:

[A] child “becomes strongly attached to those who stand in parental relationship to it and who have tenderly cared for it. Its bonds of affection have become so strong that to sunder them suddenly may result not only in the child’s unhappiness, but also in its physical injury. Nothing could be more cruel than the forceable [*sic*] separation of a child from either its real or foster parents by whom it has been lovingly cared for and to whom it is bound by strong ties of affection.”

Rosado v. Diaz, 624 A.2d 193, 195 (Pa. Super. 1993) (quoting *Commonwealth ex rel.*

Children’s Aid Soc’y v. Gard, 66 A.2d 300, 306 (Pa. 1949); *see also Seger v. Seger*, 547 A.2d 424, 427 (Pa. Super. 1988) (“to abruptly cut off and destroy the relationship would be detrimental to the child’s welfare.”); and discussion *infra* Part II. Courts have noted a variety of affirmative benefits that children enjoy when permitted to have a continued relationship

with their *in loco parentis* parent:

The [*de facto* parent] may, in many instances, instill in the child a sense of stability. He may develop qualities in the child which the [legal parent] is uninterested, unwilling or incapable of developing. To the extent that he can perform such a valuable service, his presence becomes exceedingly important.

Spells, 378 A.2d at 883. Consequently, where *in loco parentis* status has been found, courts have vigorously protected the custodial rights of the *in loco parentis* parent: “It is against public policy to limit or destroy the relationship of parent to child. Accordingly, when a stepparent is ‘in loco parentis’ with his stepchildren, courts must jealously guard his rights to visitation.” *Id.*

This application of the principles governing standing determinations is consistent with the legislative purpose of the custody statute: to assure that children whose parents are separated or divorced have “a reasonable and continuing contact” with both parents when such contact is in the child’s best interest. *See* 23 Pa.C.S.A. § 5301 (declaration of policy). As set forth more fully in the Brief for Appellee, there is nothing in the text of the custody statute or the caselaw construing and applying it that precludes *in loco parentis* standing.¹ *See* Br. Appellee Part I. Indeed, the Pennsylvania legislature has amended the custody statute repeatedly,² and has done so against the well-established common law backdrop of the *in loco parentis* doctrine; had it

¹ *In re G.C.*, 735 A.2d 1226 (Pa. 1999), and *Ken R. v. Arthur Z.*, 682 A.2d 1267 (Pa. 1996), are not to the contrary. *G.C.* dealt with the question of whether foster parents have standing to contest or seek custody awards. This Court denied foster parent standing based on “the uniquely limited and subordinate, state-created, agency-maintained, foster parent/child relationship established through the Legislative scheme.” *In re G.C.*, 735 A.2d at 1230. *Ken R.* is likewise inapposite: as the court below noted, *see T.B.*, 753 A.2d at 888 n.8, it turned not on the *in loco parentis* doctrine but rather on the claim that the petitioner’s status as sibling gave him standing to petition for visitation with his sister.

² *See, e.g.* P.L. 706, No. 124 (1996); P.L. 264, No. 66 (1985); P.L. 322, No. 115 (1981).

intended to abrogate that doctrine, it would have done so explicitly. *See Gibbs v. Ernst*, 647 A.2d 882, 888-89 (Pa. 1994) (applying traditional common law principles to adoption intermediaries based on finding that those principles were “so well established that we find affirmative action by the legislature, rather than silence, would be necessary to prevent their application in the adoption context.”); *Metro. Prop. & Liab. Ins. Co. v. Ins. Comm’r*, 580 A.2d 300, 302 (Pa. 1990) (“The legislature must affirmatively repeal existing law or specifically preempt accepted common law for prior law to be disregarded.”). Far from deviating from the custody statute’s purpose and intent, the *in loco parentis* doctrine is indispensable for the consistent and faithful application of that statute to any family arrangement in which the parental figures are not the legal mother and legal father of the child.

B. The *In Loco Parentis* Standing Doctrine Turns on the Needs of the Child, Which Are Paramount, Not on the Particulars of the Parents’ Relationship.

The *in loco parentis* doctrine exists precisely to permit the adjudication of custody disputes in families with atypical or nontraditional structures. Even early expressions of the *in loco parentis* standing doctrine did not limit the doctrine’s application to stepparents. Instead, the doctrine was framed using the more inclusive formulation, “nonparents or step-parents”:

Numerous child custody contests have arisen between natural parents or blood relatives, and *nonparents* or step-parents. The courts have consistently viewed the matter with relation to the best interests and welfare of the child.

Spells, 378 A.2d at 882 (emphasis added). In the years following *Spells*, courts indeed granted *in loco parentis* standing in numerous stepparent cases, *see, e.g., Charles*, 744 A.2d 1255 (stepfather awarded *in loco parentis* standing in custody action by fit biological father); *Karner v. McMahon*, 640 A.2d 926 (Pa. Super. 1994) (conferring *in loco parentis* standing on

stepfather); *Rosado*, 624 A.2d 193 (awarding *in loco parentis* standing to stepmother).

However, courts also applied the doctrine in many different contexts as well. For example, third-party standing was granted to grandparents, *see Albright*, 421 A.2d 157; other relatives of the child, *see McDonel v. Sohn*, 762 A.2d 1101 (Pa. Super. 2000) (standing granted to child's aunt and uncle who were actively involved in raising child); *Cardamone v. Elshoff*, 659 A.2d 575 (Pa. Super. 1995) (maternal aunt granted *in loco parentis* standing to seek custody where child was in aunt's care for twenty-eight months with mother's approval); unrelated caregivers with whom the child had formed a familial bond, *see Bupp v. Bupp*, 718 A.2d 1278 (Pa. Super. 1998) (third party who lived with and cared for child during first year of her life granted standing); *Silfies v. Webster*, 713 A.2d 639 (Pa. Super. 1998) (prospective adopting parents granted standing); *In re Baby Boy S.*, 615 A.2d 1355 (Pa. Super. 1992), *aff'd*, 657 A.2d 484 (Pa. 1995) (same); *Burke v. Pope*, 531 A.2d 782 (Pa. Super. 1987) (unrelated caregiver granted standing in mother's custody action); and unmarried partners of the child's biological parent. *See J.A.L.*, 682 A.2d 1314 (lesbian co-parent granted standing to seek visitation with child she helped raise since birth).

Whether the family at issue possessed a conventional structure or conformed to traditional norms was irrelevant. As the *Spells* court recognized, custody disputes in nontraditional families involve the same considerations as disputes between traditional married couples: "In any case involving visitation, neither the fact of illegitimacy nor the personal preferences or prejudices of the parents should control our decision. *The governing criterion must always be the best interests of the child.*" *Spells*, 378 A.2d at 882 (italics in original); *see also J.A.L.*, 682 A.2d at 1332 (refusing to accommodate anti-gay prejudices where best interest

of child was at stake).

Similarly, whether the person standing *in loco parentis* had been married or could have been married to the child's other parent is irrelevant to this determination: indeed, in most if not all of the non-stepparent cases cited *supra*, the *in loco parentis* parent was not married to the child's legal parent. In fact, in many cases the *in loco parentis* parent was the same gender as the legal parent or was otherwise prevented by law from entering into a marriage with the legal parent. See, e.g., *McDonel*, 762 A.2d 1101; *Cardamone*, 659 A.2d 575; *Burke*, 531 A.2d 782. In all of these cases, the inability of a *de facto* parent to marry the legal parent had no bearing upon the question of standing to pursue a custody action. Indeed, a rule to the contrary would raise serious constitutional concerns. See discussion *infra* Part III; cf. *Commonwealth ex rel. Spriggs v. Carson*, 368 A.2d 635, 639-40 (Pa. 1977) (in rejecting tender years presumption, questioning "legitimacy of a doctrine that is predicated upon traditional or stereotypic roles of men and women in a marital union.").

Despite the clarity of this precedent, Appellant L.R.M. suggests that recent developments in Pennsylvania's marriage and adoption law should lead this Court to abandon the *in loco parentis* doctrine as applied to custody proceedings involving lesbian and gay parents. See Br. Appellant at 15. In fact, these developments—the passage of P.L. 706, No. 124 of 1996 prohibiting same-sex marriages and the recent Superior Court second-parent adoption rulings—in no way undermine the *in loco parentis* doctrine or lend any support for excluding lesbian and gay families from its protection. In fact, the legislative history of Act 124 shows plainly that no such consequence was intended.³

³ In floor debate on the measure, the prime sponsor of the amendment prohibiting lesbian and gay marriages took pains to explain the limited scope of the measure he was

Likewise, *Adoption of R.B.F.*, 762 A.2d 739 (Pa. Super. 2000), and *Adoption of C.C.G.*, 762 A.2d 724 (Pa. Super. 2000), *consolidated petition for allowance of appeal filed* (Dec. 7, 2000), do not speak to the *in loco parentis* doctrine. In those cases, a divided Superior Court upheld the dismissal of second-parent adoption petitions, wherein the unmarried partner of the child's legal parent sought to adopt the child as a second legal parent. The majority rulings in those cases turned on the narrow holding that the Pennsylvania Adoption Act inflexibly requires an existing legal parent to sign a consent terminating his or her own parental rights before a non-stepparent may adopt the existing legal parent's child.⁴ See *C.C.G.*, 762 A.2d at 727-28 (citing 23 Pa.C.S. § 2711(d)). The majority carefully noted that it was "not mak[ing] a policy decision that Appellant[] is ineligible to adopt because of Appellants' sexual orientation."⁵ *Id.* at 727. Thus, neither the enactment of the anti-marriage law nor the Superior Court's recent adoption rulings support L.R.M.'s argument that a *de facto* parent who cannot marry the legal parent or complete a second-parent adoption is thereby barred from achieving *in loco parentis* status.

proposing: "This amendment does not take anything away from anyone that they now have." See Pa. House Legis. J. 2017 (June 28, 1996) (remarks of Rep. Egolf). As the *in loco parentis* standing doctrine was already an integral part of Pennsylvania custody jurisprudence at that time, this legislative history indicates that the General Assembly expressly intended not to abrogate the application of that doctrine to lesbian and gay parents. See *Gibbs*, 647 A.2d at 888-89; *Metro. Prop. & Liab. Ins. Co.*, 580 A.2d at 310.

⁴ Because the Superior Court's construction of the Adoption Act in *R.B.F.* and *C.C.G.* fails to give effect to a statutory provision granting courts discretion to dispense with formal consent requirements for good cause shown, see 23 Pa.C.S. § 2901, and because it undermines the Act's paramount purpose of protecting the best interests of the child, the Superior Court's rulings are in error and, if review is granted, should be reversed.

⁵ Indeed, as Judge Johnson noted in dissent, the majority opinion in no way ruled out adoptions by lesbian and gay individuals or joint adoptions by lesbian and gay couples in the first instance. See *id.* at 732 ("the Adoption Act does not prohibit a joint adoption by an unmarried homosexual or heterosexual couple when the adoptee is not related to either petitioner.") (Johnson, J., dissenting).

Indeed, the *in loco parentis* doctrine was created precisely for those cases in which a person in the shoes of a parent is unprotected by any formal legal recognition of his or her parental role.

Rather than turning on the actual or potential marital status of the *de facto* parent, the operative test for *in loco parentis* standing is whether the petitioner had assumed parental status and discharged parental duties. Significantly, to achieve *in loco parentis* status, it is not necessary that the duties performed by the legal and *de facto* parent be co-extensive. In *Silfies*, for example, despite the fact that the biological parent performed such parental duties as authorizing medical treatment, choosing the day care provider, and paying for the child's medical insurance, the *in loco parentis* status of the child's prospective adoptive parents was not negated since "the Silfies assumed parental duties and responsibilities to the extent that they were legally permitted." *Silfies*, 713 A.2d at 645.

Of greater importance than the precise percentage of parental duties undertaken by the *in loco parentis* parent is his or her role as parent in the eyes of the child. The *J.A.L.* court found particularly probative of parental status the "evidence that J.A.L. and the child were co-members of a nontraditional family." *J.A.L.* at 1322; *see also Bupp*, 718 A.2d at 1281 (finding that "[a]n important factor in determining whether a third party has standing is whether the third party lived with the child and the natural parent in a family setting, irrespective of its traditional or nontraditional composition, and developed a relationship with the child as a result of the participation and acquiescence of the natural parent.").

C. The *In Loco Parentis* Standing Doctrine Does Not Unconstitutionally Impinge on the Rights of the Biological Parent.

This Court has recently reaffirmed that, "[w]hile this Commonwealth places great importance on biological ties, it does not do so to the extent that the biological parent's right to

custody will trump the best interests of the child.” *Charles*, 744 A.2d at 1259; *see also J.A.L.*, 682 A.2d at 1319-20 (observing that “[t]he in loco parentis basis for standing recognizes that the need to guard the family from intrusions by third parties and to protect the rights of the natural parent must be tempered by the paramount need to protect the child’s best interest.”). As set forth more fully in the Brief for Appellee, the constitutionality of the *in loco parentis* standing doctrine is not called into question by the U.S. Supreme Court’s recent decision in *Troxel v. Granville*, 530 U.S. 57 (2000). *See* Br. Appellee Part I-D. In *Troxel*, the Washington Supreme Court had construed a state statute to confer standing to litigate a visitation action on literally “any person” at “any time.” In striking down the statute so construed, the *Troxel* majority expressly declined to delineate the precise contours of the parental right. *Troxel*, 530 U.S. at 73. As Justice Stevens’s dissent notes, the Court explicitly did not reach “any number of cases—indeed, one suspects, the most common to arise—in which the ‘person’ among ‘any’ seeking visitation is a once-custodial caregiver, an intimate relation, or even a genetic parent”:

Even the Court would seem to agree that in many circumstances, it would be constitutionally permissible for a court to award some visitation of a child to a parent or previous caregiver in cases of parental separation or divorce, cases of disputed custody, cases involving temporary foster care or guardianship, and so forth.

Id. at 85 (Stevens, J., dissenting).

In contrast to the “breathhtakingly broad” Washington state statute, *see id.* at 67, that ““does not require the petitioner to establish that he or she has a substantial relationship with the child,”” *id.* at 77 (Souter, J., concurring) (quoting *In re Smith*, 969 P.2d 21, 31 (Wash. 1998)), the Pennsylvania *in loco parentis* doctrine requires a threshold showing that a person has achieved parental status and has discharged parental duties. The burden of making this threshold showing

provides a critical layer of protection for parental rights that distinguishes Pennsylvania's standing doctrine from the unlimited intrusions threatened by the visitation statute in *Troxel*.

Particularly where, as here, the petitioning parent seeks not full custodial rights but only partial custody for purposes of limited visitation, the "limited nature of the intrusion into the biological family must be considered in deciding whether standing has been made out." *J.A.L.*, 682 A.2d at 1321. Here, as in *J.A.L.*, the mother's "rights as the biological parent do not extend to erasing a relationship between her partner and her child which she voluntarily created and actively fostered simply because after the parties' separation she regretted having done so." *Id.* at 1322. *Troxel* does not cast any doubt on this reasoning or dictate a contrary result.

II. THE BEST INTERESTS OF THE CHILD ARE TYPICALLY SERVED BY CONTINUING THE CHILD'S RELATIONSHIP WITH THE *IN LOCO PARENTIS* PARENT, REGARDLESS OF THE PARENT'S SEXUAL ORIENTATION.

A. Children Develop Strong Attachments to *De Facto* Parents.

Pennsylvania's *in loco parentis* standing doctrine finds strong support in social science and psychological research on children's developmental needs. It is a widely accepted axiom of work with and for children that legal and emotional permanency are necessary for healthy child development.⁶ See Joseph Goldstein et al., *Beyond the Best Interests of the Child* 27 (1979 ed.) [hereinafter Goldstein et al.]; see also *In re S.S.*, 65 A.2d 174, 175 (Pa. Super. 1994). Children develop strong bonds to their parents early in life, bonds that psychologists refer to as

⁶ The National Council of Juvenile and Family Court Judges recognizes the need for and importance of permanency in the healthy development of children, and acknowledges that children form attachments to unrelated adults standing *in loco parentis*: "The attachment process may include a father, grandparent, adopted parent or another adult who assumes care for the child." M. Stein, "Child Development: Basic Principles," in *Child Development: A Judge's Reference Guide* 6 (1993).

attachments. *See generally, e.g.,* John Bowlby, *Attachment* (1969). In two-parent homes, children typically form full attachments to both parents. In fact, research on father-child relationships shows that children develop strong bonds with their fathers even if they spend less time with their fathers than with their mothers. These “emotionally salient relationships . . . persist[] as the child grows older.” R. Thompson, “The Father’s Case in Child Custody Disputes: The Contributions of Psychological Research,” in *Fatherhood and Public Policy* 90 (M. Lamb & A. Sagi eds., 1983).

Research also shows that these bonds develop regardless of whether there is any biological relationship between the parent and the child. Thus, children form attachments to adoptive parents that are as strong as those to biological parents. *See* L. Singer et al., *Mother-Infant Attachment in Adoptive Families*, 56 *Child Dev.* 1543 (1985); J. Seglow et al., *Growing Up Adopted: A Long-Term Study of Adopted Children and Their Families* (1972). Likewise, children typically develop strong attachments to a grandparent who fulfills the role of a parent. *See, e.g.,* L. Burton & V. Bengtson, “Black Grandmothers,” in *Grandparenthood* (Vern Bengtson & Joan Robertson eds., 1985) [hereinafter *Grandparenthood*]; C. Johnson, “Grandparenting in Divorcing Families: An Anthropological Perspective,” in *Grandparenthood, supra*; R. Kalish & E. Visser, *Grandparents of Divorce and Remarriage*, 5 *J. Divorce* 127 (1982).

Psychological parent-child relationships also develop outside of biological relation or formal adoption contexts. *See* Goldstein et al., *supra*. 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. The psychological parent may be a biological, adoptive, foster, or

common-law parent, or any other person.”⁷ *Id.* at 98. Other researchers have observed that a child comes to view a second adult as a parent based not only on the adult’s caretaking, but also on the relationship between the child’s caretakers. See K.A. Clarke-Stewart, *And Daddy Makes Three*, 49 *Child Dev.* 466 (1978). The sexual orientation of the parents is irrelevant to whether an attachment bond is formed with the child. A clinical evaluation of preschool children of lesbian couples concluded that, when both members of a lesbian couple care for a child, the child becomes attached to both. See B. McCandlish, “Against All Odds: Lesbian Mother Family Dynamics,” in *Gay and Lesbian Parents* 23-38 (Frederick W. Bozett ed., 1987).

Thus, research supports the conclusion that, in households where both members of a couple have been involved with a child from birth, or from an early age, the child is likely to have formed a full attachment with both adults. See Goldstein et al., *supra*, at 31-32.

Furthermore, there is some evidence that children of lesbian couples are especially likely to bond fully with both parents. A study comparing child care by lesbian and heterosexual couples raising children under two years old found that decision-making was shared equally by both types of couples, but that while biological mothers in both groups were more involved in child care than their partners, the non-biological mothers in lesbian households were substantially more involved with child care than heterosexual fathers. See C. Patterson, *Children* 266 (1997).

B. Continuity of the Relationship Between *De Facto* Parents and Children Is Essential to Healthy Child Development.

Once bonds have formed between adults and children, continuity of the relationship is “essential for a child’s normal development.” Goldstein et al., *supra*, at 31. Studies of children

⁷ The authors use the term “common-law parent” to describe an adult whose parental role developed outside of adoption, custody, or the initial assignment of a child at birth to his or her biological parents. *Id.*

of divorced parents confirm the psychological harm that can result from separation from a parent to whom the child had attached.⁸ When a child has formed an attachment to a parent, “the forcible interruption of the relationship, besides causing distress to the [adult] is reacted to by the child with emotional distress and a setback of ongoing development.” *Id.* at 27. These 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.

Likewise, the emotional impact on a child of separation from co-parenting life partners can be severe. If shared custody or visitation is not arranged, children raised in lesbian households risk losing their relationships with co-parents in the event that their parents separate or their biological mothers die. Such a loss “can cause extreme distress.” F. Tasker & S. Golombok, *Growing Up in a Lesbian Family*, 12 (The Guilford Press, 1997) [hereinafter Tasker & Golombok, *Growing Up*]. Not surprisingly, a clinical survey that included thirty-two children from twenty-eight lesbian families concluded that the dissolution of a biological mother’s relationship with her female partner was “a threat to [the child’s] feeling of family stability and security.” See F. Bozett, *Gay and Lesbian Parents* 67 (1987); M. Kirkpatrick et al., *Lesbian Mothers and Their Children: A Comparative Study*, 51 *Am. J. Orthopsychiatry* 545 (1981); see also F. Bozett, *Review*, 13 *J. Homosexuality* 135 (1987). The dissolution of these relationships

⁸ See J. Wallerstein & S. Blakeslee, *Second Chances* (1989) (children who do not maintain contact with co-parent suffer continuing sense of loss and sadness); E. M. Hetherington et al., *What Matters? What Does Not?*, 53 *Am. Psychol.* 167, 177 (1998) (“some degree of contact is essential”); P. Amato & B. Keith, *Parental Divorce and the Well-Being of Children: A Meta-Analysis*, 110 *Psychol. Bull.* 26, 37 (1991); J. Wallerstein & J. Kelly, *Surviving the Breakup* 17-20, 132-46, 170-72 (1980).

affected younger children in the same adverse manner that the separation of heterosexual mothers and fathers affected their children. *Id.*

The preservation of a child's emotional bonds to both parents is accordingly of critical importance to the child's emotional health and growth: "If a child is separated from the person who has been primarily responsible for caring for the child since birth, serious harm and pain will be inflicted." M. Takas, *Child Custody: A Complete Guide for Concerned Mothers* 4 (1987). Even when the broken bond is not with the primary caregiver, children who are denied visitation or joint custody with their other parent will "suffer a real sense of sadness and loss." *Id.* A stable custody and visitation plan is therefore necessary to prevent or heal emotional and psychological wounds that the dissolution of a relationship can inflict on a child. *See id.* at 1. If a lesbian couple that has jointly brought up a child since birth later separates, "it is reasonable to expect that the best interests of the child will be served by preserving the continuity and stability of the child's relationships with both parents." *See C. Patterson, Children, supra* at 273.

C. Lesbian and Gay Parents Are As Fit As Heterosexual Parents.

Psychological data consistently indicates that lesbians and gay men are as good at parenting as their heterosexual counterparts. In particular, research has found no significant difference between lesbian and gay parents and heterosexual parents with respect to their parenting skills and abilities, attitudes about parenting, and mental health. Children of lesbian mothers and gay fathers do not differ from children of heterosexual parents in their psychological development, social adjustment, peer relations, intellectual development, gender identity, or sexual orientation in adulthood. Moreover, there is no evidence that a lesbian or gay parent's sexual orientation adversely affects his or her children. Given the strength and consistency of

these findings, continuing relationships with a lesbian or gay parent will ordinarily be in the best interests of children.

1. The Parenting Skills of Lesbian and Gay Parents Are Comparable to the Parenting Skills of Heterosexual Parents.

Scientific research concludes that lesbian and gay parents do not differ from heterosexual parents in terms of their parenting skills and abilities⁹ or their mental health.¹⁰ Research does not support the myth that lesbians and gay men lack the caregiving skills, instincts, and abilities of heterosexual parents. As noted by the Superior Court, “a variety of psychological studies indicate that lesbianism does not correlate negatively with the ability to raise a healthy, normal child.” *Blew v. Verta*, 617 A.2d 31, 36 n.2 (Pa. Super. 1992) (citing R. Green et al., *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 Archives of Sexual Behavior 167 (1986) (“The postulated compromised parental fitness of lesbian mothers, commonly asserted in child custody cases, is not supported by these data.”); Kirkpatrick et al., *supra* (prevalence of disturbance among children not found to be related to mother’s choice of same-sex partner)); *see also* J. Kleber et al., *The Impact of Parental Homosexuality in Child Custody Cases: A Review of the Literature*, 14-1 Bull. Am. Acad.

⁹ See G.D. Green & F. Bozett, “Lesbian Mothers and Gay Fathers” in *Homosexuality: Research Implications for Public Policy* 197 (1991) [hereinafter Green & Bozett, “Lesbian Mothers”]; *see also* M. Harris & P. Turner, *Gay and Lesbian Parents*, 12 (2) J. Homosexuality 101, 104 (1985-86); C. Patterson, *Children of Lesbian and Gay Parents*, 63 Child Dev. 1025 (1992).

¹⁰ The American Psychiatric Association and American Psychological Association both declared nearly a quarter century ago that homosexuality *per se* implied no impairment in mental abilities or judgment and that their members should work to dispel such stigma associated with homosexuality. *Resolution of the American Psychiatric Association*, December 15, 1973, reprinted in 131 Am. J. Psychiatry 497 (1974); American Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychol. 620, 633 (1975).

Psychiatry Law (1986) (concluding that “[r]esearch regarding lesbian motherhood has consistently failed to provide any evidence for necessarily inferior parenting styles. Children of lesbian mothers have not demonstrated aberrant gender identity development, increased preference for homosexual[ity], nor enhanced social-emotional maladjustment, when compared with children raised by single heterosexual mothers.”). Since *Blew*, numerous studies have replicated the finding that lesbian and gay parents are as proficient in parental roles as heterosexual parents, and the quality of home life provided by gay and lesbian parents is at least equal to that of heterosexual families. See, e.g., G. Green & F. Bozett, “Lesbian Mothers and Gay Fathers” 197, in *Homosexuality: Research Implications for Public Policy* (1991); see also S. Golombok et al., *Children Raised in Fatherless Families from Infancy: Family Relationships and the Socioemotional Development of Children of Lesbian and Single Heterosexual Mothers*, 38 J. Child Psychiatry 787, 789 (1997) [hereinafter Golombok et al., *Infancy*] (finding that parenting skills of lesbians and female heterosexuals are comparable).¹¹

In reviewing the pertinent studies of lesbian and gay parenting skills, researchers have concluded:

The home environments of lesbian and gay persons have been found to be as moral and as physically and psychologically healthy as those of non-gays. The research . . . makes it clear that lesbian and gay parents’ attitudes and behaviors are very like those of other parents studied and that they facilitate their children’s growing up in healthy, productive ways.

¹¹ Gay and lesbian parents or their partners are *less* likely to be sexual abusers of children than heterosexual parents or their partners. A study of all reported cases of child sexual abuse to an urban hospital in one year found that less than 1% of the abusers were gay or lesbian. See C. Jenny et al., *Are Children at Risk for Sexual Abuse by Homosexuals*, 94 Pediatrics 41 (1994) (study of 269 sexually abused children where an adult offender was identified found that 88% of the perpetrators had documented heterosexual relationships, and that 77% of those who abused girls and 74% of those who abused boys were heterosexual partners of a family member).

Green & Bozett, "Lesbian Mothers," *supra*, at 211. A large body of research comparing the parenting skills and attitudes of lesbian and heterosexual mothers evidences a "remarkable absence of distinguishing features between the life-styles, child-rearing practices, and general demographic data" of lesbian mothers versus heterosexual mothers. See B. Hoeffler, *Children's Acquisition of Sex-Role Behavior in Lesbian Mother Families*, 51 Am. J. Orthopsychiatry 536, 537 (1981); see also Kirkpatrick et al., *supra*, at 546. Lesbian mothers score similarly to heterosexual mothers on the Parent Awareness Skills Survey, a standard tool for measuring the effectiveness and sensitivity levels of a parent while responding to hypothetical child care issues. See D. Flaks et al., *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children*, 31 Dev. Psychol. 105 (Jan. 1995) [hereinafter Flaks et al.]. Another study comparing lesbian and gay parents to heterosexual parents found "no significant difference in the relationships of the two sets of parents with their children." See J. Harris & P. Turner, *Gay and Lesbian Parents*, 12 (2) J. Homosexuality 101, 111 (1985-86). Moreover, no differences were found in the parents' encouragement of same-sex friends or in the encouragement of gender-typed toys for their own children. *Id.* at 110. This research supports the conclusion that sexual orientation is not a reliable predictor of parenting ability.

Those politically opposed to motherhood by lesbian women often warn of the purported lack of male role models for children living with lesbian mothers. However valid this concern may be, research shows that lesbian mothers, as a whole, have been found to be more conscientious about providing male roles models for their children than unmarried heterosexual mothers.¹² Similarly, studies of gay and heterosexual fathers suggest that gay fathers are at least

¹² Studies of children being raised by their mothers have found that children living

equal to, if not better than, heterosexual fathers in terms of the quality of their parenting, efforts to form a stable home environment, and ability to forge a positive relationship with their children.¹³ One study comparing responses to standard measures of parental attitudes by gay and heterosexual fathers found that “no discernible parenting style could be found to distinguish one group from the other,” see J. Bigner & R.B. Jacobsen, *Adult Responses to Child Behavior and Attitude Toward Fathering: Gay and Nongay Fathers*, 23 (3) *J. Homosexuality* 99, 99 (1992) (comparing 24 gay and 29 heterosexual fathers), and that “sexual orientation of fathers is not a variable that significantly affects attitudes toward fathering nor responses to hypothetical child behavior.” *Id.* at 108.

In summary, scientific research demonstrates that the parenting skills and home lives of lesbian and gay parents are as likely as those provided by heterosexual parents to foster a safe environment to support a child’s psychosocial growth.

2. Children Raised by Lesbian Mothers or Gay Fathers Are As Well-Adjusted As Children Raised by Heterosexual Parents.

with lesbian mothers visited with their fathers more often and were more likely to have interaction with male relatives than children living with heterosexual mothers. See S. Golombok et al., *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 *J. Child Psychol. & Psychiatry* 551, 554 (1983) [hereinafter Golombok et al., *Appraisal*]; J. Hare & L. Richards, *Children Raised by Lesbian Couples: Does the Context of Birth Affect Father and Partner Involvement?*, 42 *Fam. Relations* 249-55 (1993) (90% of children being raised by lesbian mothers had contact with their father); Kirkpatrick et al., *supra*, at 549.

¹³ See J. Bigner & R.B. Jacobsen, *Parenting Behaviors of Homosexual and Heterosexual Fathers*, 18 *J. Homosexuality* 173, 181 (1989); J. Bigner & F. Bozett, *Parenting by Gay Fathers*, 14 *Marriage & Fam. Rev.* 155 (1989), reprinted in *Homosexuality and Family Relations* 155, 173 (1990) [hereinafter Bigner & Bozett, *Parenting by Gay Fathers*]; F. Bozett, *Gay Fathers: A Review of the Literature*, 18 *J. Homosexuality* 137 (1989), reprinted in *Psychological Perspectives on Lesbian and Gay Male Experiences* 437, 453 (1993); R. Barret & B. Robinson, “Gay Dads,” in *Redefining Families: Implications for Children’s Development* 157, 163 (1994).

Research does not indicate that the children of lesbian and gay parents are disadvantaged in psychological or social development in comparison to children of heterosexual parents. See C. Patterson, *Parents, supra*, at 1026; see also C. Patterson & R. Redding, *Lesbian and Gay Families with Children: Implications of Social Science Research for Policy*, 52 (3) J. Soc. Issues 29, 41, 43 (1996) (finding that “results of research to date suggest that children of lesbian and gay parents have normal relationships with peers and that their relationships with adults of both sexes are also satisfactory”); C. Patterson, “Summary of Research Findings,” 3-6, in *Lesbian and Gay Parenting: A Resource for Psychologists*, Am. Psychol. Assoc. (1995).¹⁴ Research consistently concludes that children raised by lesbian and gay parents do not differ from children raised by heterosexual parents in terms of psychological development, social adjustment, peer relations, intelligence levels, gender identity and sexual orientation in adulthood.

i. Children of Lesbian and Gay Families Show No Differences in Psychological Well-Being from Children of Heterosexual Families.

The consistent conclusion drawn from studies examining the psychological development of children living with lesbian and gay parents is that these children demonstrate no appreciable differences in psychological well-being from children raised by heterosexual parents. See, e.g., Tasker & Golombok, *Growing Up, supra* (twenty-year longitudinal study of parents and children); Flaks et al., *supra* (studying parents and children in Pennsylvania); Green et al., *supra* (studying parents and children in both rural and urban areas in Connecticut, Florida, Illinois,

¹⁴ Most of the research conducted on children living with gay and lesbian parents explores situations where the parents have retained custody of their children from prior heterosexual relationships. As few fathers, and even fewer gay fathers, have received custody of their children, research on children raised by homosexual parents has focused mostly on children being raised by lesbian mothers and their partners.

Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, and Wisconsin). The concern that children of lesbians and gay men will suffer dysfunction as a result of their parents' sexual orientation is belied by the research: "[t]here is *no evidence of any kind* that demonstrates that living with a homosexual parent has any negative effects on children." See J. Bigner & F. Bozett, *Parenting by Gay Fathers*, 14 *Marriage & Fam. Rev.* 155, 163 (1989), reprinted in *Homosexuality and Family Relations*, 155 (1990) (emphasis added).

A recent study evaluated four types of nuclear families who had conceived children through donor insemination: children from heterosexual couples, single heterosexual mothers, lesbian couples, and single lesbian mothers. R. Chan et al., *Psychological Adjustment Among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 *Child Dev.* 443 (1998). The researchers assessed the children's social competence and behavioral adjustment according to standard measures, as well as through teacher and parent reports. The study also evaluated the parents' self-concepts, relationship satisfaction, and parenting according to various accepted tests. The study showed that children's outcomes were unrelated to their parents' sexual orientation, and that "it was impossible to distinguish children born to and brought up by lesbian versus heterosexual parents." *Id.* at 21. Rather, the researchers found that parenting stress, relationship adjustment between the parents, love between the parents, and conflict between the parents affected the children's adjustment. *Id.* at 23.

In a recent similar study, European researchers evaluated thirty families headed by two lesbian parents with a child between four and eight years of age who was conceived by donor insemination. The researchers compared these families to matched groups consisting of thirty-eight heterosexual two-parent families with children of the same age who had conceived through

donor insemination and thirty heterosexual parent families with children of the same ages who did not conceive through donor insemination. A. Brewaeys et al., *Donor Insemination: Child Development and Family Functioning in Lesbian Mother Families*, 12 *Human Reproduction* 1349 (1997). Researchers found no differences in behavioral adjustment of the children in the three groups. Furthermore, they noted: "The most important conclusion emerging from all of these findings with regard to family functioning is that children in lesbian mother families have been growing up for the first years of their lives in a warm and secure family environment, just like the children in the heterosexual control groups." *Id.* at 1356.

In 1995, a group of researchers compared fifteen lesbian couples with three- to nine-year-old children born through donor insemination with fifteen matched, heterosexual-parent families. Flaks et al., *supra*, at 109. Based upon responses of parents and teachers to standard testing instruments, these researchers found that the behavioral adjustment of the children of lesbian parents was remarkably similar to that of the children of heterosexual parents. *Id.* at 112.

Unlike the above studies, most of the early research in this area compared the children of lesbian mothers, most of whom were divorced, to the children of divorced heterosexual mothers. These samples were selected to ensure that any differences between the two groups would be attributable to the parent's sexual orientation rather than the shared characteristic of divorce. Researchers who examined seventy-five children from twenty-seven households of lesbian mothers and twenty-seven households of divorced, heterosexual mothers observed no significant differences between the two groups of children with respect to emotional difficulties, conduct difficulties, antisocial behavior, or hyperactivity. See S. Golombok et al., *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 *J. Child Psychol. &*

Psychiatry 551, 565-66 (1983). Fourteen years later, in 1997, the researchers followed up with available subjects from the original 1983 study in an effort to obtain longitudinal data. Standard psychological tests revealed no differences between the children raised by lesbian mothers and those raised by heterosexual mothers with respect to anxiety or depression. *See* Tasker & Golombok, *Growing Up, supra*, at 135-36. Moreover, interviews with the adult subjects revealed no significant difference with respect to mental health problems or periods of unemployment. *Id.*

ii. The Children of Lesbian and Gay Parents Are As Socially Well-Adjusted As the Children of Heterosexual Parents.

The research focusing on the social development and peer relations of children of lesbian and gay parents dispels the myth that such children suffer negative effects because of society's reactions to their parents' homosexuality. Recent reviews of the research have concluded, "No differences between children of lesbian and single heterosexual mothers have been identified for emotional well-being, quality of friendships, or self-esteem." Golombok et al., *Infancy, supra*, at 789 (only statistically significant difference between two groups was greater interaction between lesbian mothers and children than between heterosexual mothers and their children). Moreover, the research has demonstrated that children raised by lesbian mothers or couples "have play and activity preferences that are similar to children raised in heterosexual households, and do not show heightened anxiety, depression, or behavior problems." *Id.*

In the longitudinal study noted above, the researchers compared children of divorced lesbian mothers to children of divorced heterosexual mothers and found no significant differences in the quality of peer relationships between the groups. *See* Golombok et al., *Appraisal, supra*, at 567. After following up with as many of the subjects as possible,

researchers found that, as adults, children raised by lesbian mothers did not recall significantly more teasing by peers regarding their families than those raised by heterosexual single parents. See Tasker & Golombok, *Growing Up*, *supra*, at 86.

In 1989, a study compared the scores on standard instruments for measuring self-esteem of two groups of eighteen adolescent boys and girls. One group was raised by lesbian mothers, and the other group was raised by heterosexual mothers. See S. Huggins, *A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers*, 17 J. Homosexuality 123 (1989). Researchers found no significant difference in self-esteem between the two groups of adolescents.

Similarly, researchers studied fifty-six children of fifty lesbian mothers with a matched sample of forty-eight children of forty heterosexual mothers, and the results showed no significant differences between the two groups with respect to the children's self-ratings of popularity or the mothers' descriptions of the children's popularity. See Green & Bozett, *Lesbian Mothers*, *supra*, at 174. These findings are consistent with other research concluding that no significant differences exist in the quality of peer relationships between children of divorced lesbian mothers and children of divorced heterosexual mothers.¹⁵

iii. Sexual Orientation of Parents Does Not Affect the Intellectual Development of Their Children.

The relatively sparse research conducted on the intellectual development of the children of lesbian mothers has consistently found that their intelligence level is no different from that of

¹⁵ See M. Hotvedt & J. Mandel, "Children of Lesbian Mothers," *Homosexuality—Social, Psychological and Biological Issues*, at 280, 282 (comparing 58 children of 50 single lesbian mothers to matched group of 25 children of 20 single heterosexual mothers and finding no differences in peer group relationships among boys and, if anything, that daughters of lesbian mothers reported they were more popular than daughters of heterosexual women).

the children of heterosexual mothers. For instance, the most recent study of this issue found no relationship between parental sexual orientation and the children's scores on cognitive functioning tests administered to children raised from birth by lesbian mothers and matched children raised in heterosexual families. See Flaks et al., *supra*, at 109. This study supports the findings of other researchers comparing the intelligence of children raised by divorced lesbian mothers and divorced heterosexual mothers.¹⁶

iv. Children of Lesbian Mothers and Gay Fathers Do Not Show Any Differences in Gender Identity and Sexual Orientation When Compared to Children of Heterosexual Parents.

Contrary to outdated myths about children of lesbian mothers and gay fathers, social science research fails to indicate any differences between the children of lesbian and gay parents and the children of heterosexual parents with respect to gender identity or sexual orientation. See C. Patterson & R. Chan, "Gay Fathers" 382, in *The Role of the Father in Child Development*; Herek, *Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research*, 1 *Law and Sexuality* 133, 157-61 (1991); F. Bozett, *Gay Fathers: A Review of the Literature*, 18 *J. Homosexuality* 137, 142 (1989), reprinted in *Psychological Perspectives on Lesbian and Gay Male Experiences* (1993).

In a thorough 1996 literature review, two scholars reviewed four gender identity studies, eight studies of gender-role behavior, and thirteen studies concerning the sexual orientation of children of lesbian or gay parents, and concluded:

Although studies have assessed over 300 offspring of lesbian and

¹⁶ See Green et al., *Lesbian Mothers and Their Children*, *supra*, at 174 (comparing 56 children of 50 lesbian women to matched control group of 48 children of 40 heterosexual women); Kirkpatrick et al., *Lesbian Mothers*, *supra*, at 547 (comparing 20 children of lesbian women to matched control group of 20 children of heterosexual mothers).

gay parents in many different samples, no evidence has been found for disturbances in the development of sexual identity among these individuals. Fears about difficulties with sexual identity among children of gay and lesbian parents have not been supported by the results of empirical research.

C. Patterson & R. Redding, *Implications, supra*, at 39-41.

In summary, lesbian and gay parents are functionally equivalent to their heterosexual counterparts. Children raised by lesbian mothers and gay fathers exhibit no differences from children raised in heterosexual households with respect to psychological development, social adjustment and peer relations, intellectual development, gender identity, and sexual orientation. Social science research consistently indicates that no significant difference exists between children of lesbian and gay families compared to children of heterosexual families. This research strongly supports the wisdom and necessity of preserving the relationship between children and their *in loco parentis* parent, including where that parent is lesbian or gay.

III. EXCLUDING LESBIAN AND GAY PARENTS FROM THE *IN LOCO PARENTIS* STANDING DOCTRINE WOULD RAISE SERIOUS PUBLIC POLICY AND CONSTITUTIONAL CONCERNS.

A. Denying *In Loco Parentis* Standing to Lesbian and Gay Parents Would Deny Their Children Equal Protection of the Laws.

As discussed *supra*, courts have recognized that continued contact between children and their *de facto* parent is crucial for the children's healthy development. Yet, the rule of law that L.R.M. urges this Court to adopt would create a regime that extends or withholds its benefits to children on the basis of the sexual orientation of the petitioning parent.

The U.S. Supreme Court has condemned classifications that, while purporting to act on parents, in effect create two castes of children: "although the challenged classification turns upon the marital status of the parents as well as upon the parent-child relationship, *in practical*

effect it operates almost invariably to deny benefits to illegitimate children while granting benefits to those children who are legitimate.” *New Jersey Welfare Rights Org. v. Cahill*, 411 U.S. 619, 619-20 (1973) (emphasis supplied). Carving out lesbian and gay parents from the *in loco parentis* doctrine would, “in practical effect,” delineate two categories of children: children with *in loco* parents who are entitled to petition for a continued parent-child relationship, and children with *in loco* parents who are not.¹⁷ Children whose *in loco parentis* parent is heterosexual will reap the substantial benefits of a continuing parental relationship; children whose *in loco parentis* parent is lesbian or gay will not. Time and again the Supreme Court has “invalidated classifications that burden . . . children for the sake of punishing . . . their parents, because ‘visiting this condemnation on the head of an infant is illogical and unjust.’” *Clark v. Jeter*, 486 U.S. 456, 461 (1988) (quoting *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972));¹⁸ see also *Plyler v. Doe*, 457 U.S. 202, 220 (1982) (“legislation directing the onus of a

¹⁷ Studies estimate that millions of children have a gay or lesbian parent and that one-third of lesbians have children either from prior heterosexual relationships or donor insemination. See, e.g., Charlotte Patterson, *Children of Lesbian and Gay Parents*, 63 *Child Development* 1025, 1026 (1992); Joy Schulenberg, *Gay Parenting: A Complete Guide for Gay Men and Lesbians with Children* (1995); *ABA Annual Meeting Provides Forum for Family Law Experts*, 13 *Fam. L. Rep.* (BNA) 1512, 1513 (Aug. 25, 1987); see also Polikoff, *This Child Does Have Two Mothers*, 78 *Geo. L.J.* 459, 461 n.2 (1990) (collecting data and psychosocial studies).

¹⁸ See *Pickett v. Brown*, 462 U.S. 1, 8-9 (1983) (quoting *Gomez v. Perez*, 409 U.S. 535, 538 (1973) (“[A] State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. . . . [O]nce a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother.”); *Mills v. Habluetzel*, 456 U.S. 91, 96 (1982) (“If *Gomez* and the equal protection principles which underlie it are to have any meaning, . . . the . . . opportunity provided by the State to illegitimate children must be more than illusory.”); *Trimble v. Gordon*, 430 U.S. 762, 770 (1977) (“The parents have the ability to conform their conduct to societal norms, but their illegitimate children can affect neither their parents’ conduct nor their own status.”).

parent's [conduct] against his children does not comport with fundamental concepts of justice.”).

In terms of their need for the benefits of continued parental contact, children raised by lesbian or gay parents cannot be distinguished on any rational basis from children living with heterosexual adults. In *Curtis v. Kline*, 666 A.2d 265, 269 (Pa. 1995), this Court invalidated a statute because it “classifie[d] young adults according to the marital status of their parents.” The Court noted that children could be similarly situated with regard to their need for financial assistance for post-secondary education—the benefit granted or withheld in that case—regardless of their parents’ marital status, and held that any distinction between children must be rationally related to their differences with respect to this need. *Id.* Therefore, the Court rejected as irrelevant the Commonwealth’s interest in deferring to the traditional marital unit. Likewise, that justification must fail here, because children’s need for the benefits of continued contact with their noncustodial parent exists independently of the marital status or sexual orientation of their parents.

B. Discrimination Against Lesbian and Gay Parents Is Constitutionally Suspect.

To survive constitutional scrutiny, “a classification must rest upon some ground of difference which justifies the classifications and [must] have a fair and substantial relationship to the object of the legislation.” *Curtis*, 666 A.2d at 268. As set forth more fully in the Brief *Amicus Curiae* American Civil Liberties Union, no conceivably relevant difference separates an *in loco parentis* parent who is lesbian or gay from one who is not. To carve out lesbian and gay parents from the protection of the *in loco parentis* doctrine based solely on prejudice against them would run afoul of the Equal Protection Clause. *See Romer v. Evans*, 517 U.S. 620 (1996) (statute may not single out gay or lesbian persons for special disadvantages merely because of

societal disapproval or prejudice).

Pennsylvania courts have held that parental marital status is never dispositive of a determination of a child's best interests. *See, e.g., McAnallen v. McAnallen*, 446 A.2d 918, 922 (Pa. Super. 1982) (cautioning judges against assuming that simply because a non-marital relationship exists, the impact of the relationship on the child has been harmful); *see also Custody of Temos*, 450 A.2d 111, 122 (Pa. Super. 1982) (same). Likewise, there is no legitimacy to the unfounded assumption that a parent's involvement in a same-gender relationship is adverse to the children's best interests. *See* discussion *supra* Part II; *see also Blew*, 617 A.2d at 35 (observing that "a variety of psychological studies indicate that lesbianism does not correlate negatively with the ability to raise a healthy, normal child."); *id.* at 36 n.2 (citing studies and Nancy D. Polikoff, *This Child Does Have Two Mothers*, 78 Geo. L.J. 459, 560-67 (1990) (collecting data and studies). Over a decade ago, in removing a custody restriction on a lesbian mother, the Superior Court recognized:

"Although courts have gone to great lengths to provide every child with precisely one mother and one father, the realities of family formation and parenting are considerably more complex. Lesbian-mother families are but one alternative to the presumed form. In resolving disputes about the custody of children, the court system should recognize the reality of children's lives, however unusual or complex. Courts should design rules to serve children's best interests. By failing to do so, they perpetuate the fiction of family homogeneity at the expense of the children whose reality does not fit this form."

Id. at 36 (quoting Polikoff, *supra*, at 469). To withhold the benefits of the *in loco parentis* doctrine from an entire class of loving, competent parents solely because of their sexual orientation would run counter to "[t]he essence of the constitutional principle of equal protection under the law" that "like persons in like circumstances should be treated similarly." *Curtis*, 666

A.2d at 267. It also would conflict with this Court's command that, "[i]n all custody matters, our primary concern is, and must continue to be, the well-being of the most fragile human participant—that of the minor child." *Charles*, 744 A.2d at 1260.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Brief for Appellee, *Amici Curiae* respectfully urge this Court to affirm the judgment below.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Susan Frietsche, hereby certify that on April 12, 2001, I caused to be served by First-Class Mail, Postage Prepaid, two true and correct copies of the foregoing document upon the following, which service satisfies the requirements of Pa. R. App. P. 121:

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INDIVIDUAL STATEMENTS OF INTEREST OF *AMICI CURIAE*

BRETHREN/MENNONITE COUNCIL FOR LESBIAN AND GAY CONCERNS, INC.

The Brethren/Mennonite Council for Lesbian and Gay Concerns, Inc. (BMC), founded in 1976, is an international association of individuals and congregations from Mennonite and Church of the Brethren traditions who welcome lesbian, gay, bisexual and transgender people as full members of the church. BMC supports Brethren and Mennonite gay, lesbian, bisexual and transgender people, and their parents, spouses, relatives, and friends; fosters dialogue between gay and non-gay people in the churches; and provides accurate information about homosexuality from the social sciences, biblical studies, and theology. We support the continued custody or visitation of lesbian and gay co-parents with the children they have helped to raise.

CENTER FOR LESBIAN AND GAY CIVIL RIGHTS

The Center for Lesbian and Gay Civil Rights is a non-profit legal service organization founded in 1996 to address the unmet legal needs of lesbians and gay men in Pennsylvania. The Center's mission is to advocate equality for lesbian and gay Pennsylvanians through legal assistance, education and policy reform. The Center's Family Rights Project represents lesbian and gay partners and parents and their children. The Center has received hundreds of requests for legal assistance from gay and lesbian parents who want their legal status with respect to their children to be commensurate with the emotional bonds that they share.

CHILDREN OF LESBIANS AND GAYS EVERYWHERE

Children of Lesbians and Gays Everywhere (COLAGE) is a national and international organization providing support, advocacy, and education on behalf of the children of lesbian, gay, bisexual, and transgender parents. Since 1990, COLAGE has worked to make a safer world for daughters and sons of lesbian, gay, bisexual, and transgender parents, by making our families visible through public education and media campaigns.

CHOICE

CHOICE, founded in 1971, is a non-profit consumer advocacy organization dedicated to helping people obtain quality health care. Nearly 45,000 people in the Philadelphia region turn to CHOICE annually for reliable health-related information and referrals, effective consumer advocacy, and sensitive, non-directive counseling on reproductive and sexual health issues. CHOICE strongly supports every child's right to a healthy and caring upbringing and, for seven years, has dedicated our Children's Health Line to helping parents achieve this goal for the sake of their children. CHOICE supports the equal parenting rights of all loving, responsible individuals who can help their children prosper, regardless of sexual preference.

CHRISTIAN ASSOCIATION AT THE UNIVERSITY OF PENNSYLVANIA

Our ecumenical Christian organization, begun in 1891, has as its stated purpose to “proclaim the Gospel of Jesus by empowering the University of Pennsylvania community in the search of liberation and reconciliation.” We are particularly concerned at this time about the attempts to circumscribe parental love as appropriate for children only if it comes from a heterosexual couple. The power of love is at the heart of the Christian message: at no time are people of faith ever to impose limits on a nurturing love. The fact that a person is a lesbian or gay non-legal parent should not be used to deny visitation with children she or he has loved and nurtured as a parent.

COMMON SENSE ADOPTION SERVICES

Common Sense Adoption Services is a non-profit, licensed adoption agency that operates in Pennsylvania with a primary focus on working with children with special needs, especially those coming from the public child welfare system. We know of no evidence that the sexual orientation of the parents per se is a determinant of parenting ability. On the contrary, lesbian and gay parents are as competent and loving as heterosexual parents.

COMMUNITY WOMEN’S EDUCATION PROJECT

Community Women’s Education Project (CWEP) is a community-based education agency serving low-income families throughout the city of Philadelphia. Through a continuum of education programs, vital educational supports, and connections to the workplace, for twenty-two years CWEP has helped more than 13,000 women and their families move from public assistance to self-assistance. Embedded in our mission is a commitment to challenging discrimination in all its forms, including sexual discrimination. CWEP supports the rights of a same sex former partner to seek visitation with a child that they once helped raise.

CONGREGATION BETH ISRAEL OF MEDIA

Congregation Beth Israel of Media is a Jewish Reconstructionist congregation located in Media, Pennsylvania. Beth Israel is made up of 150 households, including individuals, single parent families, gay and lesbian families, as well as traditional families. Our mission includes building community, strengthening families, and working toward “tikkun olam” – the repair of the world. As a Jewish congregation, we believe that the denial of legal rights to gay and lesbian individuals, couples and families is an injustice that is in need of repair.

CONGREGATION MISHKAN SHALOM

Mishkan Shalom is a Jewish Reconstructionist congregation in Chestnut Hill, Pennsylvania, with members who live throughout the Delaware Valley. Between 15-20% of our 290 households are gay or lesbian. Almost half of these families include children, and all are active participants in the life of our community and religious school. We also have many other forms of family life in our community, including single parents, non-

Jewish spouses and partners, multi-racial parents and children, divorced and separated families, and adoptive families, as well as “traditional” families with biological children. We believe that legal recognition of lesbian and gay parents and their families is required for a world that should bless equally the children of every family and recognize the sanctity of all family ties, however they are bound.

CONNECTICUT WOMEN’S EDUCATION AND LEGAL FUND

The Connecticut Women’s Education and Legal Fund (CWEALF) is a non-profit women’s rights organization dedicated to ending discrimination and empowering women, girls and their families to achieve equal opportunities in their personal and professional lives. CWEALF was founded in 1973 and has a membership of over 1,400 individuals and organizations. CWEALF has been involved with numerous *amicus curiae* briefs in the last several years supporting lesbian families issues. CWEALF believes that permitting a same sex former partner to petition for visitation rights for the child they once helped raise is not merely an issue of fairness, but is in the best interest of children.

DEFENDER ASSOCIATION OF PHILADELPHIA

The Defender Association of Philadelphia is a private, non-profit corporation that contracts with the City of Philadelphia to provide certain legal services. Since 1976, the Defender Association’s Child Advocacy Unit has provided representation to children in Philadelphia’s Dependency Court. In this role, the Defender Association has an interest in ensuring that Dependency Court judges are given every available option for placement that would foster our clients’ safety, welfare, and healthy development with familiar, permanent settings. To that end, the Defender Association believes that it is in the best interest of the child for a relationship to continue with a parent’s former partner who once acted as a co-parent to that child.

DIGNITY/USA

Dignity/USA is the nation’s oldest and largest organization of gay, lesbian, bisexual and transgender (GLBT) Catholics and our families and friends. Since its founding in 1969, Dignity/USA has consistently fulfilled a dual mission of ministry and pastoral care to individual GLBT Catholics who seek to integrate their sexual orientation and/or gender identity and their faith, and providing a formidable voice on behalf of our community to the larger Church and society. Dignity/USA believes that the law should recognize same sex families and give these families all the privileges and responsibilities of heterosexual families. We believe this in both faith and law.

DIGNITY/PHILADELPHIA

Dignity/Philadelphia, as a chartered member of Dignity/USA, supports our national organization’s Statement of Position and Purpose to “work for justice and equality through education and by supporting social and legal reforms.” As members of Dignity, we promote causes of interest to gay, lesbian, bisexual, and transgender

Catholics, and we work to recognize and eradicate all injustices in regard to the gay, lesbian, bisexual and transgender community.

EDUCATION LAW CENTER – PA

The Education Law Center (ELC-PA) is a non-profit, public interest law organization serving families with problems involving the public education system. ELC-PA supports measures, such as the right of same-sex former partners to have standing to petition for visitation because our experience shows that security in their relationships with caretakers benefits children in school settings. ELC-PA believes in the importance of ensuring that a child's relationships with parents are maintained to the maximum extent feasible, regardless of issues of sexual orientation.

ELIZABETH BLACKWELL HEALTH CENTER FOR WOMEN

Founded in 1975, the Elizabeth Blackwell Health Center for Women (EBHCW) is a non-profit women's health care organization that provides comprehensive reproductive health care and health education programs in a sensitive, consumer-oriented environment. By creating a setting that enables every woman to be an active participant in her health care, EBHCW serves the needs of a diverse consumer base regardless of age, race, religion, national origin, physical ability, marital status, or sexual orientation.

EPISCOPAL COMMUNITY SERVICES

Founded in 1870, Episcopal Community Services (ECS) is a diocesan social service agency of the Episcopal Diocese of Pennsylvania. ECS offers a variety of child welfare programs and services, and we work to eliminate discrimination against any persons because of sexual orientation, race, creed, color, national origin, disability or any other known reason for which discrimination has existed historically in our country. We believe that a same sex former partner should have standing to petition for visitation with the child they once helped parent and to prevent them from doing so based on their sexual orientation would be discriminatory.

EQUAL PARTNERS IN FAITH

Founded in 1997, Equal Partners in Faith is a multi-faith, multi-racial network of religious leaders and people of faith committed to equality and diversity. Our diverse faith traditions and shared religious values lead us to affirm and defend the equality of all people, regardless of religion, race, ability, gender or sexual orientation. As people of faith, we actively oppose the manipulation of religion to promote exclusion and inequality. Equal Partners in Faith is helping mainstream and progressive people of faith promote a more inclusive vision of religion and society. We strongly support the idea that lesbians and gays should have the same legal rights as other citizens, and support the right to seek visitation with children they have parented.

FAMILY PRIDE COALITION

The Family Pride Coalition (FPC) seeks to advance the well-being of lesbian, gay, bisexual, and transgender parents and their families through mutual support, community collaboration, and public understanding. FPC works to promote positive public policy for these families and to project positive, accurate messages about them. The families that make up our membership are living proof that lesbian and gay parents are as devoted, caring, and skilled at parenting as heterosexual parents, and our families are as worthy of legal protection as traditional families.

GAY AND LESBIAN ADVOCATES AND DEFENDERS

Gay and Lesbian Advocates and Defenders (GLAD), incorporated in Massachusetts in 1978 as Park Square Advocates, is a non-profit, public interest law firm which represents gay men, lesbians and persons with HIV infection in impact litigation throughout New England. GLAD historically has been concerned with the right of same-sex couples who have separated to seek visitation under the best interest of the child standard. GLAD represented the appellant in a similar Massachusetts case, *E.N.O. v. L.M.M.*, 429 Mass. 824, 711 N.E.2d 886, *cert. denied*, 528 U.S. 1005 (1999), and has participated in such cases as *amicus* in the supreme courts of Vermont, *Titchenal v. Dexter*, 693 A.2d 682 (Vt. 1997), and Rhode Island, *Rubano v. DiCenzo*, 759 A.2d 959 (R.I. 2000).

GAY AND LESBIAN LAWYERS OF PHILADELPHIA

Gay and Lesbian Lawyers of Philadelphia (GALLOP) is a non-profit organization of over 400 legal professionals serving the gay and lesbian community in the Philadelphia, Pennsylvania metropolitan area. GALLOP is dedicated to the elimination of prejudice and discrimination on the basis of sexual orientation, to educating members of the gay and lesbian community about available rights and protections, and to improving access to attorneys sensitive to the needs of the community. Formed in 1985, GALLOP is recognized as a minority bar association by the Philadelphia Bar Association. GALLOP submits *amicus* briefs in cases of importance to the lesbian and gay community, including in *Romer v. Evans*, 517 U.S. 620 (1996). GALLOP takes particular interest in this Court's application of the doctrine of *in loco parentis* because GALLOP members represent same sex partners and former partners.

GERTRUDE STEIN POLITICAL CLUB OF GREATER PITTSBURGH

The Gertrude Stein Political Club of Greater Pittsburgh (GSPC) is involved in electoral politics representing the issues of the lesbian, gay, bisexual, and transgender community and women's rights. The organization was founded in the 1970s, and currently has over 50 members as well as nonmember volunteers. GSPC seeks and supports candidates who support various lesbian, gay, bisexual and transgendered issues, including the protection of the best interests of children of same-sex couples.

JEWISH RECONSTRUCTIONIST FEDERATION

The Jewish Reconstructionist Federation (JRF) is the umbrella group of 100 religious communities and congregations throughout the United States. Committed to the synthesis of Jewish tradition and modernity, JRF has 50,000 members.

JUVENILE LAW CENTER

The Juvenile Law Center (JLC) is a private, non-profit public interest law firm that has represented children in cases involving Pennsylvania's child welfare, juvenile justice, mental health and public health systems. JLC has worked to ensure that children's rights and interests are protected throughout these systems. JLC's publications are used by attorneys, judges, and child welfare professionals across the Commonwealth. JLC has participated as *amicus curiae* in the United States Supreme Court, as well as this Court.

LEAGUE OF GAY AND LESBIAN VOTERS

The League of Gay and Lesbian Voters' purpose since its establishment in 1987 is to protect and advance the concerns of the lesbian and gay community in the Commonwealth of Pennsylvania. This includes, among other things, the interests of all members of lesbian and gay families, and the well-being of the children of lesbian and gay parents, regardless of the parents' sexual orientation.

LUTHERAN CHILDREN AND FAMILY SERVICE OF EASTERN PENNSYLVANIA

Lutheran Children and Family Service of Eastern Pennsylvania (LCFS) is an affiliated organization of the Evangelical Lutheran Church in America, founded in 1922. LCFS is a major provider of child welfare services for the City of Philadelphia and surrounding counties. As part of its child welfare work, LCFS has developed specialized placement services for gay, lesbian or transgendered persons, and as such, has a history of positive outcomes for such placements.

MASSACHUSETTS LESBIAN AND GAY BAR ASSOCIATION

The Massachusetts Lesbian and Gay Bar Association (MLGBA) is a statewide professional association of some 300 lawyers, judges, and law students who seek to educate the legal community about issues and laws that affect the lives of lesbians, gay men, bisexuals, and transgender individuals. MLGBA was formed, in part, to promote the evenhanded administration of justice for all persons without regard to their sexual orientation. MLGBA is affiliated with the Massachusetts Bar Association and the National Lesbian and Gay Law Association.

METROPOLITAN COMMUNITY CHURCH OF THE LEHIGH VALLEY

Metropolitan Community Church of the Lehigh Valley (MCC) is a Christ-centered community church sharing God's love and grace with all people through worship, fellowship and service. MCC of the Lehigh Valley is a member of the denomination of the Universal Fellowship of Metropolitan Community Churches, which was founded in 1968 and now has over 200 member churches around the country and throughout the world. Founded in 1984, MCC of the Lehigh Valley welcomes all people and we offer affirming outreach to the gay, lesbian, bisexual, and transgender community in the Lehigh Valley. Our membership is predominantly gay and lesbian and includes gay and lesbian parents.

NATIONAL ASSOCIATION OF SOCIAL WORKERS (NASW) AND THE PENNSYLVANIA CHAPTER OF NASW

The National Association of Social Workers (NASW) is a professional membership organization comprised of more than 150,000 social workers with chapters in every state, the District of Columbia, and internationally. The Pennsylvania Chapter has over 6,600 members. Established in 1955, NASW has as its purpose to develop and disseminate high standards of practice while strengthening and unifying the social work profession as a whole. Among the activities engaged in to further its purposes, NASW promulgates professional standards and criteria, conducts research, publishes books and studies of interest to the profession, provides continuing education and enforces the *NASW Code of Ethics*. NASW has adopted a policy affirming the Association's commitment "to work toward full social and legal acceptance and recognition of lesbian and gay persons." When that policy is coupled with NASW's intrinsic interest in protecting the rights of children, NASW's participation in this case is particularly appropriate.

NATIONAL CENTER FOR YOUTH LAW

The National Center for Youth Law (NCYL), founded in 1971 and based in Oakland, California, engages in litigation, legislative and administrative advocacy, and policy development on behalf of low-income children, adolescents, and their families. NCYL's top priorities include promoting the well-being of children by advocating for child welfare policies that are in their best interests.

NATIONAL GAY AND LESBIAN TASK FORCE

Since its inception in 1973, the National Gay and Lesbian Task Force (NGLTF) has been at the forefront of initiatives for lesbian, gay, bisexual and transgender rights. Millions of lesbian, gay, bisexual and transgender parents are raising children. Studies overwhelmingly conclude that there are no significant differences in the psychological health of children raised by lesbians and gay men compared with children raised by heterosexuals. NGLTF believes strongly in the right of all people to form families and in the value of gay, lesbian, bisexual and transgender families. Accordingly, NGLTF

believes that former same-sex partners deserve the same right as straight persons to petition for visitation.

NATIONAL ORGANIZATION FOR WOMEN FOUNDATION

The National Organization for Women Foundation (NOW Foundation) is a non-profit organization devoted to furthering women's rights through education and litigation. NOW Foundation is affiliated with the National Organization for Women, the largest feminist organization in the United States, with a membership of over 250,000 women and men in more than 600 chapters in all 50 states and the District of Columbia. Since its inception in 1986, a major goal of NOW Foundation has been to ensure fair and equal treatment for, and an end to discrimination against, lesbians and gay men. In furtherance of that goal, NOW Foundation has a strong interest in ending discrimination on the basis of sexual orientation in all areas, particularly in family law.

NEW JERSEY ASSOCIATION FOR INFANT MENTAL HEALTH

The New Jersey Association for Infant Mental Health (NJAIMH) was established in 1991 as an affiliate of the World Association for Infant Mental Health. The term "infant mental health" refers to the biological, social, emotional, and cognitive growth of infants and the optimal development of infants and their families. The approximately 70 members of the organization have a variety of backgrounds related to infant mental health, and include psychiatrists, psychologists, nurses, physical and occupational therapists, and early childhood educators. The mission of NJAIMH involves encouraging the realization that infancy is a critical psychosocial period, working to consider the needs of culturally and ethnically diverse infants, and promoting awareness of the effect of public policy on infant mental health.

NORTHWEST WOMEN'S LAW CENTER

The Northwest Women's Law Center is a non-profit public interest organization dedicated to protecting the legal rights of women through litigation, education, legislative advocacy and the provision of legal information and referral services. The Law Center provides these services to women throughout Washington State and the Pacific Northwest. Since its founding in 1978, the Law Center has been actively involved in family law and lesbian rights issues. The Law Center has worked to protect children's best interests in family law and continues to fight to ensure that individuals in long-term committed relationships, regardless of sexual orientation or marital status, receive equitable treatment under the law.

NOW LEGAL DEFENSE AND EDUCATION FUND

The NOW Legal Defense and Education Fund (NOW LDEF) is a leading national non-profit civil rights organization that performs a broad range of legal and education services in support of women's efforts to eliminate sex-based discrimination, including discrimination against lesbians. NOW LDEF was founded as an independent organization in 1970 by leaders of the National Organization for Women. The rights of

women in the family sphere have been a significant focus of NOW LDEF's work. NOW LDEF has participated as counsel or *amicus curiae* in numerous cases involving child custody and visitation in state and federal courts, including cases involving the custody rights of lesbian mothers.

OFFICIAL BOARD OF OLD FIRST REFORMED CHURCH, UNITED CHURCH OF CHRIST

The 15-member Official Board of Old First Reformed United Church of Christ (Old First) acts on behalf of a 300 member congregation. Old First seeks to be "a wellspring of faith for a diverse people in the heart of the city." Old First is an "open and affirming" congregation of the United Church of Christ, welcoming into full membership and participation in the Body of Christ persons of every race, language, age, gender, sexual orientation, physical or mental ability, and economic status. We acknowledge that throughout history the Christian church has often condemned and excluded gay, lesbian and bisexual persons from the community of faith, or has condoned such condemnation and exclusion by its silence. We hold that such discrimination is incompatible with the gospel of Jesus Christ. We affirm all relationships founded on the principles of God's love and justice.

PARENT INFANT CENTER

The Parent Infant Center (PIC), located for over 20 years in Philadelphia, provides full day care for eighty children between infant and preschool, and a school age program serving eighty more between kindergarten and sixth grade. In addition, PIC offers a weekly parent-child playgroup and periodic parenting workshops or support groups. We believe that all children deserve to have two consistent, loving parents. At best, those parents will maintain a mutually loving and supportive relationship and the family will remain intact. Even if the parents separate, though, children need and deserve to know that the adults who have been important will continue to be there for them. We strongly support any effort that will assure that children grow up knowing that they are loved and supported by both parents, regardless of the genders of their parents.

PARENTS, FAMILIES AND FRIENDS OF LESBIANS AND GAYS, INC. (PFLAG)

PFLAG National Headquarters, Washington DC
PFLAG Chambersburg/Franklin Area
PFLAG Dubois
PFLAG Philadelphia
PFLAG York

Parents, Families and Friends of Lesbians and Gays, Inc. (PFLAG) is a national non-profit organization with a membership of over 80,000 households and more than 450 affiliates worldwide. PFLAG promotes the health and well-being of gay, lesbian, bisexual and transgender persons, their families and friends by providing the following: support to help them cope with an adverse society; education to enlighten themselves and

the public; and advocacy to end discrimination and to secure justice and equal rights. We believe that love is the most important factor in raising contented, well-adjusted children. It is through guidance and nurturing that children will grow into responsible, secure adults. PFLAG supports the right of visitation for partners of gay and lesbian parents. It is important that any children being raised by same sex parents continue to feel the love and concern of both parents.

PENNSYLVANIA NATIONAL ORGANIZATION FOR WOMEN

Pennsylvania NOW, Inc., is a non-profit, social change, membership organization founded in 1972 and affiliated with the National Organization for Women. Through grassroots organizing efforts, Pennsylvania NOW's thirty-two chapters, with over 9,000 members, work to eliminate all forms of discrimination against women, including race, economic status, age, sexual orientation, religious affiliation, ethnic origin, and discrimination on the basis of disability.

PENNSYLVANIA PSYCHOLOGICAL ASSOCIATION

The Pennsylvania Psychological Association, founded in 1933, represents more than 2700 psychologists in Pennsylvania. We are the state affiliate of the American Psychological Association. Our mission is to advance psychology in Pennsylvania as a means of promoting human welfare. Our members have expertise in all aspects of psychology and human behavior, including same-sex relationships, marriage and family issues, and parent-child relationships. It is our organization's position that a same-sex former partner should be able to seek visitation with a child she or he helped raise under the doctrine of *in loco parentis*. The denial of this significant psychological relationship could be emotionally harmful to both the child and the adult.

PHILADELPHIA CITIZENS FOR CHILDREN AND YOUTH

Philadelphia Citizens for Children and Youth (PCCY) is a non-profit child advocacy organization founded in 1980 dedicated to improving the lives and life chances of Philadelphia's children. PCCY has worked on child health and welfare and has served on numerous task forces with the goal of improving services and support to children at risk of abuse and neglect.

PHILADELPHIA COALITION OF LABOR UNION WOMEN

Philadelphia Coalition of Labor Union Women is a chapter of the national organization, Coalition of Labor Union Women, founded in 1974 to further the following goals: to organize unorganized working women; to bring about affirmative action in the workplace; to increase the participation of women in policy-making roles at all levels of the union movement; and to increase the participation of women in the political and legislative process.

PHILADELPHIA FAMILY PRIDE

Philadelphia Family Pride (PFP), founded in 1993, is an organization of over 100 families headed by gay and lesbian parents, most of whom live in southeastern Pennsylvania. PFP provides support and assistance around parenting and family issues, and also brings members together for family activities. In addition, PFP works to make the public aware that the needs of families headed by lesbian and gay parents are more similar to those of other families than they are different. PFP believes that, just as children of two heterosexual parents should have legal rights with respect to both parents, children of lesbian and gay couples deserve these rights as well.

RAISING OTHERS' CHILDREN/EIGHTEENTH STREET DEVELOPMENT CORPORATION

Raising Others' Children (ROC) is one of three programs run by the Eighteen Street Development Corporation, a community-based organization providing free services to the Point Breeze neighborhood of South Philadelphia. ROC provides holistic care and assistance to families in the community through group meetings, resource workshops for the adults and developmental activities for the children. ROC endeavors to provide the unique extended family group with the knowledge and resolution needed to break the cycle of child abuse and neglect.

STATEWIDE PENNSYLVANIA RIGHTS COALITION

The Statewide Pennsylvania Rights Coalition (SPARC) is the largest coalition of organizations and individuals working for passage of statewide civil rights legislation on behalf of lesbian, gay, bisexual, and transgender people in Pennsylvania. A major part of SPARC's agenda involves the legal rights of lesbian, gay, bisexual, and transgender families. As a result of our efforts in this area, SPARC knows firsthand of the pain caused to families by separation and works to secure the rights of both children and adults who have stood as parents to them to have secure relationships with one another.

SUCCESS AGAINST ALL ODDS

Success Against All Odds (SAO) is a non-profit organization dedicated to helping low-income families achieve economic independence. SAO is comprised primarily of single mothers in transition from welfare or low-wage employment to self-sufficiency. SAO helps these parents to secure a family-sustaining income, benefits such as health insurance, and other supports that contribute to the financial security of children.

SUPPORT CENTER FOR CHILD ADVOCATES

The Support Center for Child Advocates (Support Center) provides legal assistance and social service advocacy to abused and neglected children in Philadelphia. For all the children committed to the Support Center's care, lawyers and social workers advocate to ensure safety, health, education, family, permanency and access to justice. In

their advocacy, Support Center attorneys and social workers witness the negative effects on many child-clients who do not have permanency in their lives.

TABERNACLE UNITED CHURCH

Tabernacle United Church is a community of faith which welcomes all people regardless of their sexual orientation. Trusting in God's grace, we strive to be a starting point for a ministry of reconciliation in the world. Accordingly, we care deeply about the wellbeing of all children, including those being raised by lesbian and gay parents, and we support the rights of all sexual minorities, including those who are parents.

TEMPLE OF WOMANSPIRIT

Temple of WomanSpirit (WomanSpirit) was founded twenty years ago and is the first women's church in our country. We are women of diverse religious backgrounds and practices who share a common social and spiritual vision, and a deep desire to express the soul of our individual and collective roots while celebrating significant life events and personal rites of passage symbolic of the cycles of women's lives. WomanSpirit is committed to full equality for women in our society.

TRANSITIONS ADOPTION AGENCY, INC.

Transitions Adoption Agency, Inc. is an adoption and children, youth and family agency licensed in the State of Pennsylvania. It is the mission of Transitions to assist all families, regardless of sexual orientation, in building safe, loving, permanent homes for children who need them. We have performed home studies and post placement supervision for many lesbian and gay families to determine if the best interests of the children in those homes were being met. It is our professional opinion that children in lesbian and gay homes thrive just as much as their counterparts in so-called "traditional" families.

UNITARIAN UNIVERSALIST ASSOCIATION

The Unitarian Universalist Association (UUA) is a religious association of more than one thousand congregations in the United States, Canada and elsewhere. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. In particular, the Association has adopted numerous resolutions affirming the principles of separation of church and state, personal religious freedom and the right to privacy. Most relevant to the case at bar are the Association's resolutions (a) opposing discrimination based on sexual orientation or practice and (b) affirming the goals of equality, dignity and respect for all people regardless of sexual orientation or preference.

UNIVERSITY LUTHERAN CHURCH OF THE INCARNATION

Since 1970, University Lutheran Church of the Incarnation has been a combination of the Lutheran Campus Ministry in Philadelphia and the parish of the

Lutheran Church of the Incarnation, founded in 1889. Since February of 1988, we have been a Reconciling in Christ Congregation, affirming the rights of all people, regardless of sexual orientation. As a community of the people of God, we believe we are called to minister to all people in our world, knowing that the world is often an unloving place. Our interest in this case is in the spirit of preventing alienation and brokenness in the children of families where adults who have functioned as parents, in a non-traditional family setting, become estranged. As healers in our society we are concerned that the children in such families not be punished by denial of visitation with parental figures.

WOMEN'S LAW PROJECT

The Women's Law Project (WLP) is a non-profit, feminist legal advocacy organization located in Philadelphia. Founded in 1974, WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public policy advocacy, and education. Throughout its history, WLP has worked to eliminate discrimination based on sexual orientation. WLP has participated as *amicus curiae* on behalf of lesbian mothers in custody and second-parent adoption cases and has published a handbook on the legal rights of lesbian and gay parents in Pennsylvania. WLP has worked closely with the Philadelphia Family Court to develop fair and equitable procedures relating to the court's response to lesbian and gay parents and their children. We have also provided information through telephone counseling, teaching and public speaking on the legal rights of lesbian and gay parents. We coordinate a state-wide network of advocates for the rights of lesbian and gay parents and have significant knowledge about the many benefits that families gain when the relationships between parental figures and their children are secure.

