

IN THE SUPREME COURT OF THE STATE OF NEBRASKA

CASE NO. S-01-0053

IN RE ADOPTION OF LUKE

ON APPEAL FROM THE COUNTY COURT OF LANCASTER COUNTY
The Honorable James Foster, County Court Judge

BRIEF OF *AMICI CURIAE* AMERICAN PSYCHOLOGICAL ASSOCIATION;
NATIONAL ASSOCIATION OF SOCIAL WORKERS;
NEBRASKA CHAPTER, NATIONAL ASSOCIATION OF SOCIAL WORKERS;
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INTEREST OF AMICI

The American Psychological Association, the Nebraska Psychological Association, the National Association of Social Workers, and the Nebraska Chapter, National Association of Social Workers are associations of psychologists and social workers, respectively. *Amici* present empirical data that bear on this case from their perspective as associations of scientists and professionals in the field. Such research typically is subject to critical review by outside experts, usually during the peer review process preceding publication in a scholarly journal. A detailed statement of interest is included in their attached Motion for Leave to File a Brief *Amici Curiae*.

ARGUMENT

The approach taken by the County Court, that second-parent adoptions must be denied when the co-parents are gay or lesbian, can place these children at psychological and social risk and is inconsistent with the adoption law's purpose of promoting the welfare of children. Research and clinical experience indicate that when children have been raised from birth or an early age by lesbian couples, co-parent adoption will ordinarily provide significant psychological and social benefits to them and therefore will ordinarily be in their best interests.

Because Luke is already being raised by lesbian co-parents, the Attorney General's view that children should not be has no bearing here. Second-parent adoptions are a mechanism to secure,

not create, parent-child bonds. The issue here is whether Luke is better off with one legal parent or the two who want him. The Attorney General has also misconstrued the research on children raised by gay or lesbian parents which demonstrates they are as psychologically healthy and socially adjusted as children raised by heterosexuals. Few of the "differences" between samples noted are statistically significant and none indicate that children raised by gay or lesbian parents are at greater risk.

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

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

A. Attachment and Continuity

Children develop strong bonds to their parents early in life, bonds psychologists refer to as attachment, which persist as children grow older. See generally, e.g., John Bowlby, *Attachment* (1969). These bonds develop regardless of whether the parent is a biological parent of the child. 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). 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." Joseph Goldstein *et al.*, *Beyond the Best Interests of the Child* 27 (1979 ed.).

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

Once these bonds have formed, continuity of the relationship appears to be important for the child's healthy development. *Id.* at 31. When the relationship is forcibly interrupted children "not only suffer separation distress and anxiety but also setbacks in the quality of their next attachments, which will be less trustful." *Id.* at 33. Studies of children of divorced parents confirm the psychological harm that can result from separation from a parent to whom the child is attached. See, e.g., Judith S. Wallerstein & Sandra Blakeslee, *Second Chances* (1989) (children who do not maintain contact with co-parent suffer a continuing sense of loss and sadness); E. Mavis Hetherington *et*

al., What Matters? What Does Not?, 53 *Am. Psychologist* 167, 177 (Feb. 1998) ("some degree of contact is essential").

Specific research on lesbian households demonstrates the same need for continuity. Researchers have found that when lesbian couples separate, the children mourn for the absent caretaker the same as for an absent parent after divorce. Martha Kirkpatrick *et al.*, *Lesbian Mothers and Their Children: A Comparative Study*, 51 *Am. J. Orthopsychiatry* 545, 545-51 (1981).

Children raised in lesbian households, if they are not adopted by their second parents, risk total cessation of their relationships with their co-parents in the event their parents separate or their biological mothers die, which "can cause extreme distress." Fiona Tasker & Susan Golombok, *Growing Up in a Lesbian Family* 12 (1997) (a twenty-year longitudinal study in the UK). Non-adoptive co-parents lack legal security regarding custody or visitation. If their biological mother dies, the children can be removed from their families and consigned to strangers, losing both parents, and possibly siblings and other relatives, at a time when the child most needs stability. Even if the co-parent is ultimately awarded custody, the process may leave the child in limbo for an extended period of time.

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

consigned to grandparents, and returned only after four years of litigation. See *In re Pearlman*, No. 87-24926 (Fla. Cir. Ct., Broward Cty., Mar. 31, 1989). The court-appointed psychiatrist found the child had experienced anxiety since separation from her second parent, manifested by acting out and hyperactivity; her attachment to her second parent had not lessened after several years; and she would not attach to anyone else. In contrast, after a lesbian couple in Washington, D.C. adopted each other's children, one of the mothers was killed in a car accident, and her biological child was permitted to remain with her second parent and sibling. See *Legal Times*, May 9, 1994, at 6.

It is generally best for children if the parent with whom they have bonded takes over responsibility and daily decision-making immediately and permanently. G. Dorsey Green & Frederick W. Bozett, *Lesbian Mothers and Gay Fathers*, in *Homosexuality: Research Implications for Public Policy* 197, 213 (J.C. Gonsiorek & J.D. Weinrich eds., 1991).

B. Second-Parent Adoption in Intact Families

Second-parent adoptions are likely to provide significant psychological advantages even when a family remains intact. The research comparing children in long-term foster care with adopted children is not fully analogous but is nonetheless instructive. Studies show "that those growing up adopted, even if placed when older, appear in adulthood to have a stronger sense of self and

to function more adequately at the personal, social and economic level compared with those who were formerly fostered." John Triseliotis & Malcolm Hill, *Contrasting Adoption, Foster Care, and Residential Rearing*, in *The Psychology of Adoption* 107 (David Brodzinsky & Marshall Schechter eds., 1990) (jurisdiction randomly assigned children to foster care or adoption); J. Lahti, *A Follow-Up Study of Foster Children In Permanent Placements*, 56 Soc. Serv. Rev. 556-71 (1982). Even children in long-term foster placements gain psychological benefits from being adopted by their foster family. Triseliotis & Hill at 114. Outcomes appear better for those who are adopted than for those raised in foster homes even between siblings. A. Dumaret, *IQ, Scholastic Performance, and Behavior of Siblings Raised In Contrasting Environments*, 26 J. Child Psychol. & Psychiat. 553-580 (1985) (French study measuring IQ and school performance). The social work profession has long recognized the psychological value of permanency, moving public policy away from foster care and toward permanent placement. Alice Bussiere, *The Development of Adoption Law*, 1 Adoption Q. 3, 8-9 (1998).

Additional relevant data is provided by an ongoing national longitudinal study of adolescents at the University of North Carolina's Carolina Population Center. Using the information in this database on children living with their biological mothers and their mother's spouses or partners, Deputy Director Kathleen

Mullan Harris and her research assistant compared those who had been adopted by the second parent with those who had not. Regression analysis was used to eliminate differences in income, race, sex and age of child, and mother's education. The children adopted by second parents were 49% less likely to display negative affect, 57% less likely to have committed 4 or more delinquent acts, and 33% less likely to have used 3 or more illicit substances. They were also 32% more likely to feel that discipline included helping them understand why their behavior was wrong. The data shows correlations between certain factors, and cannot establish causality. But they are consistent with hypotheses that the formal ties of second parent adoption benefit children by increasing their sense of stability and the second parents' willingness to provide supervision and discipline.

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

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

The consistent conclusion drawn from two decades of scientific research conducted on gay and lesbian parents and

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

A. Children Raised by Lesbians or Gay Men

1. Psychological and social adjustment. Research comparing children of divorce raised by lesbian and heterosexual mothers in both single parent and two-adult households have found no evidence that those raised by lesbians develop abnormally or are impaired psychologically or socially. Susan Golombok *et al.*, *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 J. Child Psychol. & Psychiat. 551, 565, 570 (1983) (measuring conduct problems, unsociableness, emotional difficulty, hyperactivity) ("Appraisal"); Sharon L. Huggins, *A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers*, in *Homosexuality and the Family* 123, 132-35 (Frederick

W. Bozett ed., 1989) (measuring self-concepts and self-esteem); Tasker & Golombok at 135, 138, 143-44 (measuring anxiety, depression, mental health problems, and unemployment in adults who had been raised by lesbians). Another study comparing adult daughters raised by lesbian and heterosexual mothers, and finding no higher incidence of emotional problems among the daughters raised by lesbian mothers, found instead they were more likely to feel secure in relationships and in the world while the daughters raised by heterosexual mothers exhibited greater apathy and cautiousness and had more complaints and worries. Julie S. Gottman, *Children of Gay and Lesbian Parents*, in *Homosexuality and Family Relations* 177, 189-90 (Frederick W. Bozett ed., 1990).

The research on children raised from birth in lesbian households has also found psychological parity between these children and their peers from heterosexual households. Raymond W. Chan *et al.*, *Psychosocial Adjustment among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 *Child Dev.* 443 (April 1998) (measuring social competence and behavior problems); Flaks at 16-20, 24 (measuring behavioral functioning, cognitive abilities, developmental progress, social skills, and school performance); Susan Golombok *et al.*, *Children Raised in Fatherless Families From Infancy*, 38 *J. Child Psychol. & Psychiat.* 783, 788-89 (1997) ("*Infancy*") (measuring psychological well-being and behavior).

The article the Attorney General relies on also reported that the scientific studies had found no differences between children raised by lesbians and heterosexuals with respect to self-esteem, anxiety, depression, behavioral problems, performance in sports, school and friendships, use of counseling, unsociability, hyperactivity, or emotional difficulty. Judith Stacey and Timothy J. Biblarz, *(How) Does the Sexual Orientation of Parents Matter?*, 66 Am. Soc. Rev. 159, 169, 171 (2001).

Some research has indicated that children raised by lesbians report greater symptoms of stress than those of heterosexual mothers, but also greater feelings of contentedness, comfort with themselves, and joy. Charlotte J. Patterson, *Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex-Role Identity*, in *Lesbian and Gay Psychology: Theory, Research and Clinical Applications* 156, 168-70 (Beverly Greene & Gregory M. Herek eds., 1994); see also Stacey & Biblarz at 172 (reporting other research finding that children of gay or lesbian parents had experienced homophobic teasing that was stressful but that they exhibited "impressive psychological strength").

The research shows that children raised by lesbians do not differ from children raised by heterosexuals in self-ratings of popularity and overall social adjustment or parents' ratings of the children's leadership qualities and popularity. R. Green at 178; *Appraisal* at 565-67. Research also does not support any

presumption that children raised in lesbian households are deprived of male role models. Kirkpatrick at 549.

2. Gender and Sexual Issues. The Attorney General's summary of research misconstrues the nature and significance of the empirical data. The publication upon which he relies is a summary of psychological research by sociologists who focus on differences that the authors themselves concede were generally not statistically significant and were often contradicted by other studies. For example, some researchers have found that more of the children raised by lesbians or gay men than the children raised by heterosexuals appeared freer from older stereotypes of "proper" male and female roles. The girls were more likely to aspire to professional careers and the boys were less likely to exhibit domineering and aggressive behavior and more likely to have fewer sexual partners. Beverly Hoefffer, *Children's Acquisition of Sex-Role Behavior in Lesbian-Mother Families*, Am. J. Orthopsychiatry 536-44 (1981); Golombok, *Appraisal* at 551-72; R. Green at 167-84; Alisa Steckel, *Psychosocial Development of Children of Lesbian Mothers*, in *Gay and Lesbian Parents* 75 (Frederick W. Bozett ed., 1987). Thus, it may be, for example, that boys raised by lesbians may be less inclined toward casual or predatory sexual behaviors, but the data are insufficient to warrant conclusions. The differences between the subjects studied were not statistically significant, and thus cannot be regarded as likely to be true of other

samples. Even if such a correlation were statistically significant, it could not be concluded that the significant factor is the sexual orientation of the parents, without testing other plausible causal factors such as social attitudes.

The Attorney General also relies inappropriately on the one study in which more children of the lesbian mothers reported having felt and experimented with homoerotic attraction. Tasker & Golombok. Because these data are based on self-reports, there is no way to distinguish whether those reporting attraction or experimentation were the only ones who experienced it or the only ones willing to report it to strangers. Thus, it may be that children raised by lesbians are simply more willing to report homoerotic attractions and experimentation.

Any intimation that these not-established differences signify that children raised by lesbian or gay parents are more likely to be gay or lesbian themselves is contrary to the empirical data. Although it might be hypothesized, especially for biological children, that there would be a correlation between the sexual orientation of parents and their children, the research indicates that the incidence of homosexuality is no higher among children of homosexuals than among children of heterosexuals. *Id.* at 171; Frederick W. Bozett, *Gay Fathers: A Review of the Literature*, 18 J. Homosexuality 137 (1989), reprinted in *Psychological Perspectives on Lesbian and Gay Male Experiences* at 442 (L. Garnets & D. Kimmel eds. 1993); Tasker & Golombok at 132; Gail S. Goodman *et al.*, *Developmental Psychology*

& Law: Divorce, Child Maltreatment, Foster Care and Adoption, in *Handbook of Child Psychology* 775, 849 (William Damon et al. eds., 1998); Huggins at 123-35. Another study found the sexual orientation of sons of gay fathers unrelated to the amount of time spent living with the fathers. Michael J. Bailey et al., *Sexual Orientation of Adult Sons of Gay Fathers*, 31 Dev. Psychol. 124, 124-29 (Jan. 1995). The research also shows parity between children of homosexual and heterosexual parents with respect to a desire to be the opposite gender. R. Green at 167-84. *Amici* do not suggest that a higher incidence of gay or lesbian children would be a negative outcome, only that the research contradicts any hypothesis postulating that outcome.

B. Parenting by Lesbians and Gay Men.

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

respond to child care situations, but that lesbian second parents scored considerably better than fathers. Flaks at 111, 112.

The article the Attorney General relies on drew the same conclusions, and speculated that the comparative parenting strengths of lesbian co-parents may "have more to do with gender than with sexual orientation." Stacey & Biblarz at 175. These sociologists also explained that research provides no evidence that lesbian mothers suffer greater levels of psychological difficulties than heterosexual mothers but suggests instead that "lesbian mothers actually display somewhat higher levels of positive psychological resources." *Id.* Here too, however, the differences noted were not statistically significant.

Any presumption about the fitness of lesbians or gay men to be parents based on a belief that their sexual orientation indicates psychological dysfunction is unfounded. Professional psychiatric and psychological associations have long rejected the view that homosexuality is a mental disorder, based on extensive empirical research demonstrating that earlier assumptions cannot be justified by scientific observation. John C. Gonsiorek, *The Empirical Basis of the Demise of the Illness Model of Homosexuality*, in *Homosexuality: Research Implications for Public Policy* 115-136 (J.C. Gonsiorek & J.D. Weinrich eds., 1991); see also *Resolution of the American Psychiatric Association* (Dec. 15, 1973), reprinted in 131 *Am. J. Psychiatry* 497 (1974); American

Psychological Association, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975).

CONCLUSION

Scientific research and clinical experience indicate that, where a child is being raised by a lesbian couple, adoption by the second parent is generally beneficial for the child's social and psychological development and therefore consistent with the child's best interests. A decision to the contrary, which is not based on the individual circumstances, will generally be inconsistent with the child's best interests and can place the child at particular risk in the event the household is interrupted by illness, injury, death or separation.

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CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing Motion of the American Psychological Association; the National Association of Social Workers; the Nebraska Chapter, National Association of Social Workers; and the Nebraska Psychological Association for Leave to File Brief *Amici Curiae* and Brief *Amici Curiae* of the American Psychological Association; the National Association of Social Workers; the Nebraska Chapter, National Association of Social Workers; and the Nebraska Psychological Association, upon counsel for Petitioners and the State of Nebraska by placing copies in the United States Mail, first class postage prepaid, addressed as follows:

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